

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

CRIMINAL APPEAL NO.1315 OF 2013

Dhananjay Mahendra Mandal	...Appellant
Versus	
The State of Maharashtra & Anr.	...Respondents

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Mr. Jayesh Bhatt for the Appellant.

Ms Deepali Patankar i/b. Ms Punam H. Kantharia, Spl.PP for the Respondent No.2.

Mr. Rajan Salvi, APP for the Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON 5/12/2017

JUDGMENT PRONOUNCED ON 7/12/2017

JUDGMENT :

The Appellant herein was the accused in Sessions Case No.13 of 2010 on the file of the learned Sessions Judge, Daman. He has been held guilty of offence under Section 376 of the IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- i/d. to suffer RI for one year. The Appellant had challenged the said conviction and sentence by filing the present Appeal.

2. During the pendency of the Appeal, the Appellant had raised the claim of juvenality. The claim of juvenality was enquired

into in terms of Section 7(A) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and findings have been recorded that the Appellant was a juvenile as on the date of the commission of the offence. The said findings have not been challenged by the State.

3. Mr. Jayesh Bhatt, the learned counsel for the Appellant has submitted that he does not wish to challenge the conviction of the Appellant. He submits that the Appellant herein has already undergone imprisonment for a term of 7 years. He has submitted that in terms of Clause (g) of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the Juvenile Justice Board at the most could have directed the juvenile to be sent to a Special home for a period of three years. He has submitted that since the Appellant has already undergone imprisonment for a term of 7 years, he be released forthwith. He has relied upon the decision of the Apex Court in ***B.S. Joshi Vs. State of Maharashtra, AIR 2003 SC 1386*** and ***Vijendra Singh Vs. State of UP, AIR 2017 SC 860***.

4. I have perused the records and considered the submissions advanced by Mr. Jayesh Bhat, the learned counsel for the Appellant, Ms P.H. Kantharia, learned Spl. PP for the Respondent No.2 and Mr.

Rajan Salvi, APP for the Respondent No.1-State.

5. The Appellant herein was prosecuted for committing offence of rape. Case of the prosecution in brief was that on 6.7.2010 between 10.00 to 10.30 p.m. near Ganga Niwas Building, Dori Kadaiya, Nani Daman the Appellant committed rape on a minor girl. The prosecution in support of its case had examined the victim as well as 7 other witnesses. The learned Sessions Judge, after considering the evidence of the victim as well as the other witnesses has held that the prosecution has proved the guilt of the Appellant beyond reasonable doubt and hence convicted and sentenced the Appellant as stated above.

6. The Appellant had raised a plea of Juvenality and after conducting the enquiry in accordance with the procedure prescribed by Rule 12 of Juvenile Justice Model Rules 2007, the Appellant is held to be a juvenile as on the date of the offence. There is no challenge to these findings, as a result thereof, the findings that the Appellant was a juvenile as on the date of the offence, has attained finality. Generally in such fact situation the Court is required to forward the juvenile to the Board for passing appropriate order and sentence. However,

considering the fact that the Appellant has been in custody for more than the maximum period for which he could have been confined to a special home, while sustaining the conviction, the Appellant is ordered to be released from custody forthwith.

7. The Appeal stands disposed of in the light of the directions as stated hereinabove.

8. All concerned to act on authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)