

(2018) 06 BOM CK 0002

In the Bombay High Court

Case No : CRIMINAL REVISION APPLICATION NO.203 OF 2000

PRAVIN @ SHRIKRISHNA CHANDRAKANT MARATHE

APPELLANT

Vs

STATE OF MAHARASHTRA

RESPONDENT

Date of Decision : 04-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 148, 149, 302, 323, 324, 375, 376, 451, 506
Juvenile Justice Act, 1986 — Section 2(h), 2(i), 2(k), 2(l), 6, 7, 7A
Juvenile Justice Act, 2000 — Section 20
Uttar Pradesh Children Act, 1951 — Section 2(4), 29

Citation : (2018) 06 BOM CK 0002

Hon'ble Judges : PRAKASH D. NAIK, J

Bench : Single Bench

Advocate : A.S.Khandeparkar, Apoorva A. Khandeparkar, Rajdeep D. Gude, R.M.Gadhvi

Final Decision : Partly Allowed

Judgement

1. The applicant was charged with offences punishable under Sections 376, 451 and 506 of Indian Penal Code (` IPC').Â The applicant was tried

before the Court of Assistant Sessions Judge, Sindhudurg, at Oros vide Sessions Case No.27 of 1997.

2. The facts of the prosecution case, in brief, are as under :

(a) Kumari Sangita Gunaji Khandare (hereinafter referred to as the `victim') is the resident of RanbambuliÂKavalewadi.Â She was taking education

in 7th standard in Primary Marathi School, at Ranbambuli.Â The date of birth of the victim is 25th July 1981.Â Her family consists of parents,

brother and two sisters.Â The accused is also resident of Kavalewadi;

(b) Some time in MarchÂ1996, at about 11.00 a.m., the victim was present in her house.Â She was alone.Â Her family members had gone out to

attend their work.Â The accused came to the house of the victim and embraced her saying that he loves her and intends to marry her.Â He made

her fall down and committed intercourse with the victim.Â He left the house of victim with a promise that he would marry the victim and threatened

her not to disclose the incident to anyone else;

(c) After about four to five days of the said incident, when the victim was alone in the house, the accused again visited the victim.Â He forcibly

dragged the victim to adjoining room in the house.Â He committed intercourse with her.Â While leaving the house, he threatened her not to disclose

the incident to anyone else or else she will be killed;

(d) Thereafter the accused visited the house of the victim on several occasions but the other family members were present in the house and therefore,

he could not commit any such act but kept on promising that he will marry the victim and told her not to tell the incidents to anyone else;

(e) The victim was pregnant for about seven months and her stomach was enlarged.Â So her parents and sisters made inquiries with her in that

regard, but due to fear, she did not disclose anything to them.Â The mother of victim took her to doctor, who opined on examination that she was

pregnant for about seven months. Thereafter on inquiry by parents, the victim told them that she was pregnant from accused.Â The father of victim

secured presence of some persons from locality and he informed them that the accused is responsible for pregnancy of the victim.Â All of them went

to the house of accused.Â Before them, the accused admitted that he had sexual intercourse with the victim.Â All of them asked the accused to

perform marriage with the victim, but the accused and his father declined to do so.Â On the next day of Ganesh Chaturthi festival, the father of

victim called a meeting at his house and even at that time, the accused refused to perform marriage with the victim.Â On 19th September 1996,

information was received that the accused was about to abscond from village and thereafter the father of victim with the help of villagers took the

accused to police station;

(f) On 19th September 1996, the victim lodged first information report about the incident.Â On the basis of first information report, offence came to

be registered against the accused under Sections 376, 451 and 506 of IPC.Â Mr.Panchal, Police Sub Inspector of Oros Police Station took over the

charge of investigation of the case. On 20th September 1996, a panchanama of scene of offence was drawn. The complainant was referred to

Civil Hospital, Sawantwadi. Dr.Marathe and Dr.Tidke both examined the complainant and found that she was pregnant and issued requisite medical

certificate. The complainant/victim was admitted to the hospital, where she gave birth to a male child on 23rd October 1996. On 20th September

1996, the accused was arrested;

(g) During the course of investigation statements of witnesses were recorded. The documents like C.A. certificates and the certificate issued by

the Headmaster, Primary Marathi School, Ranbambuli, were collected. The charge sheet was filed in the Court of Judicial Magistrate, First Class,

Kudal. Since offence u/s 376 of IPC was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, at Sindhudurg,

at Oros.

3. The applicant was tried for the said offences before the Court of Assistant Sessions Judge, Sindhudurg. The prosecution has relied upon the oral

testimony of PW1 Sangita Khandare, PW2 Suresh Dabholkar (panch), PW3 Balkrishna Sawant, PW4 Dr.Marathe (Medical Officer, Civil

Hospital, Sawantwadi), PW5 Hanumant Sawant (Headmaster, Marathi Primary School, Ranbambuli), PW6 Dr.Tidke (Medical Cottage Hospital,

Sawantwadi), PW7 Dr.Joshi (Rural Medical Hospital, Kudal) and PW8 PSI Panchal (Investigating Officer). The prosecution relied upon the

first information report (Exhibit16), Panchanama of scene of offence (Exhibit18), School Leaving Certificate (Exhibit31), Medical Certificate of

victim (Exhibit37), Medical certificate of accused (Exhibit42), Panchanama of arrest of the accused (Exhibit44), CA certificates of victim and

accused (Exhibits45 and 46) and medical certificate of accused (Exhibit49).

4. The learned Assistant Sessions Judge by judgment and order dated 6th March 1998 convicted the applicant/accused for the offence punishable

under Sections 376 and 451 of Indian Penal Code. He was sentenced to suffer rigorous imprisonment for seven years and to pay fine of

Rs.3,000/ and in default, to suffer rigorous imprisonment for four months for conviction u/s 376 of IPC and he was sentenced to suffer rigorous

imprisonment for six months and to pay fine of Rs.500/ and in default, to suffer rigorous imprisonment for two months for the conviction u/s 451 of

IPC. The substantive sentence on each count were directed to run concurrently. The applicant accused was acquitted for the offence u/s 506 of IPC.

5. The applicant accused preferred an appeal before the Sessions Judge, Sindhudurg challenging the judgment and order passed by the Assistant Sessions Judge, Sindhudurg, at Oros convicting him for the aforesaid offences. The appeal viz Criminal Appeal No.7 of 1998 was heard by learned Sessions Judge and by judgment and order dated 24th May 2000, the appeal was dismissed.

6. The applicant accused preferred this revision application challenging the aforesaid judgments and orders convicting him for the said offences.

The revision application was admitted by this Court on 14th June 2000 and pending disposal of the revision application, the applicant was enlarged on

bail. During pendency of this revision application, the applicant preferred Criminal Application No.577 of 2009 before this Court and submitted that

the applicant is a juvenile and directions were sought to conduct an inquiry to ascertain the age of the applicant as on the date of occurrence of the

alleged offence and to submit a report to this Court. By order dated 13th November 2009, this Court directed the Assistant Sessions Judge,

Sindhudurg to conduct an inquiry to ascertain the age of the applicant on the date of commission of offence after verifying the record of school upon

evidence of the Headmaster or any other school authority and consequently to verify the truth of the contents of the certificate and thereafter the

learned Assistant Sessions Judge was required to pass further orders in accordance with Juvenile Justice (Care and Protection of Children) Act, 2000,

as amended in 2006, verifying the age of the applicant as per judgment of Hon'ble Supreme Court of India in the case of Ravinder Singh Gorkhi Vs.

State of Uttar Pradesh {(2006)5 SCC 584} and Criminal Application No.577 of 2009 was disposed off.

7. In pursuance to the aforesaid order the learned Assistant Sessions Judge, Sindhudurg, at Oros conducted the inquiry as per the directions of this

Court. The evidence of the witnesses was recorded and report was submitted vide order dated 6th May 2010 stating that the applicant accused

was a juvenile in conflict with law as he was less than eighteen years of age during the period of 30th January 1996 and 10th February 1996, when the

offence was committed.Â The said report was received by this Court and the same is part of the record of this proceeding.

8. The learned counsel for applicantÂaccused submits that the applicantÂaccused is entitled for the benefit under the provisions of Juvenile Justice

(Care and Protection of Children) Act, 2000 (hereinafter referred to as ` Juvenile Justice Act' for short).Â It is submitted that the inquiry was

conducted by the Assistant Sessions Judge in pursuant to the order of this Court and it is declared that the applicant was a juvenile in conflict at the

time of commission of offence.Â Mr.Khandeparkar further submitted thatÂ apart from the applicability of the provisions of Juvenile Justice Act, the

applicant is also entitled for acquittal on the merits of the case, as the prosecution has failed to establish the alleged offences.

9. Mr.Khandeparkar made the following submissions on the merits of the case :

(i) There was delay in lodging the first information report, which was not explained by the prosecution;

(ii) The explanation put forth by the prosecution witnesses that there was delay on the ground of false promise of marriage, is after thought and is

motivated since the applicant had refused to marry the victim;

(iii) The Courts below had committed an error in appreciating that there was dispute as regards the age and birth date of the victim girl.Â There was

no cogent evidence of the victim being minor;

(iv) The Courts have failed to consider that the findings of the Trial Court was that the victim had consented to the intercourse and therefore the birth

date of the victim was of vital importance and the evidence on record does not show that she was a minor girl.Â The findings are based on

presumptions that the prosecutrix was a minor girl;

(v) The evidence of the author of general register was not brought before the Court nor was any explanation given as to why the said evidence was

not adduced before the Court.Â The school leaving certificate was not admissible in evidence.Â The evidence on record was insufficient to prove

that the victim was minor.

10. The learned counsel for applicantÂaccused placed reliance on following decisions:

(i) Kaini Rajan Vs. State of Kerala 2013(4)ÂMh.L.J. (Cri.) (SC)Â482;

(ii) Lotan Budha Chaudhari Vs. The State of Maharashtra and another Â? 2017(5)Â?Mh.L.J. (Cri)Â?531;

(iii) Gurpreet Singh Vs. State of Punjab 2005(12)Â?SCCÂ?615;

(iv) The State Vs. Jagtar and others 2015Â?ALL M.R. (Cri.)Â?JournalÂ?31

11. Learned APP Ms.Gadhvi submitted that there is sufficient evidence to convict the applicantÂ?accused for the offences.Â? There is concurrent

findings of two Lower Courts and there is no reason to interfere in the judgment of Trial Court and the Appellate Court.Â? The Revisional Court has

limited scope and in the absence of any perversity in the judgments of the Courts below, this Court may not set aside the said judgments.Â? It is

further submitted that the prosecution has adduced evidence of several witnesses in support of its case, which could not be discarded by the

defence.Â? The evidence of the victim is corroborated by other witnesses as well as by medical evidence.Â? The prosecution has established that the

accused has committed the intercourse and has committed the said offence. There was sufficient evidence before the Trial Court to come to the

conclusion that the victim was minor at the time of alleged incident and the defence could not discard the evidence of witnesses to disprove the said

fact.Â? It is submitted that the consent was immaterial as the victim was minor at the time of alleged incident.Â? Both the Courts have considered the

aspect of juvenility of the applicantaccused and the said claim was rejected by the Courts below and the applicantÂ?accused is not entitled for the

benefit under the provisions of Juvenile Justice Act.Â? The evidence in the form of school leaving certificate establishes the date of birth of the

victim.Â? She was born on 25th July 1981 and she delivered child on 23rd October 1996.Â? The evidence of victim, the medical officers, the

headmaster of the school, clearly establishes the case against the accused beyond all reasonable doubt.Â? The delay in lodging the first information

report has been properly explained.Â? There was no reason to disbelieve the evidence of the victim.Â? It was not necessary to examine the author of

general register.Â? In these circumstances no case is made out to set aside the impugned judgments and hence the revision application be

dismissed.Â? Learned APP relied upon the decision of Hon'ble Supreme Court in the case of State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny

reported in (2017)2Â?SCCÂ?51.

12. Since the applicant[^]accused has challenged the impugned judgments of conviction on merits as well as claimed applicability of the provisions of Juvenile Justice Act, it is trite to examine both the aspects.[^] As far as merits of the case is concerned, it is a matter of record that the date of birth of the victim was 25th July 1981 and she delivered a child on 23rd October 1996.[^] Whereas, the date of birth of the applicant[^]accused is 21st February 1978.[^] The prosecution has examined several witnesses, as stated above, in support of its case. The Trial Court has opined that in the instant case the express consent of the prosecutrix is silent.[^] However, she has impliedly consented or participated in the sexual intercourse, which has to be gathered and inferred from the conduct and surrounding circumstances.[^] According to the victim, sometime in the month of March[^]1996, when she was alone at house, the accused abruptly entered in her house and under the pretext of love and promise of marriage and intimidation, committed intercourse with her.[^] The victim did not disclose the incident for a long time until it was found that she was pregnant.[^] The age of the victim was disputed by defence, as the prosecution claimed that she was below 16 years of age, whereas, the defence claimed that her age was more than 16 years on the date of incident.[^] The Trial Court relied upon testimony of the prosecutrix and school leaving certificate which denote her date of birth as 25th July 1981.[^] According to prosecutrix, the accused committed intercourse somewhere in March[^]1996.[^] PW[^]4 Dr.Marathe has deposed that the intercourse with victim might have taken place in the month of January[^]1996, whereas, PW[^]6 Dr.Tidke has deposed that the intercourse with victim might have taken place by the end of December[^]1995 or in the first week of January[^]1996.[^] The medical certificate at Exhibit[^]37 and testimony of PW[^]6 Dr.Tidke indicate the age of prosecutrix to be 12 to 13 years as on 20th September 1996. The FIR indicates the age of prosecutrix as 15 years as on 19th September 1996.[^] The Trial Court has, therefore, observed that the documentary evidence and medical evidence brought on record clearly denotes that the age of the prosecutrix was below 16 years.

13. It is pertinent to note that the school leaving certificate was issued by the Headmaster, Primary Marathi School, Ranbambuli (PW5) on the basis of general register entry maintained in the school. Defence has tried to contend before the Courts below as well as this Court that the teacher who made

the entry in the general register at Exhibit 33, is not examined by the prosecution and, therefore, the evidence of PW 5 and the school leaving

certificate Exhibit 31, are not admissible in evidence. The entry in the general register vide Exhibit 33 about the date of birth of victim showing the

same as 25th July 1981, was made by the concerned person in discharge of official duties. Hence, the said document is admissible u/s 35 of Indian

Evidence Act and non-examination of the teacher who made the entry, cannot be discard the said evidence. It is true that on the point of age of

the victim the medical evidence is not supported by x-ray plate or ossification test. The defence had submitted that in the absence of ossification

test the age of the victim cannot be held below 16 years at the relevant time. Apart from medical evidence there is other reliable documentary

evidence and oral evidence of the victim to establish that at the relevant time she was below 16 years. In these circumstances the Trial Court has

rightly given a finding that once it is held that the prosecutrix was below 16 years at the relevant time, then, even though she has impliedly consented

for the intercourse, her consent is immaterial in the light of provisions incorporated in Section 375 of IPC.

14. Apart from the aforesaid evidence, PW 3 Balkrishna Sawant, who was ex-Deputy Sarpanch of Village Ranbambuli and respectful and

independent person, has justified that he met the prosecutrix and she told him that she was pregnant from the accused and thereafter he met the

accused and his father, wherein the accused had admitted that he has committed the mistake. On the basis of this evidence, the Trial Court has

observed that the statement of the accused to the said witness is in the nature of extra judicial confession which corroborates the testimony of

prosecutrix. The medical evidence corroborates the testimony of prosecutrix that she gave birth to a male child on 23rd October 1996. The Trial

Court has also observed that the medical evidence with regards to the date of incident and the version of the prosecutrix in that regards defers,

however, it has to be considered that the victim comes from hamlet and has just passed 7th standard and was not expected to mention the correct

month of the incident. The defence had also contended before the Trial Court that there was no paternity test. It was submitted that in the

absence of such test, there cannot be any nexus of the accused with the pregnancy of the victim. Dr. Joshi has examined the accused on 20th

September 1996 and issued medical certificate Exhibit 42 dated 26th September 1996. It is not necessary to bring on record the evidence of paternity. The testimony of the victim and other relevant and material evidence is sufficient to establish that the accused has committed intercourse with the victim as a result of which she conceived and delivered a child. There is no reason to disbelieve the version of victim with regards to the intercourse committed by the accused with her. Although it is expected that the FIR should be lodged promptly, however, on account of belated lodging of FIR in the facts and circumstances of the case, the prosecution case cannot be disbelieved. It is necessary to note that after the intercourse under the pretext of marriage assurances and the intimidation, the victim was of tender age who did not disclose the fact of pregnancy from the accused, which was detected upon medical examination. It is required to be noted that in rape cases, there is feeling of reluctance to the police on account of attitude of the society and in such an eventuality there is any delay in lodging the complaint, the same is not fatal. Looking to the circumstances in the present case and the testimony of the victim, it will have to be held that delay has been properly explained. Merely because there is delay in lodging the FIR itself, cannot be a ground to give benefit to the accused looking to the circumstances brought on record. The motive for false implication attributed by the defence cannot be accepted. The prosecution has established its case by cogent and satisfactory evidence that accused has committed sexual intercourse with the prosecutrix while she was minor. The accused had entered into the house of the victim and thereby committed the criminal trespass. The evidence of the prosecutrix was not shattered during the cross-examination and she is consistent that the accused has committed rape of her. PW 3 has deposed that on 12th September 1996, during the days of Ganpati festival, he was called by Gunaji Khandare who told him that his daughter is pregnant from accused. He was asked to act as a mediator and settle the marriage between the accused and the prosecutrix. He made inquiries with both the parties. The accused had admitted his mistake. The cross-examination of this witness was not fruitful to the defence. There was nothing to discard his evidence. As far as age of the victim is concerned, it will have to be noted that the defence has not specifically claimed that there was an intercourse by the accused with the prosecutrix with her consent.

However, it was challenged on the ground that prosecutrix was not minor and she was above the age of 16 years.Â However, during the course of crossÂexamination of the prosecutrix, nothing was suggested that she was consenting party and therefore, the evidence will have to be appreciated in the light of the said facts brought on record.Â On examination of the evidence of Dr.Tidke and Dr.Marathe, it cannot be said that the victim was more than 16 years on the date of examination.Â Although ossification test is one of the mode to ascertain the age of victim, but the sole reliance cannot be placed on the ossification test and the other evidence will have to be taken into consideration.Â The evidence of PWÂ5 discloses that he was Headmaster in Zilla Parishad Marathi Primary School, Ranbambuli and he had issued the certificate dated 13th January 1997 in respect of victim on the strength of entry no.67 in general register.Â The age is mentioned as per the information at the time of admission of the student in the school.Â There is no other evidence or circumstance that prosecutrix was more than 16 years of age on the date of incident.Â Taking into consideration all the circumstances and the evidence on record, there is no substance in the defence of the accused and it will have to be held that the prosecution has established its case.

15. Learned counsel for applicant had relied upon the decision of this Court in case of Lotan Buda Chaudhari (supra).Â The said decision was delivered in the facts and circumstances of that case which differs from the present case.Â In the said decision it was observed that the conviction was awarded by the Trial Court solely on the basis of testimony of the prosecutrix and her evidence was not worthy of credence and reliable.Â In the light of the prosecution case and over all evidence on record, it is unsafe to base the conviction on the sole testimony of prosecutrix.Â However, in the present case, as stated above, the evidence of prosecutrix is not shaky and doubtful. She is consistent with her version and is supported by other evidence on record.Â Further reliance is placed on the decision of Hon'ble Supreme Court of India in the case of Kaini Rajan (supra).Â In the said case the accused was charged u/s 375 of IPC.Â In the said decision it was observed that the victim was consenting party.Â She was major at the time of alleged incident.Â It was also observed that the behaviour of the parents of the prosecutrix was strange.Â The evidence of the victim

creates doubt in the mind of Court with regards to the veracity of her evidence and it is not safe to rely on uncorroborated version of the victim of

rape.Â The most distinguishable feature of the said case was that it was undisputed that the victim was major and her evidence was doubtful and it

was proved that she was consenting party for the alleged incident. Hence, the said decision is not applicable in the present case.

16. The judgment of Hon'ble Supreme Court relied upon by learned APP is of relevance.Â In the said decision in the case of State of Himachal

Pradesh Vs. Sanjay Kumar @ Sunny (supra), it was observed by the Apex Court that after taking all due precautions which are necessary, when it is

found that the prosecution version is worth believing, the case is to be dealt with sensitivity that is noted in such cases.Â In such cases, one has to

take stock of the realities of life as well.Â There is a fear of attracting social stigma.Â The deterring factor many time prevents the victims or their

families to lodge the complaint as they find that process of criminal justice system is intimidating.Â The testimony of the victim in sexual offence is

vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the Court should find no difficulty but act on

the testimony of the victim of a sexual assault alone to convict the accused.Â The victim of rape is not an accomplice and her evidence can be acted

upon without corroboration.

17. In the circumstances, the accused is not entitled for acquittal. The concurrent findings of Courts below do not require any interference as far as

merits of the case is concerned and the same is required to be confirmed.

18. This takes me to the other important issue involved in this proceeding with regards to the provisions of Juvenile Justice Act.Â As stated above,

during pendency of this revision application, this Court had directed the Trial Court to conduct an inquiry with regards to the age of the applicantÂ?

accused at the time of alleged incident of sexual intercourse with the victim.Â The Assistant Sessions Judge, Sindhudurg, at Oros has conducted the

inquiry and has opined by order dated 6th May 2010 that the applicantÂaccused was a juvenile in conflict with law, as he was less than 18 years of

age during the period between 30th January 1996 and 10th February 1996 when the offence was committed.Â It is relevant to consider that the

applicant had claimed to be juvenile in conflict at the time of alleged incident

during the trial as well as before the Appellate Court while dealing with his appeal against the judgment of conviction.Â The Trial Court has dealt with the said issue in paragraph 18 of the impugned judgment.Â The date of birth of the applicantÂaccused is 21st February 1978.Â The Trial Court has observed that some villagers from RanbambuliÂKavalewadi took the applicantÂaccused to police station on 19th September 1996.Â The accused gave a complaint against some villagers to the police regarding assault against him by them, which was treated as nonÂcognizable complaint.Â In the said complaint dated 19th September 1996, the accused gave his age as 18 years.Â The Trial Court, therefore, observed that it was admitted by the applicantÂaccused that his age was 18 years and, therefore, the said fact need not be proved.Â However, during the arguments, the accused has pleaded that he is minor.Â Such plea is uncalled for as he was major on the relevant date.Â The Appellate Court has also rejected the said contention on the ground that the accused has not produced any documentary evidence regarding his birth date to show that he was minor on the date of incident.Â It was also observed that in a recent case it is held that if the accused is major on the date of trial, then, it cannot be said that trial is vitiated.

19. I have perused the report submitted by learned Assistant Sessions Judge, Sindhudurg with regards to the inquiry conducted by the said Court in accordance with the directions issued by this Court. During the said inquiry, at the instance of applicant, evidence of AW1 Manderao Pundalik Kumbhar and AWÂ2 Dipak Anant Patade was adduced.Â AWÂ1 was working as Headmaster at New English School at Kasal since 21st January 2002.Â He produced the character certificate in the name of accused dated 30th March 2010.Â The said character certificate contains the date of birth of the accused.Â He deposed that he had written the said date of birth on the basis of original register kept in New English School in the regular course of business and the said document is admitted in evidence at Exhibit68.Â He also produced the original register along with xerox copy. The registration number of the accused in the school was 1843.Â He also brought on record the carbon copy of school leaving certificate of New English School and Junior College, at Kasal.Â The school leaving certificate issued to the accused has been given as per entries at sr.no.1358 of the school register brought by him.Â The evidence of the said witness was not challenged

by the public prosecutor.

20. AWÂ2 Dipak Patade is working as Headmaster at Zilla Parishad School, Ranbambuli since 1978.Â He deposed that he has given school leaving

certificate of the accused under his signature on the basis of register kept in the regular course of business in the school. The said register number of

the applicant is 440.Â He also deposed that the contents of the said original certificate are correct as per original register and it also bears his

signature.Â The date of birth of the applicant was shown as 21st February 1978.

21. As stated above, during the examination of AWÂ1 Kumbhar, he produced the character certificate of the accused and the original register as well

as carbon copy of school leaving certificate.Â The Court conducting the inquiry has recorded the said evidence and since the said witness has

deposed that he had written the date of birth on the basis of original register kept in New English School in the regular course of business, the said

document was admitted in evidence at ExhibitÂ68.Â The entries against the register produced by the said witness were also admitted in evidence at

ExhibitÂ69.Â The advocate for the accused had submitted before the said Court that the original leaving certificate was lost and therefore secondary

evidence in the form of carbon copy of the leaving certificate book was read with the permission of Court regarding the said certificate at sr.no.1358

of the said book and it's xerox copy was found to be tallying with the carbon copy.Â The said documents were admitted in evidence as ExhibitsÂ78

and 79.Â The Court has observed in the report that on perusal of character certificate at ExhibitÂ68, the entries in the register on the basis of which

the character certificate was issued at ExhibitÂ69 so also the carbon copy of the leaving certificate at serial number 1358 of New English School and

Junior College, Kasal at ExhibitÂ70 would indicate that the date of birth of the accused was shown as 21st February 1978.Â It was further observed

that the evidence of the said witness was not challenged in any manner by the prosecution and, therefore, there was no reason to disbelieve the

correctness of the entries kept in the records of New English School and Junior College, Kasal in the regular course of business, which would show

that the date of birth of the accused is 21st February 1978.Â Through the evidence of AWÂ2 Dipak Patade, entry 440 with regards to register

number of the applicant in the register on the basis of which the school leaving

certificate of the applicant¹accused was issued under the signature, was admitted in evidence and marked as Exhibit²72 and the xerox copy was marked as Exhibit³72A.⁴ The original leaving certificate was marked as Exhibit⁵73.⁶ The evidence of the said witness was not challenged by the prosecution. The Court, therefore, observed that on having a looking at the said school leaving certificate issued by the witness in his capacity as Headmaster of primary zilla parishad school, it is indicated that the date of birth of the applicant⁷accused is shown as 21st February 1978 and there is no reason to disbelieve the said entry.

22. The Court of inquiry also dealt with the crucial question as to what was the date of commission of offence.⁸ The Trial Court had observed that

the sexual intercourse with the prosecutrix and the accused took place somewhere during the period from January⁹1996 and March¹⁰1996.¹¹ PW¹²4

Dr.Marathe had deposed that the intercourse with the prosecutrix might have taken place in the month of January1996 whereas PW¹³4 Dr.Tidke has

deposed that the intercourse with the victim had taken place by the end of December¹⁴1995 or in the first week of January¹⁵1996.¹⁶ The Court of

inquiry had analyzed the evidence of these witnesses and also the evidence of prosecutrix Sangita wherein she has stated that she was staying at the

reception centre since 1996 and she had given birth to male child on 29th September 1996.¹⁷ The Court took into consideration the evidence of

Dr.Marathe, PW¹⁸4, in which he has stated that as per the abdominal examination he had noticed that the uterus of the prosecutrix was of 30 weeks

size and in the cross¹⁹examination he proceeded to state that according to him, the intercourse with the victim might have taken place in the month of

January²⁰1996.²¹ The examination was carried out by PW²²4 on 20th September 1996.²³ He deposed that he and Dr.Tidke had examined the

prosecutrix on that day and they were informed by the prosecutrix the history and at that time she had stated that she had intercourse twice with the

accused before eight months and thereafter her menstruation had stopped.²⁴ The Court therefore observed that taking into account the finding of the

above medical examination that on 20th September 1996 the prosecutrix was 30 weeks pregnant, that would mean that she might have conceived

about 30 weeks before 20th September 1996 i.e. about seven and a half months back.²⁵ Thus, if on 20th September 1996 she was 30 weeks

pregnant, then, in that event, she would have conceived on 5th February 1996. It appears that it was further observed that according to the prosecutrix, she had given birth to the child on 23rd October 1996 i.e. after eight and a half months of pregnancy. The Court further observed that according to the prosecutrix, the accused had forcible intercourse with her twice and the second intercourse was after gap of about four to five days of the first intercourse. Thus, it may be possible that she may have had first intercourse on 5th February 1996 and the second one on 9th or 10th February 1996 and may have conceived after first intercourse on 5th February 1996 itself. It is also probable that she may have had her first intercourse on 30th or 31st January 1996 and second on 5th February 1996 and may have conceived after second intercourse i.e. on 5th February 1996. The Court, therefore, opined that the alleged offence of forcible intercourse with the prosecutrix may have taken place during the period during 30th January 1996 and 10th February 1996. In paragraph 9 of the report it is observed that from the character certificate Exhibit 68 and the register relating to the said certificate Exhibit 69, the school leaving certificate at Exhibit 70 of New English School and Junior College, Kasal and further from the register relating to school leaving certificate Exhibit 72 and the original school leaving certificate Exhibit 73 of the Primary School, Zilla Parishad, Ranbambuli, the date of birth of the applicant accused was 21st February 1978. Thus, taking into consideration the above said date of birth, the applicant accused would have completed 18 years of age on 20th February 1996. The Court thereafter relied upon the decision in the case of Ravinder Singh Gorkhi (supra) and ratio in the case of Pratap Singh Vs. State of Jharkhand and another (2005) 3 SCC 551, it was considered that determination about the juvenality is required to be made even if at the relevant time the juvenile has crossed the age of 18 years. The Court further relied upon the decision in the case of Birad Mal Singhvi Vs. Anand Purohit 1988 Supp SCC 604 wherein it was held that an entry relating to date of birth made in the school register is relevant and admissible u/s 35 of Evidence Act but the entry regarding age of person in school register is of not much evidentiary value to prove the age of person in the absence of material on which the age is recorded. After analyzing the factual aspects, evidence of the witnesses and documents and judicial pronouncements referred to above, the Court of inquiry observed that there

is every reason to believe that the entries of age in the register can be said to have been proved u/s 35 of Evidence Act. In the said way, the secondary evidence in respect of school leaving certificate has been prepared as per entries at sr.no.1358 and the original register of school leaving certificate which has also not been challenged in the cross-examination by the prosecution, there is nothing to doubt the genuineness of the said certificate which has been kept in regular and ordinary course of business of the school. The Court also exhibited the evidence of AW2 relating to entry no.440 in the register (Exhibit72) and the original school leaving certificate (Exhibit73) can be accepted. There was no challenge to the testimony of the said witness and no challenge regarding evidence that the register has been maintained in regular or ordinary course of business and there is every reason to believe that the date of birth of the accused shown in the certificate is 21st February 1978 is correct. It was further observed that there is no room for suspicion on this aspect. Taking into account the documentary evidence in the nature of character certificate, entry of the name of the accused in the register maintained by the school and the school leaving certificate of the said school and further taking into account the entry in the school register at sr.no.440 and the school leaving certificate at Exhibit73, it can be said that the accused would have completed 18 years of age on 20th February 1996. The Court further opined that on the basis of material on record, the offence would have taken place during 30th January 1996 and 10th February 1996 and, therefore, the age of the accused at the time of the incident was below 18 years of age. As a result of which he will be a juvenile in conflict with law within the meaning of Juvenile Justice Act, 2000 after amendment of the said definition by Act No.33 of 2006. The Court also considered that the revision application of the applicant is pending before this Court and therefore, finding is required to be submitted to this Court and proceeded to pass order on 6th May 2010 that the applicant was a juvenile in conflict with law, as he was less than 18 years of age during the period between 30th January 1996 to 10th February 1996 when the offence was committed.

23. As observed by the Court hereinabove, the evidence of AW1 and AW2 could not be challenged and discarded by the prosecution. No other evidence was brought on record at the instance of prosecution. I do not find any reason to draw any adverse opinion with regards to the report

submitted by learned Assistant Sessions Judge in pursuance to the order of this Court.Â Learned APP could not point out any infirmity in the opinion/findings in the report submitted by learned Assistant Sessions Judge in this Court.Â The learned Judge has taken into consideration all the aspects of the matter and analyzed the evidence of the witnesses examined before him, the evidence of the medical officers examined before the Trial Court, the evidence of prosecutrix and by proper analyses with cogent reasons has formed an opinion that the applicant is a juvenile in conflict with law.Â I do not find any reason to interfere with the said report.

24. Learned advocate for the applicant had pointed out from the decision of Hon'ble Supreme Court in the case of Gurpreet Singh Vs. State of Punjab (supra) that while hearing an appeal preferred by the appellant before the Supreme Court, a report was called for from the Trial Court as to whether on the date of occurrence of the incident, the said appellant was a juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986.Â The appellant therein had challenged the conviction on merits as well as submitted that on the date of alleged occurrence, he was a juvenile within the meaning of Section 2(h) of Juvenile Justice Act, 1986 as on that date he had not attained the age of 16 years.Â The said point was not raised either before the Trial Court or before the High Court.Â The Supreme Court observed that it is well settled that in such an eventuality, the Court should first consider the legality or otherwise of the conviction of the accused and in case conviction is upheld, a report should be called for from the Trial Court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was a juvenile on such date and continues to be so, he shall be sent to juvenile home.Â But in case it finds that on the date of occurrence he was juvenile but on the date of Court passing the final order upon receipt of the report from the Trial Court, he no longer continues to be a juvenile,Â the sentence imposed against him would be liable to be set aside.Â A reference was made to the earlier decision of Supreme Court in case of Bhoop Ram Vs.

State of Uttar Pradesh (1989)3ÂSCCÂ1, in which case at the time of grant of special leave to appeal, a report was called for from the Trial Court as to whether the accused was juvenile or not, which reported that the accused was not juvenile on the date of occurrence, but the Court differing with

the report came to the conclusion that the accused was juvenile on the date of offence and he was no longer a juvenile on the date of judgment of the Court and the sentence awarded against him was set aside, though conviction was upheld.Â It is pertinent to note that in the case of Gurpreet Singh (supra), the Supreme Court had upheld the conviction of the appellant but called for a report from the Trial Court relating to his age on the date of occurrence of the offence.

25. In the decision relied upon by learned counsel for applicant delivered by Delhi High Court in case of State Vs. Jagtar and others (supra), the Court has dealt with a similar issue with regards to the plea of juvenility being raised for the first time in the appeal against conviction qua applicability of the provisions of Juvenile Justice Act, 2000.Â It was observed that there is scanty jurisprudence with regards to the plea of juvenility being raised in criminal appeals against conviction by the convicts before the High Court, though several instances of such plea being pressed before Supreme Court are available.Â The Court further observed that it is evident that the prohibition upon the Court trying a juvenile for commission of an offence is absolute.Â There is no option but to deal with the juvenile in accordance with the provisions of Juvenile Justice Act.Â Failure to do so would be contrary to the specific statutory provisions and result in violation of statutory provisions and denial of legal protection to the juvenile.Â In the facts of that case, the Court observed that some of the appellants had undergone the imprisonment much beyond the maximum period of permissible detention of three years under the Juvenile Justice Act and it would be impermissible to deprive them of their liberty after undergoing confinement beyond a period of three years.Â The appellants were above the age of 18 years at the time of passing the order and they cannot be lodged in the special home.

26. It would be pertinent to note that in the present case, during the course of arguments before the Trial Court, a plea was raised although it was not raised during the course of recording the evidence, that the applicant is a juvenile and be dealt with in accordance with the provisions of appropriate law.Â The said plea was rejected by the Trial Court without holding any inquiry on the basis of non-cognizable complaint lodged by the applicant wherein he had stated his age to be of 18 years.Â The Trial Court did not

ascertain the said fact at the commencement of trial or during the trial or even when the said plea was raised by the applicant.Â The said plea was also rejected by the Appellate Court on the similar grounds by reiterating the reasons assigned by the Trial Court.Â However, before this Court,Â on the application of the applicant, a report was called for from the Trial Court with regards to the juvenility of the applicant, which is discussed in detail hereinabove.Â The report stands in favour of the applicant stating that at the time of occurrence of the alleged incident, he was below 18 years of age.

27. In the case of Bharat Bhushan Vs. State of Himachal Pradesh (2013)11Â? SCCÂ?274, the Supreme Court has considered the case of a convict who was more than 16 years of age but less than 18 years, on the date of commission of offence.Â It was held that he was entitled to the benefit of Juvenile Justice Act, 2000 since on the date of offence, the appellant was admittedly a juvenile in terms of Juvenile Justice Act, 2000.Â It was also noted that his case was pending in the High Court on date when Juvenile Justice Act, 2000 was enforced.Â Hence, it was held that the accused was required to be dealt with u/s 20 which required the High Court to record a finding about the guilt of the accused and to forward the juvenile to the juvenile board.Â It was also observed that reference to juvenile board at the belated stage is unnecessary.Â In the said case, the prosecutrix was aged about 11 years and the accused was between 16 to 18 years at the time of commission of offence.Â The testimonies of the prosecutrix and other witnesses corroborated each other and inspired the evidence.Â The conviction of the accused was upheld u/s 376 of IPC.Â The alleged incident had occurred on 22nd June 1993.Â It would be relevant to quote paragraphs 8 and 11 of the said decision viz. :

â??8. The legal position regarding the entitlement of the appellant who was more than 16 years but less than 18 years of age as on the date of commission of the offence on 22Â?1993, is in our view settled by the decision of this Court in Hari Ram Vs. State of Rajasthan (2009)13SCCÂ?211.Â This Court has in that case traced the history of the legislation and reviewed the entire case law on the subject.Â Relying upon the decision of the Constitution Bench of this Court in Pratap Singh case (2005)3Â?SCC551, this Court in Hari Ram case reiterated that the question of juvenility of a person in conflict with law has to be determined by reference to the date of the

incident and not the date on which cognizance is taken by the

Magistrate.Â Having said that, this Court held that the effect of the pronouncement in Pratap Singh case on the second question viz. Whether the

2000 Act was applicable in a case where the proceedings were initiated under the 1986 Act and were pending when the 2000 Act came into force,

stood neutralised by the amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000, by Act 33 of 2006.Â The amendments

made the provisions of the Act applicable even to juveniles who had not completed the age of 18 years on the date of commission of offence said this

Court.Â Speaking for the Court Altamas Kabir, J. (as His Lordship then was) observed :

â??58. Of the two main questions decided in Pratap Singh case, one point is now well established that the juvenility of a person in conflict with law

has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate.Â The effect of the other

part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the

provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystalised on a conjoint reading of Sections 2(i), 2(l), 7ÂA, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all

persons who were below the age of 18 years on the date of commission of the offence even prior to 1Â42001, would be treated as juveniles, even if

the claim of juvenility was raised and after they had attained the age of 18 years on or before the date of commencement of the Act and were

undergoing sentence upon being convicted.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the

Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.â??

11. The question then is whether the High Court could have at all recorded a conviction against the appellant who as seen above was a juvenile on the

date of the commission of the offence.Â The answer to that question, in our opinion, lies in Section 20 of the 2000 Act which reads as under :

â??20. Special provision in respect of pending cases :Â?

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence :

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation – In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times, when the alleged offence was committed.

28. The Court further observed in the case of Bharat Bhushan (supra) that it is manifest that the proceedings pending against a juvenile in any Court as on the date 2000 Act came into force, had to continue as if 2000 Act had not been enacted. More importantly Section 20 obliges the Court concerned to record a finding whether the juvenile has committed any offence. If the Court finds the juvenile guilty, it is required under the above provision to forward the juvenile to the Board which would then pass an order in accordance with the provisions of the Act, as if it had been satisfied on inquiry under the Act, that the juvenile had committed an offence. Pertinently, the question on reference of the accused to the juvenile justice board was under consideration and in that regard it was observed that such a reference is unnecessary at its distinct point of time. The appellant in that case was 36 years old man and father of three children. In the circumstances the Court found that reference to the juvenile board at this stage of life would serve no purpose and the only option available is to direct his release from the custody.

29. In accordance with the provisions of Juvenile Justice Act, 2000, the juvenile has been defined as a person who has not completed 18th year of age. The amended definition of 'Juvenile in conflict with law' which substituted earlier definition vide amendment of 2006, is juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 6 of the said Act deals with the powers of juvenile justice board and Sections 7 and 7A relates to procedure to be followed by the Magistrate not empowered under the Act and the procedure to be followed when claim of juvenility is raised before any Court. Section 19 relates to removal of disqualification attached to conviction. In the present case, in the inquiry, it has been opined that at the time of commission of offence, the appellant was below 18 years of age. The FIR was lodged on 19th September 1996. The appellant was convicted by the Trial Court on 6th March 1998. The appeal preferred by the applicant was dismissed by the Sessions Judge, Sindhudurg on 24th May 2000. The present revision application was preferred in this Court on 17th June 2000, which was admitted on 14th June 2000. The Juvenile Justice Act, 2000 received assent of President of India on 30th December 2000 and the same was published in the Gazette of India on 30th December 2000. The Act came into force on 1st April 2001. The proceedings challenging the conviction were pending in this Court when this Act came into force.

30. In the case of Hari Ram Vs. State of Rajasthan and another reported in (2009)13 SCC 211, the Court has extensively considered the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 especially the provisions of Sections 2(k), 2(l), 7A (Explanation) and 49 (as amended by the Act of 2006). The question which was raised before the Supreme Court was as to whether a person who was below 18 years of age on the date of commission of the offence, prior to the commencement of the 2000 Act, was entitled to the benefit under the Act of 2000. The Court held that though such person was not a 'juvenile' under a literal application of Section 2(h) of the Juvenile Justice Act, 1986 nor a 'juvenile in conflict with law' under Section 2(l), however, in all cases pending in any Court on the date the Act came into force, the determination of juvenility shall be in terms of clause (l) of Section 2 by virtue of the explanation to Section 20 of the Act of 2000. Therefore, a claim

of juvenility was tenable even after the accused had crossed the age of 18 years on or before the commencement of the JJ Act 2000 or was

undergoing a sentence after conviction.Â The permissibility of raising the plea for determination of juvenility for the first time at the appellate stage is,

therefore, no more res integra.

31. In Jayendra and another Vs. State of Uttar Pradesh (1981)4ÂSCCÂ149, a question was raised before the Supreme Court in the context of a plea

of juvenility by the appellant Jayendra that he was about 15 years on the date of the offence and sought benefit under the Uttar Pradesh Children Act,

1951, Section 29 of this Act was similar to the provisions of Section 7A of the JJ Act.Â Section 29 provided that if the child is found to have

committed an offence punishable with imprisonment, the Court may order him to be sent to an approved school for a period of stay as will not exceed

his attaining the age of 18 years.Â Jayendra was 23 years of age on the date of the report of his juvenility plea and therefore, in view of the provision

of Section 29 of the Uttar Pradesh Children Act, 1951, could not be sent to an approved school.Â For this reason, the Supreme Court upheld the

conviction of the appellant of Jayendra and quashed the sentence imposed upon him and directed that he shall be released forthwith.

32. In Bhoop Ram Vs. State of Uttar Pradesh (1989)3ÂSCCÂ9, the appellant stood convicted with five others for commission of offences under

Sections 148, 302, 323, 324 read with Section 149 of the IPC and sentenced to life imprisonment besides concurrent sentences for lesser terms of

imprisonment.Â Placing reliance on a school certificate showing his date of birth, the appellant had claimed that he should have been treated as a

child within the meaning of Section 2(4) of the U.P.Children Act, 1951.Â The learned Sessions Judge did not go into the question as to whether the

appellant was below 16 years of age on the date of offence and proceeded to award the lesser sentence of imprisonment of life instead of the

extreme penalty of death sentence.Â In the face of his plea, at the stage of admission of the Special Leave Petition, the Supreme Court was of the

view that the Sessions Judge, Bareilly be called upon to enquire into the age of the appellant and submit a report with the option to have the appellant

examined by the Chief Medical Officer of the State.Â Liberty was given to the parties to adduce evidence on this aspect.Â In this case, the Chief

Medical Officer, Bareilly gave a certificate that the appellant appeared to be 30 years of age as on 30th April 1987. The appellant had placed only his school certificate before the Sessions Judge to prove that he had not completed 16 years on 3rd October 1975, the date of commission of the offence.Â This certificate was rejected by the learned Sessions Judge on the ground that it was not unusual that in schools, ages are understated by one or two years for future benefits.

33. It is noteworthy that in Bhoop Ram Vs. State of U.P. (supra), the Supreme Court followed the reasoning of Jayendra and another Vs. State of U.P. (supra).Â On the date of consideration of the appeal by the Supreme Court, the appellant Bhoop Ram was aged more than 28 years of age and there was no question of his being sent to an approved school in accordance with the provisions of U.P.Children Act, 1951 and for being detained there.Â The appellant had crossed the maximum age of detention at the time of consideration of issue.

34. Therefore, so far as the manner in which the appellant Bhoop Ram was to be treated as he was more than 28 years of age at the time of consideration of the case by the Supreme Court is concerned, the Court adopted the course followed in Jayendra and another Vs. State of U.P. (supra) and observed that the course which was to be followed is to sustain the conviction but however, quash the sentence imposed on the accused.Â The Court accordingly sustained the conviction of the appellant under all the charges framed against him but quashed the sentence awarded to him and directed his release forthwith.Â In this regard, the Court had observed as follows :Â?

â??8. Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P.Children Act for being detained there.Â In a somewhat similar situation, this Court held in Jayendra Vs. State of U.P. That where an accused had been wrongly sentenced to imprisonment instead of being treated as a â?? childâ? under Section 2(4) of the U.P.Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith.Â Accordingly, in this case also, we

sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release

forthwith.Â The appeal is therefore partly allowed insofar as the sentence imposed upon the appellant are quashed.

35. In Dharambir Vs. State (NCT of Delhi) and another (2010)5ÂSCCÂ344, the Court reiterated the well settled principles that a claim of juvenility

would be maintainable and can be raised before any Court or forum and has to be recognised at any stage even after disposal of the case.Â In this

case, by the impugned judgment, the High Court had upheld the conviction of the appellant for commission of the offences under Sections 302 and 307

read with Section 34 of the Indian Penal Code, 1860.Â The appellant had been sentenced to imprisonment for life under sections 302/34 IPC as well

as fine.Â Additionally, for commission of offence under Section 307/34 IPC, he stood sentenced to undergo rigorous imprisonment for a term of

seven years and fine.Â The Supreme Court noted that at the time of pronouncement, the appellant had undergone an actual period of sentence of 2

years, 4 months and 4 days and was now aged about 35 years.Â The Court was of the view that keeping in mind the age of the appellant, it may not

be conducive to the environment in the Special Home and to the interest of other juveniles housed in the Special Home, to refer him to the Board for

passing orders for sending the appellant to Special Home or for keeping him at some other place of safety for the remaining period of less than eight

months, the maximum period for which he can now be kept in either of the two places in accordance with the provisions of the Juvenile Justice Act,

1986.Â For these reasons, while sustaining the conviction of the appellant for the aforestated offences, the sentence imposed upon him was quashed

and he was directed to be released forthwith.

36. In the present case it can be seen that the plea of juvenility was raised during the course of argument before the Trial Court as well as the

Appellate Court and then before this Court.Â It may be that during commencement of the trial or when the trial was in progress, the appellant did not

raise that plea.Â However, it was the duty of the Trial Court to ascertain the said fact before proceeding with the trial.Â As far as the issue as to

what is the primary duty of the Trial Court, in this regard, the observations of Supreme Court in paragraph 13 of the judgment reported at 1984 (Supp)

SCC 226 (Gopinath Ghosh Vs. State of West Bengal) made as back as in the year 1984 deserve to be noticed in extenso and read thus :

Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the

Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind the

technicality of the contention being raised for the first time in this Court. A way has therefore, to be found from this situation not conducive to

speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever

a case is brought before the Magistrate and the accused appears to be aged 21 years as below, before proceeding with the trial or undertaking an

inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special acts dealing

with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case

may be, for obtaining credit worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age.

Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex

Court and the return journey to the grassroot Court. If necessary and found expedient, the High Court may on its administrative side issue

necessary instructions to cope with the situation herein indicated. (emphasis by us).

It was also open to the Appellate Court also to direct an inquiry with regards to the juvenility of the applicant. On the basis of the report submitted

by the Court pursuant to the directions of this Court, it is crystal clear that the applicant was juvenile at the time of occurrence of the incident. The

report submitted by the Court upon inquiry is analytical and a conscious effort is made by the Court to consider the evidence on record and record

finding that at the time of occurrence of the offence, the applicant was below 18 years of age. The said report deserves to be accepted. In

Hari Ram's case reference is made to the decision of Supreme Court in Rajinder Chandra Vs. State of Chhatisgarh (2002) 2 SCC 287 wherein it

was held that when a claim of juvenility is raised and on the evidence available two views are possible, the Court should lean in favour of holding

the offender to be a juvenile in border line cases.Â In the light of the decisions referred to hereinabove, more particularly in the Bharat Bhushan case

(supra), the provisions of Juvenile Justice Act, 2000 (as amended) are applicable to the case of the applicant.Â It is also apparent that the appellant

has crossed the age of 18 years and in the light of the observations in several decisions, the applicant cannot be referred to the juvenile justice

board.Â Although the conviction of the applicant is upheld, the sentence imposed upon the applicant is required to be set aside in accordance with the

provisions of the Juvenile Justice Act and in accordance with the ratio laid down in the judicial pronouncements referred to hereinabove.

37. In view of above, I pass following order :

(i) Criminal Revision Application No.203 of 2000 is partly allowed;

(ii) The conviction awarded by the Assistant Sessions Judge, Sindhudurg, at Oros vide judgment and order dated 6th March 1998 passed in Sessions

Case No.27 of 1997 and judgment and order dated 24th May 2000 passed by the Sessions Judge, Sindhudurg, at Oros in Criminal Appeal No.7 of

1998, is confirmed, however, the sentence of imprisonment awarded by the Trial Court and confirmed by the Appellate Court while convicting the

applicant for the offence u/s 376 of IPC and Section 451 of IPC, is hereby set aside.