



2025:AHC:169378

Reserved on 01.9.2025

Delivered on 22.9.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 211 of 2024

Minor X

.....Revisionist(s)

Versus

State Of Up And 3 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Arun Kumar Pandey, Suman Mishra
Counsel for Opposite Party(s) : G.A.

Court No. - 47

HON'BLE SIDDHARTH, J.

1. Despite service of notice on opposite party no.2, no one has appeared to oppose this criminal revision.

2. Heard Sri Arun Kumar Pandey, learned counsel for the revisionist; learned A.G.A. for the State and perused the material on record.

3. The present criminal revision has been filed to set and aside the judgement and order dated **11.12.2023** passed by **Additional Special Judge, POCSO Act/ Additional Sessions Judge, Court No.13, Kanpur Nagar, in Criminal Appeal No. 66 of 2023** and order dated **9.5.2023** passed by the **Juvenile Justice Board, Kanpur Nagar, in Case Crime No. 507 of 2021, under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act, Police Station Barra, District Kanpur Nagar.**

4. Juvenile Justice Board found the revisionist to be aged about 16 years, 2 months and 14 days at the time of alleged offence and directed conducting preliminary assessment of the revisionist as per Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015.

5. Psychologist submitted his report that mental capability of the accused is average and he is not able to understand the consequences of crime committed by him. The Juvenile Justice Board on the basis of questioning of the revisionist found that he is physically and mentally sound and is able to understand the consequences of the crime committed by him and

disagreeing with the report of psychologist, record of his trial was forwarded to the Children's court for being tried as adult. On appeal before the Children's court, the order of Juvenile Justice board was confirmed and hence this appeal.

6. After hearing the rival contentions, this Court finds that the victim girl was relative of the revisionist and was aged about 17 years while the revisionist was aged 16 years, 2 months and 14 days only. The victim, in her statement recorded under Section 164 Cr.P.C., stated that she willingly eloped with the revisionist since she loved him and also married him.

7. In the present case, the revisionist, being more than 16 years of age as on the date of commission of alleged offence, the matter had to be considered in view of provisions of [Section 15](#) of Act for the purpose of making preliminary assessment, as to whether the child in conflict with law had to be tried as an adult or not. The three parameters as provided under [Section 15](#) of the Act are required to be followed strictly. [The Act](#) of 2015 has been enacted by the Parliament under the powers available under [Article 253](#) of the Constitution of India, the age for trying the child/juvenile as an adult has been reduced from 18 to 16 years.

8. The case, in hand, falls within the category of heinous offence and the revisionist, being more than 16 years of age on the date of commission of offence, is required to be dealt with as per provisions of [Section 15](#) of the Act for the purpose of making preliminary assessment. As per arguments of learned counsel for the revisionist, the Board has conducted the preliminary assessment and got the report from Psychologist as per provisions of the Act and Rules framed thereunder but court has not agreed to its findings. A conjoint reading of both Rules 10, 10A in consonance with [Section 14](#), [15](#) and [18\(3\)](#) would reveal that the path to be tread upon by the Board, post the production of the Juvenile has been clearly spelt-out where heinous offence has been alleged to be committed by a child, who has completed 16 years of age. Rule 10(5) clearly reflects that the Child Welfare Police Officer is to produce the statements of witnesses and other documents prepared during the course of investigation within a period of one month from the date of first

production of a child before the Board. It is also required that a copy thereof is to be given to the child or parent or guardian of the child. The legislature in its wisdom has prescribed the period of one month to produce the statements of the witnesses and other documents with a copy to the child, subsequent to which, the Preliminary Assessment in case of heinous offences under [Section 15](#) of the Act has to be completed. Meaning thereby, the copy of list of witnesses and other documents along with copy of final report is to be supplied to the child or his parents or to the guardian before making the Preliminary Assessment as per provisions of [Section 15](#) of the Act. It is also stipulated in [Section 15](#) read with Rules 10 and 10-A along with other provisions of the Act that three basic parameters are necessary to be followed in case of a heinous offence before passing the order under [Section 18\(3\)](#) for determining the need for trial of a child as an adult. The Board had to follow three parameters for making Preliminary Assessment as to whether there is a need for the trial of said child as an adult or not. It is to be seen as to how the Board as well as the Appellate Court has appreciated the circumstances of the commission of alleged offence, without the list of witnesses, documents relevant to the matter as well as the final report, which in any case the investigating authority is to file before the Board in less than two months of the production of the child before it.

9. There is no dispute that the offence of commission of which the accused appellant was charged with, fall within the category of 'heinous offences' as defined under [Section 2\(33\)](#) of the JJ Act. [Section 15\(1\)](#) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of [Section 18](#) of the JJ Act. [Section 15\(2\)](#) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial of summons case under [CrPC](#). Under first proviso

to this sub-section, the order passed by the Board is appealable under [Section 101\(2\)](#) of the JJ Act.

10. This court finds that the report of psychologist was in favour of the revisionist. In the report it was clearly mentioned that the mental capability of revisionist was average when he was above 16 years of age. It is clear from the facts of the case that the revisionist indulged in physical relationship with the victim, aged about 17 years. She has admitted eloping with the revisionist, whom she met in marriage of close relative as per her statement under Section 161 Cr.P.C. and 164 Cr.P.C. Later in her statement under Section 164 Cr.P.C., she has alleged commission of offence of rape against her by the revisionist but in earlier part of her statement she has admitted having love affair with him.

11. This court finds that the Hon'ble Bombay High Court in the case of [Mumtaz Ahmed Nasir Khan and Others vs. State of Maharashtra and Others, 2019\(4\) Bom CR \(Cri\) 261 \(Bombay\)](#) has addressed the root cause of such offences being committed by juveniles as follows :-

"33. As [Section 15](#) permits the Board may, during the preliminary assessment, take the assistance of experienced psychologists or psychosocial workers or other experts. First, the preliminary assessment is "not a trial." Second, it is, instead, an inquiry to assess the child's capacity to commit the alleged offence and to understand its consequences. On inquiry, the Board must satisfy itself in its preliminary assessment about the juvenile's mental and physical capacity, his ability to understand the consequences of the offence, and so on. Then, if the Board is "satisfied on preliminary assessment that the matter should be disposed of", it will follow "the procedure, as far as may be, for trial in summons case under Cr PC." The Board's order is appealable under sub-section (2) of Section 101.

38. A universally accepted ideal is that children are dependent and deficient in the mental and physical capacities, and are in need of guidance. Perhaps, initially, a multi-visual medium like

TV; later, a globe devouring internet (appropriately, ominously worded as "world wide web"), and finally-and fatally-the post-truth social media have let the children, especially the adolescents, leapfrog into the adult world. Mostly it is a crash-landing, with disastrous consequences. So the childhood innocence is the casualty. These devices may have made a child bypass his or her childhood, sadly. Then, naturally, the theory of reduced culpability for juveniles relative to adults has taken a statutory dent. The good-old-days icon of a truant child seems to get replaced by the modern-day mascot of a violent predator.

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87. So we need to revisit [Section 15](#) of the Act to determine what circumstances compel a juvenile to face the trial as if he were an adult. (1) It must be a heinous offence; here it is. (2) The child must have completed sixteen years; here he has. (3) The Board must have conducted a preliminary assessment; here it has. (4) That preliminary assessment concerns four aspects: (a) the child's mental and (b) physical capacity to commit such offence; (c) his ability to understand the consequences of the offence; (d) and the circumstances in which he allegedly committed the offence. The preliminary assessment, indeed, has been on all these aspects. Agreed. But has the Board found the child fitting into the scheme on all four counts?

88. I reckon of the four aspects-physical capacity, mental ability, understanding, and the circumstances-none is dispensable. They all must be present, for they are not in the alternative. Let us remind ourselves, just because the statute permits a child of 16 years and beyond can stand trial in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subject to adult

punishment. It is not a default choice; a conscious, calibrated one. And for that, all the statutory criteria must be fulfilled.

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92. The explanation to [Section 15](#) of the Act clarifies that the preliminary assessment is not a trial; it is an exercise to assess the child's capacity to commit and understand the consequences of the alleged offence.

93. In this context, if the Board's criteria of evaluation, as affirmed by the Appellate Court, are followed, then every case becomes an open and shut case. If the child is 16 or above and is capable of committing the offence and understanding the consequences, that will suffice. I am afraid it ought to be more than that. The whole endeavor of the [JJ Act](#) is to save the child in conflict with the law from the path of self-destruction and being a menace to the society. It is reformative, not retributive. [Section 15](#), I believe, must be read and understood keeping in view the objective that permeates the whole Act and the spirit it is imbued with.

*94. That to contain crime, the State must be strict and the punishment must be harsh is an intuitive assertion; but sometimes the solution to the crime are counterintuitive. Steven D. Levitt and Stephen J. Dubner, in their popular book *Freakonomics*[16] , have hypothesized that the juvenile crime in a few of states of the US has come down thanks to *Roe v. Wade*, a judgment of the American Supreme Court that legalized abortion. Critics apart, there can be ideas that are worth exploring. It is equally worthwhile, first, to explore for ideas, instead getting stuck in a predictable, plebian approach to societal problems.*

98. Merely on the premise that the offence is heinous and that it lends to the societal volatility of indignation, we are bracing

for juvenile recidivism. Retributive approach vis-a-vis juveniles needs to be shunned unless there are exceptional circumstances, involving gross moral turpitude and irredeemable proclivity for the crime. Condemned, any juvenile is going to be a mere numeral in prison for a lifetime; reformed, he may redeem himself and may become a value addition to the Society. Let no child be condemned unless his fate is foreordained by his own destructive conduct. For this, a single incident not revealing wickedness, human depravity, mental perversity, or moral degeneration may not be enough. Just deserts are more than mere retribution.

99. The Society, or restrictively the aggrieved person, views any problem ex post; it wants a wrong to be righted or remedied to the extent possible. The courts, especially the Courts of Record, view the same problem ex ante. "It involves looking forward and asking what effects the decision about this case will have in the future"[19]. To be more accurate, the courts balance both perspectives. I reckon [Section 15](#) of the Act requires us to balance both the competing perspectives: ex post and ex ante.

[19] [The Legal Analyst, Ward Farnsworth, The University of Chicago Press, Ed. 2007. P. 5]

100. So I conclude that the Board, in the first place, has mechanically relied on the Social Investigation Report and MH Report, without analyzing the older adult's case on its own. Similarly, the Appellate Court has also endorsed the order in appeal, without exercising the powers it has under Section 101. So both fail the legal scrutiny; they have failed to exercise the jurisdiction vested in them."

12. In the judgment quoted here-in-above, Bombay High Court has rightly held that the television, internet and social-media are having disastrous effects on the impressionable minds of the adolescents and resulting in loss of their innocence at a very early and tender age.

13. Law is an evolving concept and has to keep pace with time. This court has no hesitation to hold that the nefarious effects of the visual mediums like television, internet and social-media on adolescents are not being controlled, nor it appears that the government can control the same, to prevent its deleterious effect on the adolescents, due to the uncontrollable nature of technologies involved. The "Nirbhaya case" was an exception and not a general rule and all juveniles cannot be subjected and tried like adult without proper consideration of the overall social and psychological effects on their psyche.

14. In this case the victim and the juvenile both are minors. They had teenage love affair. Both are of the same age, between 16-17 years. It is not a case of forceful rape after abduction of victim by revisionist, rather a case of consensual eloping and having physical relationship out of love and affection. There is nothing on record to indicate that the revisionist is a predator on the prowl and is prone to repeating the offence without any provocation. He never indulged in any such or other offence earlier. Maturity of his mind has not been certified by the psychologist. Merely because he committed a heinous crime he cannot be put to par with an adult.

15. In view of above consideration the impugned judgment passed by court below is set aside.

16. Criminal Revision is **allowed**.

17. The revisionist is directed to be tried as a juvenile by the Juvenile Justice Board in accordance with law.

18. Registrar (compliance) is directed to communicate this order to the Juvenile Justice Board, Kanpur Nagar for necessary compliance within three days.

(Siddharth,J.)

September 22, 2025
Ruchi Agrahari