

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 906 of 2017**

Chhote Bihari @ Sandeep Malakar, aged about 17 years, S/o Mahendra Prasad @ Raju Malakar (Minor), through natural guardian mother Smt. Champa Mali, aged about 37 years, W/o Mahendra Prasad @ Raju Malakar, R/o Neem Chowk, Purani Basti Korba, Police Station Kotwali, Korba Tahsil and District-Korba (C.G.).

**---- Applicant****Versus**

State of Chhattisgarh, through District- Magistrate, Korba, District- Korba (C.G.).

**---- Respondent**


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| For Applicant  | : | Mr. Rahul Mishra, Advocate |
| For Respondent | : | Mr. Ramakant Pandey, PL    |

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Hon'ble Shri Justice Arvind Singh Chandel

**Order on Board****19/03/2018**

1. This revision has been preferred under Section 102 of the Juvenile Justice (Care and Protection of Children), Act 2015 (in short 'the Act 2015) against the judgment dated 14/07/2017 passed by the Additional Sessions Judge (FTC), Korba (Children Court) in Criminal Appeal No. 07/23017, arising out of the order dated 15/02/2017 passed in Criminal Case No. 92/2016 by the Juvenile Justice Board, Korba.
2. Brief facts of the case are that on 12/10/2016 at about 1:00 a.m., one Parvej and deceased- Salauddin was moving near Chitra talkies, Korba. At that time, some quarrel was taken place between Salauddin

and present applicant and other accused namely- Golu, Baba and Nirmal. Salauddin was beaten by them with iron road, rock, hand and fists. He sustained multiple injuries on his body. Parvej informed the incident to Allauddin, brother of Salauddin. He came to the spot and taken Salauddin to the Hospital. The matter was reported and the offence under Section 307/34 of IPC was registered. During treatment, Salauddin died on 13/12/2016. After investigation, a charge-sheet under Section 302 and 307/34 of IPC was filed against the present juvenile and another separate charge-sheet has been filed against the major accused in regular court. After filing the charge-sheet, the learned Juvenile Justice Board conducted a preliminary assessment with regard to the mental and physical capacity of the applicant to commit the alleged offence under Section 15 of the Act, 2015. After obtaining the preliminary assessment, the Board referred the matter to the Children Court for trial of the alleged offence under sub-section 3 of Section 18 of the Act, 2015 vide order dated 15/02/2017. Against the said order, an appeal under Section 101 of the Act, 2015 was preferred which was dismissed vide order dated 14/07/2017. Hence this revision on the ground that the learned Children Court while deciding the appeal has not considered the provisions of Sub-section 2 of Section 101 of the Act, 2015 and dismissed the appeal without taking the assistance of experienced psychologist and medical specialist other than whose assistance have been obtained by the Board in passing the order under the said Section.

3. Learned counsel appearing on behalf of the applicant argues that the learned Children Court has committed error in law without following the mandatory provisions of sub-section 2 of Section 101 of the Act, 2015 and dismissed the appeal, which is illegal and liable to be set-aside.
4. Learned Counsel appearing for the State opposes the prayer for grant of bail and supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and the material available on record.
6. It is an admitted fact that a separate charge-sheet under Section 302 and 307 read with 34 of IPC has been filed against the applicant. From perusal of the order dated 15/02/2017, it is clear that the Board had conducted a preliminary assessment with regard to the mental and physical capacity of the applicant to commit the alleged offence. A report in this regard was submitted by one Sanjay Tiwari, Psychologist, Health Department, District- Hospital, Korba. On the basis of said report, the matter was referred by the Board to Children Court. While deciding the appeal preferred under Section 101 of the Act, 2015, the learned Appellate Court, relied on the report of Sanjay Tiwari and observed that no separate report is required from any other Psychologist or expert.
7. The provisions of Section 101 (2) of the Act, 2015 are as under:-

*“(2). An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under Section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal,*

*take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said Section.”*

8. From the above, it is clear that these provisions are not mandatory in nature. It is the discretion of the Appellate Court whether any assistance of expert psychologist or medical expert other than those whose assistance have been taken by the Board in passing the order under the said Section is required or not.
9. Considering the above facts and circumstances of the case, I find no infirmity in the judgment passed by the First Appellate Court.
10. The revision has no merit and is hereby dismissed.

Sd/-  
**(Arvind Singh Chandel)**  
**Judge**