

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

CRIMINAL REVISION APPLICATION NO. 365 OF 2015

Rajkumar @ Bheli Ramtirth Nishad @ Sunil Yadav ...Applicant
(Orig. Accused No.1)

Vs.

The State of Maharashtra ...Respondent
(At the instance of Sr. Inspector of Police
Santacruz Police Station in C.R.No.472/2011)

Mr. Jagdish Giria Shetty for Applicant
Ms. Anamika Malhotra, APP for the State

**CORAM : MR. A.V.NIRGUDE, J.
DATED : 7TH DECEMBER, 2015**

P.C. :

1. In August 2011 the police registered offence of murder and robbery against the applicant. The complainant came with a case that the applicant had committed murder of one Aarti and took away valuables from the house. He also mentioned that the applicant was engaged as resident servant. After investigation chargesheet was filed against the applicant and one more accused. The applicant and the other accused were convicted. Their appeal is pending before Division Bench of this Court. During the pendency of the appeal the applicant submitted to the Division Bench of this Court that on the day of the incident he was a juvenile offender and therefore, he would be entitled to different treatment.

The Division Bench of this Court directed the Sessions Court to inquire into the question as to whether the applicant on the day of incident was a juvenile. It is all along the case of the applicant that his date of birth is 15th November, 1993. The question before the learned Sessions Judge thus was whether the applicant's date of birth was 15th November, 1993. In order to prove his date of birth it was for the applicant to lead evidence. He led evidence in the form of birth certificate issued by Village Panchayat and a school leaving certificate. Both these documents indicate that one Rajkumar S/o. Ramtirth took birth on 15th November, 1993.

2. The witness of the applicant stated that he could produce school record. He admittedly did not know the applicant personally. He produced before the Court school record showing that one student by name Rajkumar was admitted in his school on 10th July, 2005 in class VI and on 30th May, 2008 the said student left the school after passing VIII standard. As per the record of the school the date of birth of Rajkumar was 15th November, 1993. He also produced a copy of school leaving certificate issued by the earlier school of Rajkumar indicating his date of birth. He also identified school leaving certificate of student Rajkumar when he left the school after passing VIII standard. This witness was disbelieved mainly because he did not know the applicant personally. No one came forward to say that the documents produced before the Court showing date of birth of one Rajkumar was 15th November, 1993 belonged to and related to the applicant. The other document that came on record is birth certificate. On

perusal of the register of which Exhibit-5-part it appears to me that the register itself is not a genuine document. This was rejected by the learned Sessions Judge mainly because this document was prepared only in 2014. So the applicant failed to prove that he was Rajkumar named in the documents of school whose date of birth was 15th November, 1993. The evidence produced on record is insufficient to draw conclusion in favour of the applicant. The applicant thus fails to prove his case. Hence the revision application is dismissed.

(A.V. NIRGUDE, J.)

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