

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11.10.2017

CRL.A. 704/2017

NOORUDDIN @ NOORA

..... Appellant

Through Mr. Sumeet Verma and Mr. Aman
Chaudhary, Advocates.

versus

STATE

..... Respondent

Through Mr. Ravi Nayak, APP for State along
with SI Ramesh Kumar, P.S. Sultan
Puri.
Inspector Rajeev Ranjan, P.S. New
Usmanpur.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE NAJMI WAZIRI

SIDDHARTH MRIDUL, J (ORAL)

1. In the present appeal, an application was instituted on behalf of the appellant under Sections 7 and 7A of the Juvenile Justice Act, 2000 (hereinafter referred to as 'the said Act') and the Juvenile Justice (Care and Protection of Children) Rules, 2007, (hereinafter referred to as 'the said Rules'), praying for a direction that an ossification test be conducted on the appellant to determine his age at the time of commission of the offence; for which he had been convicted and sentenced, and to release him in the event he was determined to be a minor on the said date.

2. Whilst disposing off the said application, by way of order dated 31st August, 2017, this Court was pleased to direct as follows:-

“ ...The Director of All India Institute of Medical Sciences (AIIMS) is requested to set up a Medical Board consisting of experts in the relevant field and conduct an ossification test on the appellant in order to determine his age. The Director, AIIMS is also requested to conduct the said test at the earliest opportunity and file a report of the Medical Board in this regard before this Court within four weeks from today.

Jail Superintendent concerned is directed to take the appellant in custody to the AIIMS for the purpose for conducting the said ossification test in the next week on 06.09.2017 and on such other dates as may be required by the Medical Board.

With the above directions, the application is disposed off.”

3. The Medical Superintendent of All India Institute of Medical Sciences, Delhi (AIIMS), by way of communication dated 15th September, 2017, forwarded to the Registrar General of this Court a report dated 14th September, 2017 of the Medical Board constituted in terms of the said order dated 31st August, 2017.

4. For the effective adjudication of the present appeal, it is considered profitable and necessary to extract the said report dated 14th September, 2017, which reads as follows:

**“ALL INDIA INSTITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi-110029**

No.F.2-35/Medical Board/2017-Estt.(H)

Dated 14.09.2017

Subject: Report of the medical board constituted at AIIMS for medical examination (ossification test for bone age) of petitioner Nooruddin @ Noora s/o Mr. Rashid Ahmad in compliance of order

dated 31.08.2017 of Hon'ble Mr. Justice Siddharth Mridul and Honb'ble Mr. Justice Najmi Waziri, High Court of Delhi vide Criminal Appeal No. 704/2017 and Crl. MA No. 11363/2017 titled Nooruddin @ Noora Versus State GNCT of Delhi.

In Compliance with the letter No.F.2-35/Medical Board/2017-Estt.(H.) dated 07.09.2017, medical board meeting was held on 14.09.2017 at 11:15 A.M in the Board Room, Deptt. of Forensic Medicine, AIIMS. The Board considered of the followings:

1. Dr. Adarsh Kumar - **Chairperson**
Professor of Forensic Medicine
2. Dr. Nasreen Akhtar - Member
Asstt. Professor of Physiology
3. Dr. Deepika Mishra - Member
Asstt. Professor of CDER
4. Dr. Priyanka - Member
Asstt. Professor of Radio-diagnosis
5. Dr. Antara Deb Barma - Member
Senior Resident, Deptt. of Forensic Medicine
6. Dr. Anant Gupta - Member Secy.
Department of Hospital Administration
7. Dr. Makhdoom Killedar - Observer
Department of Hospital Administration

Petitioner Nooruddin @ Noora S/o Mr. Rashid Ahmad brought to the Deptt. of Forensic Medicine, AIIMS on 14.09.2017 at 11:15 A.M. for determination of his age. A UHID number vide 103144082 was generated to proceed for examination and then he was taken to the Board Room in Deptt. of Forensic Medicine for examination.

Accompanying Police Official (Brought and identified by)

1. ASI Gurmehar Singh (PS No. 6805, 3rd Battalion, Mandoli Jail)
2. Rakesh, (PS No. 2208, 3rd Battalion, Mandoli Jail)

Mark of Identification:

1. One old healed scar mark, 2.5 cm in length, present over the right side of the chin.
2. One black coloured mole, situated over the right side of the forehead 5cm above the lateral angle of the right eyebrow and 8cm away from the midline.

Alleged History in brief:

As per the petitioner Nooruddin @ Noora S/o Mr. Rashid Ahmad, his age is 22/23 years. He is illiterate and cannot sign his name nor have any school certificate. As per copy of the ration card, the year of his birth is 1995. He has a total of seven siblings and he is the second youngest among them. He does not have any other valid ID cards e.g. Aadhar card/Voter ID card. The person is an accused in case of murder registered with State of Delhi u/s 302 IPC P/s and is under custody since 2008. He got married in the year 2015.

General Physical Examination:

Height-172 cms. Weight-44 kg

Patient is conscious, cooperative, well oriented to time, place and person.

Systemic Examination: No abnormally detected.

Physiological Examination findings:

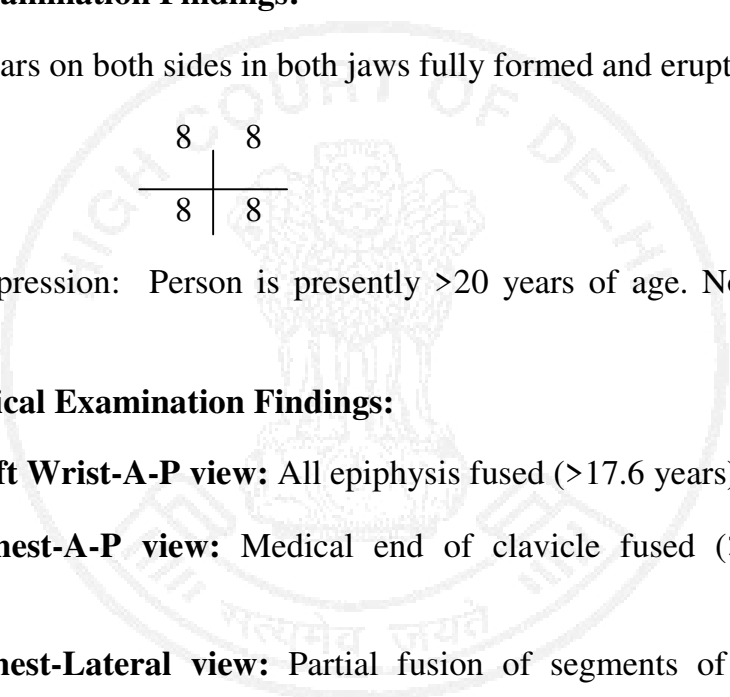
No abnormal physiological changes seen.

Following investigations were advised:

The physical, dental and radiological examination was carried out after taking due consent. There was no need to undertake OPG as all third molars in both jaws have appeared and fully erupted. X-ray of Medical end of the clavicle –AP View, Sternum-Lateral View, Left wrist-AP View and Pelvis-AP View were taken in Forensic Radiology Unit.

Dental examination Findings:

Third molars on both sides in both jaws fully formed and erupted.



8	8
8	8

Impression: Person is presently >20 years of age. No OPG required.

Radiological Examination Findings:

1. **X-ray Left Wrist-A-P view:** All epiphysis fused (>17.6 years)
2. **X-ray Chest-A-P view:** Medical end of clavicle fused (>21-22 years)
3. **X-ray Chest-Lateral view:** Partial fusion of segments of sterna body-suggestive of bone age< 25 years.
4. **X-ray Pelvis:** Iliac Crest is fused (> 20 years)

Impression: Bone age is more than 21 years and less than 25 years.

REPORT

After going through the various findings of physical, dental and radiological examinations; medical board is of considered opinion

that the age of Mr. Nooruddin @ Noora S/o Rashid Ahmad is
between 21-25 years on date of examination i.e. 14/09/2017.

(Dr. Adarsh Kumar) (Dr. Nasreen Akhtar) (Dr.Priyanka) (Dr. Deepika Mishra)

CHAIRMAN MEMBER MEMBER MEMBER

(Dr. Antara Deb Barma) (Dr. Anant Gupta) (Dr. Makhdoom Killeddar)

MEMBER MEMBER SECY. OBSERVER”

5. A perusal of the above-mentioned report clearly reveals that in the opinion of the Medical Board, the age of the Appellant is between 21 to 25 years on the date of medical examination i.e. 14th September, 2017. It is consequently axiomatic that on the date of commission of the offence i.e. 12th April, 2008, even taking into consideration the maximum present age determined as per the report of the Medical Board, the appellant would be less than 15 years and six months of age. The law prevalent at the time of the commission of the offence required for an accused to be at least 18 years old, in order to be tried as an adult under the Indian Penal Code, 1860 (hereinafter referred to as ‘IPC’).

6. Consequently, in our view, the appellant ought to have been tried as a juvenile at the time of the filing of the charge-sheet and conduct of the ensuing trial.

7. In this behalf, the relevant provisions of the law are Section 9 of the said Act as well as Rule 12 of the said Rules. The said provisions read as follows:

“ **Section 9.** Procedure to be followed by a Magistrate who has not been empowered under this Act.

XXXXX XXXX XXXX

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person’s claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.”

“**Rule 12. Procedure to be followed in determination of Age.**— (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in

conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

- (a)
 - (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
 - (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
 - (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in

respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned...”

8. A plain reading of the above provisions clearly mandates that a claim of juvenility may be raised before any Court, at any stage, and if the Court finds a person to be a juvenile on the date of the commission of the offence, it will forward the juvenile to the Juvenile Justice Board for passing appropriate orders, in accordance with law. It further stipulates that in respect of the enquiry to be conducted, in order to determine the age of the applicant claiming juvenility; in the absence of a matriculation or equivalent certificate, the date of birth certificate from the school (other than a play school) first attended will be considered.

9. In the present case, since none of the certificates as delineated in Rule 12(3)(a) of the said Rules were available for the determination of the appellant's age, the Court had directed recourse to the procedure stipulated in Rule 12(3)(b) of the said Rules.

10. The Medical opinion of the said Board constituted by the Director of the AIIMS clearly demonstrates that the appellant was a minor on the date of the commission of the offence. Consequently, any sentence passed by a

Court of competent jurisdiction, sentencing the appellant for the offence with which he had been charged i.e. under Section 302/34 IPC; against the subject FIR No.89/2008 of Police Station New Usman Pur, Delhi, shall be deemed to have no effect whatsoever in law.

11. Additionally, as recorded in the said order of this Court dated 31st August, 2017, a ration card produced by the appellant; issued by the Food and Supply Officer, Circle 65, Seelampur, recorded the year of birth of the appellant as 1995. Even on the assumption that the ration card correctly recorded the age of the appellant, the latter would be less than 14 years of age, at the time of commission of the offence.

12. In view of the foregoing discussion, as well as the decision of the Hon'ble Supreme Court in ***Jitendra Singh alias Babboo Singh v. State of Uttar Pradesh***, reported as (2013) 11 SCC 193, the sentence imposed by the Trial Court on Nooruddin @ Noora, the appellant is duly effective required to be set aside by the operation of law. Resultantly, whilst upholding the conviction imposed by the Trial Court on Nooruddin @ Noora, the sentence awarded to him is set-aside. Furthermore, in view of the circumstance that the appellant has already undergone more than seven years' incarceration, it is considered just, necessary and expedient not to refer the matter to the Juvenile Justice Board for further proceedings in accordance with law.

13. The appeal is disposed off in the above terms with no orders as to costs.

14. The appellant – Nooruddin *alias* Noora be released forthwith, if not required in any other case.

SIDDHARTH MRIDUL, J

NAJMI WAZIRI, J

OCTOBER 11, 2017

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