

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1003 OF 2012

Madhu Radaku Waghe,
R/o Khutalyachiwadi, Tal. Panvel,
Dist. Raigad.

... Appellant.

V/s.

The State of Maharashtra
At the instance of Rasayni Police
Station, District Raigad.

... Respondent.

Mr.Sanjiv G. Punalekar with Mr.Dharma Raj for the appellant

Ms.M.H.Mhatre, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 18th January 2019.

ORAL JUDGMENT : (Per A.S. Oka, J.)

The present appeal is directed against the judgment and order dated 20th April 2012 passed by the learned Additional Sessions Judge, Raigad-Alibag. The appellant- accused No.1 was convicted under section 302 of Indian Penal Code (for short “IPC”) and was sentenced to suffer life imprisonment.

2. A contention raised by the appellant by filing an application was that on the date on which the alleged offence was committed, he was juvenile in conflict with law and, therefore, by an order dated 20th June

2018, a Division Bench of this Court directed the learned Sessions Judge to hold an enquiry on the question whether the applicant was juvenile in conflict with law on the date of commission of the alleged offence. Accordingly, an application was moved by the present applicant before the Additional Sessions Judge, Raigad- Alibag. After recording evidence and after holding an enquiry, by an order dated 28th August 2018, the learned Additional Sessions Judge came to the conclusion that on the date of offence (i.e. 19th November 2010), the appellant was a juvenile in conflict with law as his date of birth is 18th April 1994. The learned Additional Sessions Judge has forwarded a copy of the said order along with notes of evidence and documents produced during the enquiry. The learned APP stated that the State Government has accepted the findings recorded under the said order dated 28th August 2018 as correct.

3. In ordinary course, the appellant ought to have been directed to be produced before the Juvenile Justice Board. We have perused the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short “the said Act”) and, in particular section 15 which lays down the orders which can be passed in respect of juvenile in conflict with law against whom an allegation of commission of offence has been established. The most stringent action which could have been taken under section 15 against such juvenile was to make an order directing that the juvenile should be sent to a Special Home for a period of three years.

4. It is not in dispute that the appellant has undergone sentence for a period of more than eight years as he was taken into custody on 27th November 2010.

5. Therefore, no effective purpose will be served by directing production of the appellant before the Juvenile Justice Board as the most stringent action which could be taken against the appellant is of sending him to a Special Home for a period of three years. As the appellant has undergone sentence for more than eight years, such action is not warranted.

6. As the appellant could not have been tried by the Court of Sessions and only Juvenile Justice Board had jurisdiction to deal with the case of the appellant, in view of the fact that the appellant has undergone sentence for about eight years, he will have to be set at liberty immediately.

7. Accordingly, we pass the following order:

- (i) In view of the order dated 28th August 2019 passed by the learned Sessions Judge-1 Raigad, Alibag in Criminal Misc. Application No.580/2018, we direct that the appellant shall be forthwith set at liberty provided he is not required in connection with any other offence;
- (ii) The appeal is disposed of on the above terms;
- (iii) All concerned to act on an authenticated copy of the operative part of the order.

(A.S.GADKARI, J.)

(A.S.OKA, J.)