

Solapur dated 19/12/2011, thereby convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs 1,000/- and in default thereof to suffer rigorous imprisonment for six months.

3] During the pendency of appeal, Appellant had raised a plea before this Court that, the Appellant was a juvenile on the date of commission of the offence. Accordingly, this Court, by order dated 31/07/2017, had directed that the matter be remitted to the 1st Ad-hoc Additional Sessions Judge, Solapur for conducting inquiry with regard to the Appellant's claim of juvenility.

4] The learned Trial Judge vide Order dated 21/03/2018, after considering the rival submissions, has passed an order holding that the Appellant was juvenile on the date of commission of crime i.e. on 15/06/2009.

5] Mr. Marwadi, learned Counsel appearing on behalf of the Appellant does not press the appeal on merits, though he submits that the incident was outcome of grave and sudden fight. He submits that, in view of settled position of law the sentence imposed by the learned Trial Judge would not be sustainable.

6] The issue is no more *res integra*. The Apex Court in catena of cases has held that, a plea with regard to juvenility can be raised at

any stage including before Their Lordships of the Apex Court. Even perusal of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, would reveal that, wherever such a claim is raised before any Court, an inquiry is required to be conducted to determine the said claim. Perusal of sub-section (2) of Section 7-A would also reveal that, if Court finds a person to be 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. In view of specific provision as contained in sub-section (2) of Section 7-A, the order of sentence as imposed by the learned Trial Judge, shall be deemed to have no effect. In the ordinary circumstances, we would have considered of suspending the sentence after upholding the conviction and remitted the matter to the Juvenile Board for passing appropriate orders. However, perusal of Section 15 of the said Act would reveal that, maximum order that can be passed is an order directing the juvenile to be sent to special home for a period of three years. Appellant has already undergone 9 years of sentence. It can thus be seen that, he has already undergone the sentence much more than it can be imposed by the Juvenile Board. We find that, in any event, to remand the matter to the Juvenile Board for passing appropriate orders would be an exercise in futility.

7] In that view of the matter, we are inclined to pass the following order in the interest of justice:

O R D E R

(i) Appeal is allowed.

(ii) The Judgment and Order of conviction and sentence imposed by the learned Trial Judge is quashed and set aside.

(iii) Appellant is acquitted of the charge charged with.

(iv) Appellant is directed to be released forthwith, if not required in any other case.

(iv) Since the Appeal is allowed and disposed of, no orders are necessary on the Criminal Application taken out therein and the same is also disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)