

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2449 of 2022
With
With CRAN 2 of 2023

The State of West Bengal
-Versus-
Child in Conflict with Law

For the Petitioner : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Sudip Ghosh, Adv.,
Mr. Bitasok Banerjee, Adv.

For the Respondent : Mr. Deepak Prahladka, Adv.,
Ms. Reshmi Khatun, Adv.

Heard on: 10 January, 2023.

Judgment on: 16 February, 2023.

BIBEK CHAUDHURI, J. : –

1. State of West Bengal has filed the instant revision assailing an order dated 2nd May, 2022 passed by the learned Additional Sessions Judge, 13th Court at Alipore, South 24 Parganas in Criminal Appeal No.55 of 2021 in connection with Gariahat Police Station Case No.329 of 2019 dated 12th December, 2019 under Sections 120B/302/394/201/34 of the Indian Penal Code.

2. For the purpose of proper adjudication of the instant revision it is necessary to narrate the following facts:

On 12th December, 2019 at about 12:45 hours, police attached to Gariahat P.S received a telephonic information from an anonymous caller that a disturbance was going on at 2P, Garcha 1st Lane within the jurisdiction of Gariahat police station. Accordingly, police rushed to the spot to follow up the said information and found gathering including some women in front of the said premises. Police entered into the house and found a lady aged about 60-65 years lying in a pool of blood on her back on the cot in the eastern side bed room of the ground floor. Her head was separated from her body, a big cut injury was found on her abdomen and there were multiple injuries all over her person. She was wearing saffron colour salwar and multi colour printed kameez. There were golden bangles on her both hands, golden colour ring fitted with one orange colour stone on the right hand, golden colour ring with green colour stone on the little finger on her right hand, one pair of old used golden ear ring on both ears, golden nose pin in the left side of the nose, silver foot finger ring in both index foot finger. Bed sheet and other articles were found lying near the head of the said lady on the cot. There was a steel almirah in the said room which was found in ransacked condition and valuable articles were missing. A mobile phone was lying on the sofa placed near the southern side wall of the said room. In the western side adjacent bed room one almirah was found intact but some documents, empty jewellery boxes, bags etc were found scattered on the bed. One finger ring was

found lying on the floor of the said room. The body of the deceased was indentified as that of one Urmila Jund who was also known as Urmila Kumari by her daughter-in-law Dimple Jund who was present there. Garihat P.S Case No.329 of 2019 dated 12th December, 2019 was registered on the basis of the said compliant made by one Rajrani Yadav against unknown miscreants.

3. In course of investigation it was learnt that the victim was a widow. Her husband Chuhur Singh died in the year 2011 at their native place at Sangru, Punjab. The victim had three sons. The elder one namely Mandeep Kumar alias Mintu predeceased the victim in the year 2014. Dimple Jund is the widow of Mandeep. In the wedlock between Mandeep and Dimple, Dimple gave birth to two daughters. Elder one is the opposite party herein and the younger one is Gunjan Jund who is mentally challenged girl. Second son of the deceased is named Deepak Kumar Jund. Deepak and his wife Ritu Jund has been residing in Siliguri since 2007. Deepak has two daughters and one son. The youngest son of Urmila is Balraj Jund alis Rane. Balraj and his wife with their two minor children used to live in the ground floor of premises 2P, Garcha 1st Lane. Dimple Jund and her two daughters used to reside at a flat at Himangini Apartment situtated at 40/1 Hazra Road within P.S Ballygunge.

4. In course of investigation it was further learnt that Deepak, the second son of Urmila has a business of manufacturing and repairing of refrigerator and making showcases for sweet shops styled as Aqua Industries at Siliguri. Deepak flourished his business also at Guahati and

Kolkata. Chuhur Singh and his eldest son Mandeep started a business under the name and style of Simplex Interior Company. The said company deals with interior decoration. Thus it is revealed that Jund family is basically a business family.

5. On 9th December, 2019 the youngest son of deceased Urmila Jund namely Balraj went to Coochbehar to attend marriage ceremony of their common friend. At the same time, Balraj's wife also went to Punjab along with her child to see her brother who had met with an accident. Urmila used to stay at her residence alone during relevant period of time. During those days either she cooked for herself or used to request Dimple Jund to supply lunch and dinner for her. In the absence of Balraj and his wife Dimple used to send lunch and dinner to Urmila. During investigation Dimple Jund and the opposite party were closely interrogated by the investigating officer and in course of investigation, both of them confessed their guilt into the commission of gruesome murder of Urmila Jund and also disclosed involvement of another accused namely, Sourav Puri who was at the relevant point of time absconding. Subsequently, Dimple Jund and the opposite party herein were arrested on 13th December, 2019 from their residence. On the same day, pursuant to their individual statement and on being led and pointed out by the above named arrested persons police brought out looted booties like huge amount of cash, gold ornament, blood stained wearing apparel of the opposite party and a strip containing five medicines and mobile phone. Police seized the said articles. The absconding accused Sourav Puri was arrested after observing

all legal formalities on 13th December, 2019 from in front of Deepak Hotel & Restaurant on Railway Road, Nabha, Patiala, Punjab. During police custody he was interrogated and leading to discussing police seized various articles like gold jewellery, huge amount of cash money in different denomination from room No.106 of the said hotel. Police also seized certain incriminating documents like boarding pass, flight ticket, photocopy of Aadhar card of the said Sourav Puri.

6. During investigation it was also ascertained that after the demise of Mandeep Kumar the business of interior decoration in Kolkata were divided into two equal parts between Dimple Jund and Balraj Jund. Dimple Jund wanted to look after the family business of Kolkata. But it was against the family tradition of Jund family. Urmila denied the proposal of Dimple Jund. Then Dimple Jund wanted to sell her share and proposed to settle in Punjab. Urmila vehemently opposed the said proposal and conveyed the message to Dimple that she would not be able to leave her grand-daughter. She often used to visit the residence of Dimple just to see her grand-daughter. During passage of time dispute over the share of the business started to gear up between Dimple and Balraj and Urmila. Under the instruction of Urmila, Balraj used to give Rs.40,000/- per month to Dimple as her day to day expenditure and other expenses of Urmila was also paid by Balraj.

7. Investigation of the case subsequently was taken by the Homicide Squad of the Detective Department on 24th December, 2019. Accused Sourav Puri made a confessional statement before the learned Judicial

Magistrate under Section 164 Cr.P.C where from it was revealed that Dimple Jund, the opposite party and Sourav Puri hatched a deep rooted conspiracy to commit murder of Urmila Jund. The weapon of offence was recovered as per the leading statement of accused Sourav Puri. During investigation it was ascertained that the opposite party had established a friendship with Sourav Puri in social media. She asked him to come to Kolkata and Sourav stayed in the house for days together.

8. On the fateful day in furtherance of the conspiracy hatched by the grand-daughter of the victim and her friend Sourav Puri, both of them went to the house of the deceased with the dinner packet for the deceased then they entered into the house of the deceased and committed her murder brutally. Her head was separated from her body with the help of sharp cutting weapon. There were multiple injuries. The almirah of the deceased was ransacked. Some gold ornaments and cash money were found to be stolen. Accused Sourav Puri was identified by the several witnesses as the person who accompanied the opposite party on the fateful day to the house of the victim. During investigation ossification test was held in order to ascertain the age of the opposite party herein. On 2nd September, 2020, it is ascertained that at the time of commission of murder the opposite party was aged about 17 years and 3 months. The Id. Chief Judicial Magistrate, Alipore considering the age of the opposite party declared her as a child in conflict with law and directed her to produce before the Juvenile and Justice Board, Kolkata.

9. It would not be out of place to mention in the meantime on 28th February, 2020 the investigating officer submitted charge-sheet against the opposite party and her friend Sourav Puri under Sections 120B/302/394/34/201 of the Indian Penal Code.

10. On 14th February, 2020 the investigating officer submitted the prayer before the Juvenile and Justice Board to conduct preliminary assessment of the opposite party with regard to her mental and physical capacity to commit such heinous offence, ability to understand the consequences of such offences in view of the circumstances in which offence was committed by her as per provision of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The JJB conducted independent social investigation and the psychological test of the opposite party herein. The medical report shows that the opposite party's IQ was found to be on average level of current intellectual functioning. There is no gross psychopathology present in the client on the date of medical examination. The report of the medical board also suggests that on the date of examination the opposite party was fully conscious and fully oriented. She was having normal physical built with good muscle. There was no neuro deficit found. Thus considering the physical and psychological medical test it is ascertained that the opposite party has the physical and mental capacity of the alleged offence and has the ability to understand the consequence of the alleged offence.

11. Above mentioned reports were placed before the JJB on 12th July, 2021 and on due consideration of the reports, the Board did not find

blatant and singular instance of wickedness, human depravity, mental perversity, or moral degeneration in the alleged action of the CCL. Therefore the Board was of the opinion that the victim (CCL) deserves trial as child before the Board.

12. The State of West Bengal preferred an appeal against the impugned order passed by the JJB on 12th July, 2021. The said appeal was heard by the learned Additional Sessions Judge, 13th Court at Alipore. The learned Judge in the Appellate Court dismissed the appeal filed by the State of West Bengal and affirmed the impugned order dated 12th July, 2021 passed by the JJB for trial of the opposite party as Child in Conflict with Law before the Board.

13. It is submitted by the learned Public Prosecutor that both the JJB as well as the court of appeal failed to appreciate and consider that the age of the Juvenile at the time of commission of offence was 17 years and 3 months. She is on the verge of attaining her majority. The manner in which she planned to commit the offence and asked her friend Sourav Puri to come to Kolkata, engaged in criminal conspiracy and pursuance of such conspiracy committed murder of the deceased was not at discussed either by the Board or by the Court of Appeal. The opposite party had the physical and mental capacity to understand what she was doing and the consequence of such act of murder of her own grand-mother the circumstances clearly establishes an active *mens rea* to take revenge against the deceased after her mother and she was deprived of taking part in their family business and after the death of the father of the opposite

party, the deceased and one of her uncles used to look after the said business. Therefore the petitioner thought that if the victim is removed from the living world she and her mother would be able to take active role in the family business.

14. Learned P.P further submits that brutality of commission of offence irresistibly suggests that the victim ought to have been tried as an adult.

15. Learned P.P has taken me to page 11-12 of the impugned judgment passed by the court of appeal. On perusal of the judgment I find that the learned Judge in the court of appeal considered the **J.S Verma Committee** report constituted after the **Nirbhaya Case**. In view of the report of the J.S Verma Committee Section 15 was amended. The present provision of Section 15 runs thus:

“15 Completion of Inquiry and Dispositional Alternatives. —

(1) The Board shall complete every inquiry within the stipulated time of four months and on recording a finding about juvenile's involvement in the alleged offence, pass one of the seven dispositional orders enumerated in section 15 of the Act.

(2) Before passing an order, the Board shall obtain a social investigation report prepared by the probation officer or by a recognized voluntary organization ordered to do so by the Board, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan for the concerned juvenile in conflict with law, prepared by a probation officer or voluntary organization on the basis of interaction with the juvenile and his family where possible.

(4) Where the Board decides to release the juvenile after advice and admonition or after participation in group counselling or orders him to perform community service, necessary direction may also be made by the Board to the District or State Child Protection Unit or the State Government for arranging such individual counselling, group counselling and community service.

(5) Where the Board decides to release the juvenile in conflict with law on probation and place him under the care of the parent or guardian or fit person, the person in whose custody the juvenile is released may be required to submit a written undertaking in Form V for the good behaviour and well-being of the juvenile for a maximum period of three years.

(6) The Board may order release of a juvenile in conflict with law on execution of a personal bond without surety in Form VI.

(7) In the event of placement of a juvenile in conflict with law in care of a fit institution or special home, the Board shall keep in mind that the fit institution or special home is located nearest to the place of residence of the juvenile's parent or guardian.

(8) The Board, where it releases a juvenile in conflict with law on probation and places him under the care of parent or guardian or fit person or where the juvenile is released on probation and placed under the care of fit institution, may order that the juvenile be placed under the supervision of a probation officer. The period of supervision shall be a maximum of three years.

(9) Where the Board decides that a juvenile in conflict with law ought to be treated as a child in need of care and protection, it shall make necessary orders for production of such juvenile before the nearest Committee for suitable care, protection and rehabilitation.

(10) Where it appears to the Board that the juvenile in conflict with law has not complied with probation conditions, it may order the juvenile to be sent for detention in a special home.

(11) Where a juvenile in conflict with law who has attained the age of sixteen years and the offence committed by him is of such a serious nature that in the satisfaction of the Board, it is neither in the interest of the juvenile himself nor in the interest of other juveniles of the special home, the Board may order the juvenile to be kept in a place of safety and in a manner considered most appropriate by it.

(12) The State Government shall make arrangement for complying with the detention of special category of juveniles in conflict with law in place of safety other than the special home.

(13) In no case the period of detention shall exceed beyond the maximum period provided in clause (g) of sub-section (1) of section 15 of the Act.”

16. Sub Section (3) of Section 18 states that where Board after preliminary assessment under Section 15 passes order that there is a need of trial of the said child as adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offence. Section 19 deals with the powers of children court after receiving preliminary assessment from the Board under Section 15. It is submitted by the ld. P.P that the learned Appellate Court failed to consider the provisions contained in Section 18, 19 and 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The ld. Appellate Court, on the other hand held that the Act is not retributive but reformative. The Appellate Court is also of the view in case of Child in

Conflict with Law, retributive approach should be taken when there exists exceptional circumstances. The ld. Court of appeal relied on the observations of the Hon'ble Supreme Court in **Shilpa Mittal vs. State of NCT Delhi & Anr.** reported in **(2020) 2 SCC 787** and came to a finding that an offence under Section 302 does not fall within the definition of "heinous offence" within a meaning of Section 2(2) (13) of the Juvenile Justice (Child and Protection of Children) Act, 2015. However the learned trial court failed to consider the view expressed by the Hon'ble Supreme Court in the above stated report stating, inter alia, that in respect of the offence where punishment is prescribed as imprisonment for more than 7 years or where no minimum punishment is stated, such offence in the absence of any categorization ought to be held as "serious offence" or "even more serious offence". Thus the court of appeal failed to appreciate that the offence committed by the opposite party and her friend conjointly was even serious than heinous offence.

17. Learned Advocate for the opposite party, on the other hand, submits that the opposite party was admittedly a Juvenile on the date of commission of offence on 12th December, 2019. The only question involved before the JJB as well as the court of appeal and this Court is as to whether the opposite party being a Child in Conflict with Law should be tried as an adult under Section 15 of Juvenile Justice Act 2015 or not.

18. It is submitted by Mr. Prahladka, ld. Advocate for the opposite party that the JJB and the Appellate Court taking into consideration all the aspects were of the opinion that the opposite party ought to be tried by

the Board. It is submitted by Mr. Prahladka that the decision of the Hon'ble Supreme Court in the case of **Shubam Sangra (Criminal Appeal No.1928 of 2022)** decided on 16th November, 2022, relied on by the state is not applicable under the facts and circumstances. The facts of the aforesaid report is that an 8 years old Muslim girl child was gang raped and murdered by 7 Hindu men. One of the accused claimed to be juvenile on the date of the alleged offence. Therefore the only point for adjudication was whether the accused was a juvenile on the date of commission of offence of rape and murder. The Hon'ble Supreme Court held that the accused was not a juvenile on the date of commission of offence and therefore was pleased to direct that he would be tried with adult accused persons.

19. In the instant case the opposite party was admittedly 17 years old on the date of commission of murder of her grand-mother. Thus the only point of consideration was whether she should be tried as adult under Section 15 of the Act of 2015 or not.

20. According to the ld. Counsel for the opposite party it is the duty of the Board under Section 15 of the Act to consider all surroundings circumstances which allegedly led or prompted the opposite party to commit murder of her grand-mother. The opinion of the medical board in this regard is discretionary and not mandatory. The report of the medical board is absolutely silent as to whether the victim had physical and mental ability to understand the consequence of the alleged offence when it was committed.

21. It is also submitted by the ld. Advocate for the opposite party that the opposite party and her mother have been falsely implicated in the instant case at the instance of the younger brother of the father of the opposite party as a result of family dispute. Thus the dispute relating to family property is the core of the issue. The opposite party might have thought that if her grand-mother could be removed from the mortal world it would bring happiness in the mind of her widowed mother and she might play an active role in the said family business. Presupposition of such idea is childish. A person having adult mental faculty will not think in the manner in which the opposite party thought. Therefore the ld. Advocate for the opposite party has insisted this Court to affirm the judgment passed by the ld. court of appeal.

22. Having heard the ld. P.P and the ld. Advocate for the petitioner and on careful perusal of the entire documents on record as well as decisions the only question that requires to be considered in the instant revision is as to whether the opposite party is entitle to get benefit of Juvenile Justice Act of 2015 on the ground that she was aged about 17 years and 3 months on the date of commission of offence. In this regard this Court is tempted to record the view observed made by the Hon'ble Supreme Court in the case of **Om Prakash vs. State of Rajasthan & Ors.** reported in **AIR 2012 SC 1608**. Paragraph 18 of the aforesaid report is quoted below:

“18. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he

would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates ad school records are alleged to have been with held deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.”

Though the question involved in **Om Prakash** (supra) is as to whether accused's plea of juvenile should be taken into consideration in view of the medical evidence regarding his age. The Hon'ble Supreme Court held that when an accused commits grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Accused should not be allowed to abuse the

statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. In such case medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records. Benefit of principle of benevolent legislation attached to Juvenile Justice Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority.

23. In the instant case there is no dispute as to the age of the opposite party. The petitioner, State of West Bengal has also admitted that the opposite party was a juvenile on the date of commission of offence.

24. It is found on careful perusal of the report of the JJB as well as the judgment passed by the 1st Appellate Court that both the Board and the court of appeal held that as the opposite party was below 18 years of age on the date of commission of offence she should be treated by the JJB. The court of appeal extended the benefit also on the ground that 2015 Act is a benevolent legislation and the purpose of legislation is not retributive but reformatory.

25. Neither the Board nor the court of appeal considered the following circumstances:

- (i) Mens rea of the opposite party- she thought that if her grand-mother could be removed from the living world, her mother will be able to take control of the family business.

When a girl was able to think in such manner to take control of the family business, her ability and process of thinking must be held to be like that of an adult.

- (ii) Criminal conspiracy of the opposite party in pursuit of committing such offence and bringing her friend from Punjab. He used to stay in the house of the opposite party for days together. Both of them chalked out the plan to commit a murder of the grand-mother of the opposite party. It was executed with clinical precession. In order to hide out her friend, a flight ticket on the next early morning of the date of occurrence was also purchased. Sourav Puri, the friend of the opposite party left the scene on the following early morning and he was apprehended from Ludhiana.
- (iii) Commission of murder of the victim was not a childish act. To demonstrate the incident of revenge and brutality in the mind of the perpetrator of which the opposite party is the principal offender, the victim was beheaded by the accused person.

26. Though in the case of **The State of Jammu & Kashmir vs. Shubam Sangra (Criminal Appeal No.1928 of 2022)** decided on 16th November, 2022 the Hon'ble Supreme Court held that the respondent was an adult at the time of commission of offence of rape, observation by the

Hon'ble Supreme Court in paragraph 79 is important and the same is quoted below:

“79. Before we close this matter, we would like to observe that the rising rate of juvenile delinquency in India is a matter of concern and requires immediate attention. There is a school of thought, existing in our country that firmly believes that howsoever heinous the crime may be, be it single rape, gangrape, drug peddling or murder but if the accused is a juvenile, he should be dealt with keeping in mind only one thing i.e., the goal of reformation. The school of thought, we are taking about believes that the goal of reformation is ideal. The manner, in which brutal and heinous crimes have been committed over a period of time by the juveniles and still continue to be committed, makes us wonder whether the Act, 2015 has subserved its object. We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of goal of reformation is making them more and more emboldened in indulging in such heinous crimes. It is for the Government to consider whether its enactment of 2015 has proved to be effective or something still needs to be done in the matter before it is too late in the day.”

27. The Parliament has not yet amended the recommendation of the Verma Committee where the committee observed that the age of the child in Conflict in Law ought to be reduced from 18 years to 16 years.

28. I have already mentioned various provisions of 2015 Act the Act prescribed detailed provisions as to the procedure to be followed if a juvenile commits an offence like that of an adult.

29. In the instant case this Court is not in conformity with the decision of the JJB and the court of appeal. This Court is of the view that the juvenile/opposite party ought to be tried as an adult under the general law and she is not entitled to get benefit of 2015 Act.

30. For the reasons stated above the instant revision is allowed the orders passed by the Board as well as the court of appeal are set aside.

31. The petitioner is at liberty to take necessary action for commencement of trial of the opposite party under the general provision of procedural law.

32. The instant revision is accordingly allowed on contest however, without costs.

(Bibek Chaudhuri, J.)