IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 650 OF 1996

Iqbal Mohammed Mustafa Sayyed ….Appellant.

Vs.

The State of Maharashtra ….Respondent.

Mr. Kartik Garg, appointed advocate for the Appellant.
Mr. A.R. Kapadnis, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 13th MARCH, 2018.

P.C.:-

The Appellant has been convicted under Section 376 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.500/- (Rupees Five Hundred only), in default of payment of fine to further undergo Simple Imprisonment for a period of one month and under Section 57 of the Bombay Children Act, 1948 and sentenced to suffer Rigorous Imprisonment for 6 months, by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No. 890 of 1995 by its Judgment and Order dated 23rd August, 1996. By the said Judgment and Order the Trial Court has directed that the substantive sentences imposed

upon the Appellant shall run concurrently.

2 Heard Shri Garg, the learned *amicus-curiae* for the Appellant and the learned A.P.P. for the State. Perused the record.

3 The present Appeal was filed by an Advocate representing the Appellant and the Appeal was admitted on 8th November, 1996. The record indicates that when the present Appeal came up for hearing, none appeared for the Appellant and therefore, this Court by an Order dated 2nd March, 2016 appointed Advocate Mr. Kartik Garg to espouse the cause of the Appellant.

4 On 9th March 2016, during the course of hearing of the Appeal, the learned *amicus-curiae,* after perusing the record raised the plea of 'juvenility' of the Appellant and had contended that, the date of birth of the Appellant is 17th October, 1977 and therefore, on the date of commission of offence i.e. on 11th March, 1995, he was a juvenile.

This Court, in its order dated 9th March, 2016 after recording the contention of the learned *amicus-curiae* had directed him to file an appropriate Application in that behalf. The learned *amicus-curiae,* accordingly filed Criminal Application No. 425 of 2016 and by a reasoned order dated 4th May, 2016, this Court had directed the Trial Court to hold an inquiry as contemplated under Section 7-A

of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, *"the Juvenile Justice Act"*).

5 The record indicates that in support of the contention of the Appellant, certain documents were produced on record and the learned Judge of the City Civil and Sessions Court, after conducting an enquiry has submitted its report that, the document i.e. the School Leaving Certificate produced by the Appellant in support of his contention is a genuine document and the date of birth of Appellant is 17th October 1977.

6 In view of the report submitted by the Judge of the City Civil Court and Additional Sessions Judge, Greater Mumbai, the date of birth of the Appellant can safely be taken into consideration as 17th October 1977, and therefore, on the date of the commission of the present crime i.e. on 11th March 1995, he was aged about 17 years, 4 months and 21 days old and therefore, the provisions of the Juvenile Justice Act are squarely applicable to him.

7 The evidence on record clearly indicates the fact that the victim of crime was an infant, aged about three months (below six months) and the Applicant was noticed inside the hut by the neighbours and after realizing the sexual assault committed by the

Applicant he was chased by the witnesses and was immediately apprehended by the people from the vicinity. The Medical Officer proves the sexual assault committed by the Appellant on the victim. The evidence undoubtedly reveals that the Appellant is the only perpetrator of the present crime and therefore, the conviction of the Appellant under Section 376 of the I.P.C. is upheld.

8 The Supreme Court in the case of Jitendra Singh & Anr. Vs. State of Uttar Pradesh, reported in (2013) 11 SCC 193, after considering the various provisions of the Juvenile Justice Act, 2000 has enumerated various categories of sentences to be awarded to the juveniles/the accused persons, who were subsequently found to be juvenile after conducting an inquiry as contemplated under section 7-A of the Juvenile Justice Act, 2000.

9 The learned *amicus-curiae* after perusing the record, submitted that in the present case the Appellant has undergone, as of today, actual imprisonment of 1 year and 8 months. After applying the principles laid down by the Supreme Court in the case of Jitendra Singh (Supra), this Court is of the considered view that the Appellant can be directed to be produced before the Juvenile Justice Board for passing appropriate orders, in accordance with the provisions of the

Juvenile Justice Act, 2000 which will sub-serve the ends of justice.

10 In view of the above, the Appellant partly succeeds in the present Appeal. The conviction of the Appellant under Section 376 of I.P.C. is upheld, however the sentence imposed upon the Applicant by the Trial Court is set aside and for awarding the appropriate sentence, it is directed that the Appellant/Applicant be produced before the Juvenile Justice Board, Mumbai. The Appellant is further directed to appear before the Juvenile Justice Board, Mumbai personally, failing which the Investigating Agency is directed to arrest the Appellant and produce him before the Juvenile Justice Board, Mumbai.

11 Appeal is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)