

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.516 OF 2003

Pinnya Alias Ajinath s/o Ambadas Avhad,
Age-24 years, Occu:Agri.,
R/o-Wadule (Kh.), Tq-Shevgaon,
Dist-Ahmednagar.

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

WITH

CRIMINAL APPLICATION NO.2207 OF 2016

IN

CRIMINAL APPEAL NO.516 OF 2003

Ajinath s/o Ambadas Avhad,
Age-33 years, Occu:Agriculture,
R/o-Wadule (Kd.), Shevgaon,
Tq-Shevgaon, Dist-Ahmednagar.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr. Naseem R. Shaikh Advocate for Appellant -

Applicant.
Mr. B.A. Shinde, A.P.P. for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 7TH SEPTEMBER, 2016

ORAL JUDGMENT :

1. Heard learned counsel for the Appellant and learned A.P.P. for State. The Appellant has been convicted under Section 354 of the Indian Penal Code, 1860 ("I.P.C." for short) and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs.1000/- and in default of payment of fine, to suffer rigorous imprisonment for three months.

2. The case of prosecution as brought before the trial Court was that the Appellant had taken a minor girl (victim) in a dilapidated house and removing his clothes, lay on her person and outraged her modesty. The prosecution brought was

for offence of attempting to commit rape and offence for outraging the modesty. The Appellant was acquitted of the offence punishable under Section 376 read with Section 511 of I.P.C. and came to be convicted for offence punishable under Section 534 of I.P.C. The incident is stated to be of 11th February 2000. The Appellant was convicted on 15th July 2003.

3. When this Appeal came up for hearing, the counsel for Appellant filed the Criminal Application No.2207 of 2016 claiming that on the day of offence, the Appellant was a juvenile in view of Juvenile Justice (Care and Protection of Children) Act, 2000 coming into force with effect from 1st April 2001 and protection in view of Section 7-A added in the Act with effect from 22nd August 2006 and according to the counsel, the Appellant needs to be treated as a Juvenile and protected accordingly.

4. When the Application was filed, along with the Application, the Applicant - Appellant furnished copy of primary school leaving certificate showing his date of birth as 3rd March 1983 as well as copy of Secondary School Certificate. In order to enquire, the said document from School was sent by this Court to the concerned police station to inter-alia verify from the concerned school record regarding the authenticity of the document. Subsequently, the police inspector Suresh Sapkale of the concerned police station filed report in the form of affidavit dated 27th July 2016 and additional affidavit of P.S.I. Hattekar dated 26th August 2016 is also filed. The report of the police is that the school leaving certificate of the Appellant annexed is true and correct. The copy of the relevant extract of School Admission General Register has been filed by the police and it is stated that there are no corrections or subsequent entries with regard to the date of birth in the

school admission register. It is stated that the original school admission register has been personally verified.

5. The learned A.P.P. has fairly submitted that in view of enquiry made with help of police he accepts that the date of birth of the Appellant is 3rd March 1983 and that on the date of incident which is of 11th February 2000, the Appellant was less than 18 years of age and thus now will have to be treated as a juvenile.

6. Looking to this admitted position that on the date of incident the Appellant was less than 18 years of age, the learned counsel for the Appellant relied on the case of **Abdul Razzaq vs. State of U.P., reported in A.I.R. 2015 Supreme Court 1770**. The learned counsel stated that in that matter the petitioner therein had been tried for offence under Section 302 of I.P.C. and was convicted and sentenced for life imprisonment by

Judgment dated 29th September 1980. The Judgment of the Sessions Court was confirmed by the High Court and even the Supreme Court dismissed the Special Leave Petition as well as the Review Petition. Subsequently, according to the learned counsel, in that matter the Juvenile Justice Board had held that on the date of incident the Petitioner concerned was less than 18 years of age. The counsel referred to the observations of the Hon'ble Supreme Court in Para 9 of the Judgment, which read as under:

"9. The legal position of the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time. Reference may be made to Sections 7-A and 20 of the Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which are as follows:

"Section 7-A. Procedure to be followed when claim of juvenility is raised before any court. - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile

on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not on affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

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. In Para 13 of the Judgment it was recorded that:-

"13. Again, in **Union of India v. Ex-GNR Ajeet Singh*** it was held:-

"19. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply **retrospectively**. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence."

* [(2013)4 S.C.C. 186]

. It is then stated by the learned counsel that in Para 14 of the Judgment, the Hon'ble

Supreme Court with advantage referred to the observations of the Hon'ble Supreme Court in earlier Judgment in the matter of **Jitendra Singh alias Babboo Singh vs. State of Uttar Pradesh, reported in (2013) 11 S.C.C. 193** and reproduced Para 82 of the Judgment, which reads as under:

"82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any court, upon such court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) effect. There is no provision suggesting, leave alone making it obligatory for the court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by any ordinary criminal court. Applying the maxim *expressio unius est exclusio alterius*, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication

any intention on the part of the legislature requiring the courts to set aside the conviction recorded by the lower court. Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7-A(2) of the Act."

. Relying on such law, it is stated that the Hon'ble Supreme Court left the conviction undisturbed but set aside the sentence and released the Petitioner therein from custody.

7. The counsel for the Appellant on the basis of above submissions, made alternative submissions that relying on Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, leaving the conviction undisturbed,

matter can be sent back to the Juvenile Justice Board for taking appropriate steps in the matter or, leaving the conviction undisturbed, the sentence can be set aside as has been done by the Hon'ble Supreme Court. For this, the learned counsel for the Appellant states that looking to the fact that the Appellant was already under detention from 14th February 2000 till 29th September 2000, which was more than seven months of period in the matter of conviction of one year, it would be in the interest of justice not to send back matter to the Juvenile Justice Board and adopt the course as adopted by the Hon'ble Supreme Court. The learned A.P.P. is not disputing the age of Appellant and has left the matter to the discretion of the Court.

8. I find substance in the submissions made by the learned counsel for the Appellant which are based on the Judgment in the matter of **Abdul Razzaq vs. State of U.P., cited supra**. In the

present matter, the Appellant was admittedly less than 18 years of age at the time of incident. Act of 2000 came into force with effect from 1st April 2001 and raised age to 18 years. Amendment of 2006 inserted Section 7-A referred above. The benefit was to be given retrospectively as can be seen from above Judgment. Now Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force but reading earlier Section 7-A of Act of 2000 with new Section 9 of the Act of 2015 on this count regarding giving benefit as Juvenile does not appear to make difference. Again, Section 25 of the Act of 2015 also saves proceedings pending before Court on date of commencement of Act of 2015, as if the Act had not been enacted.

9. Looking to the fact that for a conviction of one year, Appellant has already undergone seven months of imprisonment, no useful purpose would be served by sending back matter to the Juvenile Justice Board. It would be appropriate to set

aside the sentence without disturbing the conviction as requested by the learned counsel for the Appellant.

10. For such reasons, without disturbing the conviction, the sentence as imposed on the Appellant by the trial Court is quashed and set aside. The bail bonds of the Appellant are cancelled.

11. The Criminal Appeal as well as Criminal Application stand disposed of, accordingly.

[A.I.S. CHEEMA, J.]