

# BOMBAY HIGH COURT

Emperor

Vs

Lakshman Shivram

(John Beaumont, Kt., C.J. Shingne and N Wadia, JJ.)

04.08.1933

## JUDGMENT

### **John Beaumont, C.J.**

1. In this case the accused was charged under Sections 366 and 376 of the Indian Penal Code: he was convicted under Section 366 and acquitted under Section 376. The learned Judge directed that the accused be kept in rigorous imprisonment for a term of two years and that the execution of the sentence be carried out in the Borstal Institution at Dharwar. The learned Advocate General has given a certificate under Clause 26 of the Letters Patent alleging that there is an error of law in the sentence.

2. Section 6 of the Borstal Schools Act provides that when an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment and certain conditions are satisfied, it shall be lawful for the Court to pass in lieu of a sentence of transportation or imprisonment an order that the offender be detained in the Borstal school for a certain term. This Court pointed out in the case of *Emperor v. Mathurdas Purshottam*<sup>1</sup> that the proper form of order was to convict the accused, and then, in lieu of sentence of imprisonment, sentence him to be detained for a period of not less than two years and not more than five years, and that seems to us to be the correct order to make, because the Borstal Institute is not a prison, and detention there is not imprisonment. Mr. Jhabwala, who appears for the accused and also for the parents, who are entitled to be heard under the proviso to Section 6, objects to the use of the word 'convict' and points out that in Section 6 the words used are 'where an offender is found guilty.' But in my opinion, there is no distinction between the expressions 'found guilty' and 'convict'. The verb 'convict' is generally used throughout the Criminal Procedure Code, and I think it is proper to use that word in cases such as this. If there were a distinction between 'conviction' and 'finding guilty' various difficulties would arise under the Code, for instance, on a subsequent conviction, a case in which a person had been merely found guilty could not be proved as a previous conviction, and under Section 403 a person merely found guilty of an

offence would not be free from subsequent trial for that same offence. We think, therefore, the order in Emperor v. Mathurdas Purshottam was the right form of order to make. In this case we accede to the prayer of the Advocate General and alter the sentence by convicting the accused under Section 366 and directing that he be detained in the Borstal Institute for two years. The sentence will commence from the date when the learned Judge passed the sentence.

Cases Referred.

1(1931) 34 Bom. L.R. 299