

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 463 OF 2013

The State of Maharashtra
V/s.
Ajay Kishor Shigwan

.....Applicant

.....Respondent

* * * * *

Ms. S.V. Gajare, APP for applicant.

Mr. Satyavrat Joshi, Advocate for the respondent.

Coram :- Smt. R.P. SondurBaldota, J.

24th February, 2016.

P.C. :-

1). Considering the nature of the order under challenge, the Revision Application is taken up for final hearing at the stage of admission. Heard the learned Advocates.

2). This Revision Application filed by the State is directed against the order dated 9th March, 2012 by which the Sessions Court preferred medical report of Ossification test of the respondent over his School Leaving Certificate for the purpose of deciding his age. The Revision Application is strongly opposed on behalf of the respondent. Mr. Joshi, learned Advocate appearing for the respondent submits that, since the trial of the respondent is already separated as far back as in the year 2012, the challenge to the order does not deserve consideration.

3). In the incident dated 10th March, 2011 the respondent is

alleged to have stabbed the victim on his chest by knife and thereafter run away from the spot. The victim when taken to the hospital was declared dead. On 7th June, 2011 offence was registered against the respondent, his brother, Mahesh and his mother Meena for the offences punishable under sections 302, 323 read with section 34 Indian Penal Code read with section 37(1), 135 of the Bombay Police Act vide FIR No. 25 of 2011 at Niphadi Police Station, Pune. The respondent was arrested on 11th March, 2011. After completion of the investigation, filing of the chargesheet and committal of the case to the Court of Sessions, application dated 7th December, 2011 was made on behalf of the respondent contending that, he was under the age of 18 years and that the date of birth mentioned in his School Certificate was not correct. The Sessions Court, then sent the respondent to the Sasoon Hospital for medical examination and received the report at Exhibit-20 in which the Medical Officer has given opinion that his age on the date of examination is above 16 years and below 18 years. The Learned Sessions Judge, accepted the medical evidence and held that the respondent was a juvenile at the relevant time. With this, the learned Sessions Judge separated the case of the respondent and directed the police to produce him before the Juvenile Court for trial.

4). Ms. Gajare, the learned APP submits that, since the School

Leaving Certificate of the respondent, specifically states his date of birth, the respondent could not have claimed that the date mentioned therein is not correct and demanded to be medically examined. She also submits that the, Sessions Court ought not to have sent the respondent for medical examination.

5). It is well established position in law that, the School Leaving Certificate is a valid proof of the age of the accused and the same has to be preferred over the medical examination, since the opinion on the medical examination is only of approximation. The opinion is never about the exact age but is about range of two years for the age. In the case on hand also, the Medical Officer has opined on the basis of the Ossification test that the respondent is above 16 years and below 18 years. The School Leaving Certificate of the respondent shows that, at the relevant time, he was 19 years old. In the circumstances, the impugned order cannot be sustained. Hence, the Revision Application is allowed. The impugned order is set aside. The Juvenile Court Case No. 247 of 2012 pending in the Juvenile Court, Pune is transferred to the Sessions Court, Pune to be clubbed alongwith Sessions Case No. 551 of 2011. The prosecution is allowed to recall the witnesses who have been examined in Sessions Case No. 551 of 2011.

(SMT. R.P. SONDURBALDOTA, J)