

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 764 OF 2014
WITH
APPLN/1329/2015 IN APEAL/764/2014**

JITENDRA S/O SHANKAR BHANDE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Appellants : Mr P S Paranjape
APP for Respondents: Mr A R Borulkar

...

CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.
Dated: June 28, 2016

...

PER COURT :-

1. This appeal challenges the judgment and order dated 27.11.2014 passed by the learned Additional Sessions Judge, Dhule in Sessions Case No.95/2012 convicting the appellant for offence punishable u/s 302 of the Indian Penal Code and awarding sentence of life imprisonment to him with fine of Rs.7,000/- (Rs. Seven Thousand) with a default clause. The appellant faced trial in Sessions Case No.95/2012 alongwith other accused persons. All of them allegedly set the victim on fire and committed her murder. After recording of evidence, the learned Judge of the Trial Court came to conclusion that it is the appellant only who could be

convicted for offence of murder. Other five accused were acquitted. After filing of the appeal, learned counsel for the appellant learnt that, appellant probably was a juvenile in conflict with law on the day of incident and therefore, he moved an application before us under the provisions of Section 7A of Juvenile Justice Code and Protection of Children Act, 2000. We, therefore, referred the case to Juvenile Justice Board, Dhule for determination of age of the appellant on the day of incident. A finding was recorded that, on the day of incident, age of the appellant was 13 years 7 months and 2 days. As per Section 7A, we are now under obligation to do whatever the provisions prescribed. Section 7A of the **Juvenile Justice (Care and Protection of Children) Act, 2000** reads as under :-

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 inquiry, take such evidence as may be necessary (but not an 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 recognized 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.

2. In view of the findings referred to above, we forward the Juvenile to the Board for passing appropriate order. We quash and set aside the impugned sentence of the judgment awarded to the appellant in the impugned judgment and direct the Sessions Judge, Dhule to place the record before the Juvenile Justice Board for awarding appropriate sentence in accordance with the provisions of the Act. We also take a note of the fact that, the appellant has undergone imprisonment of 3.5 years (three and half) i.e. from 28.1.2012 to 28.10.2015.

3. Having regard to the facts, we are directing the Juvenile Justice Board to award appropriate sentence to

the appellant or set him free, if he has undergone maximum prescribed sentence under the Act of three years.

4. Criminal Appeal stands disposed of. In view of disposal of appeal, nothing survives for consideration in criminal application. Pending Criminal Application also stands disposed of.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

...

aaa/-