

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1022 OF 2017

ALONG WITH

CRIMINAL APPLICATION NO.393 OF 2018

Ramankumar Gandhi Mishra.] ... Appellant /
Applicant

Versus

State of Maharashtra.] ... Respondent

Mr. Subhash Jha a/w Mr. Harikrishna Mishra & Mr. Siddharth Jha i/b
Law Global Associates for Appellant / Applicant.
Mr. J. P. Yagnik, APP for State.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 11 JULY, 2018

P. C. :-

1. By this Appeal, the Appellant has challenged the Judgment and Order dated 24/08/2017 passed by the learned Additional Sessions Judge in Sessions Case No.55 of 2014 whereby he was convicted for commission of offence punishable under Section 302 read with 34 of the IPC and was sentenced to suffer imprisonment for

life and to pay fine of Rs.3,000/- and in default of payment fine, to suffer simple imprisonment for three months. The Appellant was convicted for committing murder of one Harinath Yadav on 28/05/2013 at about 9.45 p.m. at Marol-Maroshi Industrial Estate, Andheri, Mumbai.

2. It is not necessary to discuss the evidence and the Judgment in detail. Suffice it to say that the Appeal was admitted on 15/02/2018. The Appellant preferred Criminal Bail Application No.393 of 2018 in Criminal Appeal No.1022 of 2017 raising the ground that he was born on 15/02/1997 and hence, was a juvenile on the date of the incident i.e. 28/05/2013, within the meaning of the word 'juvenile' under the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the said Act'). The Appellant had prayed in the said Application that he should be released on bail during pendency of the Appeal or in the alternative, his sentence should be suspended. This Court (Coram : S. C. Dharmadharkari & Prakash D. Naik, JJ.), vide Order dated 27/03/2018, ordered inquiry in respect of plea of juvenility raised by the Appellant before this Court. Pursuant to the said Order, an inquiry was conducted by the

Additional Sessions Judge, Greater Mumbai, and vide his report dated 21/06/2018, passed the following Order :

“On the date of crime/incident dated 28.05.2013 applicant Ramankumar Gandhi Mishra was “juvenile” as defined in Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015.”

3. It is a settled position in law that the plea of juvenility can be raised even at the stage of appeal. In this connection, reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *Mohd. Feroz Khan alias Feroz Vs. State of Andhra Pradesh*¹.

4. In this view of the matter, pursuant to the Order passed by this Court, the report of the learned Additional Sessions Judge, Greater Mumbai, is received mentioning therein that the Appellant was a juvenile on the date of commission of offence. He is entitled to avail of the benefits of the provisions of the said Act. The trial before the Sessions Court, therefore, stands vitiated. Hence, the order :

ORDER

(i) Appeal is allowed.

¹ (2015) 16 Supreme Court Cases 186

- (ii) The Judgment and Order of sentence and conviction dated 24/08/2017 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.55 of 2014, is set aside. The Appellant / accused is acquitted of the charges charged with.
- (iii) The matter is remanded back to the Juvenile Justice Board for deciding afresh in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- (iv) Since the Appellant is acquitted, he be set at liberty forthwith, if not required in any other case.
- (v) In view of disposal of the Appeal, Criminal Application stands disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)