

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 234 OF 2000

Machindra S/o Bhanudas Jadhav,
Aged 21 years,
Occupation : Labourer,
resident of Asegaon,
Taluka Gangapur,
District : Aurangabad

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra

.. Respondent

Mr. R.V. Gore, Advocate for the appellant
Mr. R.V. Dasalkar, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 03/02/2016

ORAL JUDGMENT :

Heard both sides.

2. The present appellant, who was convicted by the learned Additional Sessions Judge, Aurangabad for the offences punishable under section 354 and 307 of the Indian Penal Code vide judgment and order dated 24/05/2000 passed in Sessions Case No. 73 of 1999 and sentenced to suffer rigorous imprisonment for 2 years and 7 years, respectively, for the aforesaid offences, has filed the present appeal.

3. During the pendency of the appeal, the appellant submitted that in-fact, on the date of alleged offence, he was a juvenile in conflict with law and, therefore, he could not have been convicted, as the said issue was not before the learned Additional Sessions Judge, in view of the earlier provisions of the Juvenile Justice Act, 1986.

. The learned Sessions Judge, therefore, was directed by this Court vide order dated 27/10/2014 to make enquiry regarding the age of the appellant and to submit his findings to this Court.

4. Accordingly, the learned Sessions Judge has conducted the enquiry. The papers of the same alongwith the findings are submitted. The enquiry would show that the school record of Kendriya Prathamik School, Asegaon would show that the appellant was born on 06/06/1980. On the date of the alleged offence i.e. on 25/03/1998, he was above 16 years of age but below 18 years of age.

5. Learned Additional Sessions Judge has observed that in view of the provisions of Juvenile Justice Act, 1986, since the appellant was above 16 years of age, he

was not a juvenile as per the definition of the said Act.

. The learned Additional Sessions Judge has relied on the ratio of "**Pratap Singh Vs. State of Jharkhand**" decided by the Supreme Court in Criminal Appeal No. 210 of 2005 on 02/02/2005.

6. Mr. Gore, learned counsel for the appellant however relies on the ratio of "**Ketankumar Gopalbhai Tandel Vs. State of Gujarat**" 2013 (4) Bom. C.R. (Cri.) 56, wherein the Supreme Court, by taking into consideration all the provisions, had concluded that if the case would be pending when the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force, then all the persons, who are below 18 years of age on the date of commission of the offence even prior to coming into force of the new Act, would be treated as juveniles.

7. In that view of the matter, the appeal will have to be allowed.

8. In-fact, according to the rules, the matter would be required to be relegated to the Juvenile

Justice Board, however, since the appellant is now 36 years old, any order that would be ultimately passed by the Juvenile Justice Board would be of no consequence. In the circumstances, the following order:-

9. Criminal Appeal is hereby allowed.

10. The impugned judgment and order dated 24/05/2000 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 73 of 1999, convicting the present appellant for the offences punishable under section 354 and 307 of the Indian Penal Code is hereby set aside. Instead, the appellant is acquitted of both the offences.

[M.T. JOSHI]
JUDGE

arp/