

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 351 of 2023

Amitkumar Hariram Batham .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Ms. Maharukh Adenwalla for the applicant.
Mr.S.R. Agarkar, APP for the State.
PI Mitbavkar from Versova police station.

CORAM: BHARATI DANGRE, J.
DATED : 4th DECEMBER, 2023

P.C:-

1 C.R. 54/2018 came to be registered at Jogeshwari police station involving Section 307, 397 IPC and Section 371(1) and Section 135 of the Maharashtra Police Act.

The accused therein Amitkumar Batham was shown to be of 20 years and as he was arrested on 12/4/2018 and treated as an Adult. Since the victim succumbed to the alleged injuries, section 302 is added to the subject C.R.

2 On 19/5/2021, the applicant was declared as a Child in Conflict with Law (CCL) by Sessions Court and he was forwarded to the The Juvenile Justice Board, which exercised its power u/s.18(3) of the Juvenile Justice (Care and Protection of

Children Act, 2015) {for short 'J.J.Act'}) and transferred the trial of the applicant to the Children's Court having jurisdiction.

The applicant preferred an Appeal to the Sessions Court at Dindoshi u/s.101 and 102 of the J.J. Act, 2015

on the ground that the Board has erred in not considering that the CCLs preliminary assessment had happened only after three years of his arrest and there is a remarkable difference in the development between the age of 17 to 21, and the retrospective psychological assessment is not possible. It was the submission made before the learned Judge that the Juvenile Justice Board ought to have considered the mental health report of the CCL at the time of commission of the offence and it ought to have been assessed within three months, but the delay and his assessment, at a stage when he had crossed 18 years of age, is of no consequence.

Finding no merit in the aforesaid argument, and by recording that the CCL possess the mental capacity to understand the nature and consequence of the act and the circumstance in which the offence is alleged to have taken place, with an intention to revenge the victim, the Criminal Appeal was dismissed and the order passed by the Principal Magistrate, Juvenile Justice Board. Dongri, was confirmed on 14/7/2023.

It is this order which is challenged in the present Revision Application.

3 Heard Ms.Mahrukh Adenwala for the applicant and learned APP, Shri Agarkar for the State.

She would submit that on the date of the alleged offence, the applicant was aged 17 years 4 months, his date of birth being recorded in the School Admission Record and the birth certificate as 10/12/2000. According to her, he was arrested on 12/4/2018 and on 19/5/2021 when the Sessions Court declared him as a Child in Conflict with Law, it was more than two years of his arrest. He came to be admitted to the Observation Home in terms of the J.J. Act on 28/7/2021 and was subjected to mental and physical assessment as contemplated u/s.15 of the Act.

The Social Investigation Report of the Probation Officer was submitted to the Board for his preliminary assessment and similarly, the psychiatric evaluation report was also presented on 30/8/2021. Based upon this report, the Juvenile Justice Board transferred the trial of the applicant to the Children's Court, on treating him as an Adult.

Ms.Adenwala would submit that in the scheme of the enactment, it is necessary to have a physical and mental assessment of a child in case of heinous offence alleged to have been committed and since he is above the age of 16 years, but below 18, it was imperative to conduct a preliminary assessment with regard to his mental and physical capacity to commit such

offence, the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. According to her for such an assessment, it is competent for the Board to take assistance of experienced psychologist or psycho social workers or other expert, but the essence of the provision, is the assessment of mental and physical capacity of the CCL at the relevant time when the offence is committed before he is directed to be tried as an Adult. But in the present case, when such an assessment is carried out, period of three years has lapsed from the time when he is alleged to have committed the offence and according to her, there would be remarkable difference between the development stage, both on physical and on psychological and mental aspects and this has caused grave prejudice to him.

Ms.Adenwala has placed reliance upon the decision of the Apex Court in case of *Barun Chandra Thakur Vs Master Bholu and Anr*,¹ where this very issue has been specifically touched by the Apex Court with reference to the explanation appended to Section 15, and the Apex Court has highlighted the importance of the preliminary assessment before a Juvenile is transferred into an adult justice system.

Ms.Adenwala has also placed on record a report from the National Institute of Mental Health And Neuro Science (NIMHANS) dated 21/10/2023 when a query was raised about

¹ Cr.Appeal 950/2022)

the belated mental health examination for the purpose of preliminary assessment u/s.15 of the Juvenile Justice Act, 2015, and the response received by her, clearly rule out the mental condition to be the same when a person is aged 17, and when he is aged 20.

There can be no doubt about the factual aspect that on the date of the incident, the applicant was above 17 years and 4 months and he face an accusation of committing a 'heinous' offence. The Juvenile Justice Board, before categorizing him, had to conduct a preliminary assessment u/s.15(1) of the Juvenile Justice Act, with regard to his mental and physical capacity to commit such offence and also about his ability to understand the consequences of the offence and circumstances in which he allegedly committed the offence.

The JJ Board sought the Social Investigation Report (SIR) from the Probation Officer and the applicant was also referred to the Department of Psychiatry, Sir. J.J. Group of Hospitals for conducting the mental health examination and the psychiatric evaluation report dated 30/8/2021 was placed before the Board.

The report reveal his mental status as under :-

“Mental Status Examination : He was well kept, conscious, co-operative, Attention – aroused and sustained, eye to eye contact – initiated and maintained, Rapport established, oriented to time place and person, Mood is euthymic, Affect appropriate, Speech and thought – continuous, coherent, relevant, he understands the serious nature of allegations against him and that it is wrong and against the law. Denies

delusion or perceptual abnormality, Intelligence average, Concept intact, Insight present, judgment intact, memory intact,

IMPRESSION : No Active Psychopathology at present.

CONCLUSION : No evidence of mental incapacity to commit offence.”

4 The said report is relied upon by the JJ Board and it was recorded that the mental health report of CCL reflect that he does not have any mental incapacity to commit offence and rather based on the evidence of the eye witnesses, the act of the CCL was planned, deliberate and there was evidence in form of CCTV footage, establishing that he is the author of the crime. The Board, therefore, concluded that the manner in which the deceased was lured to the spot and murdered, reveal that it was a well planned act and the CCL was possessing sufficient understanding at the relevant time and the act is committed with full knowledge of the consequence, which warrant his transfer to the Children's Act as per Section 18(3).

This reasoning is affirmed by the Special Judge in his order dated 14/7/2023 by recording that the Principal Magistrate forwarded the CCL to the JJB which made preliminary assessment and on consideration of the mental health report and also the social investigation report, the order passed by the Board could not be faulted with.

5 In case of *Barun Chandra Thakur vs. Master Bholu and Anr*, Their Lordships of the Apex Court have made pertinent

observations about the development of a child, both on physical and mental parameters and I must reproduce the observations relevant for my decision and which is noticed in the following paragraphs :

65 *While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive, behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgment, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.*

66 *Cognitive maturation is highly dependent on hereditary factors. Emotional development is less likely to affect cognitive maturation. However, if emotions are too intense and the child is unable to regulate emotions effectively, then intellectual insight/knowledge may take a back seat.*

68 *The language used in Section is “the ability to understand the consequences of the offence”. The expression used is in plurality i.e., “consequences” of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far-reaching consequences in future. Consequences could be in material/physical form but also affecting the mind and the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board.*

69 *Consequences for the victim could be his death, or permanent physical disability, or an injury which could be repaired or recovered; the impact of the offence on the mind of the victim may be prolonged and continue for his lifetime; the impact on the family and friends of the victim, both mental and financial; consequence on the child going into incarceration; mental impact on the child, it could be repentance or remorse for life, the social stigma cast on the child and his family members; the consequences of litigating and so many other things which would be difficult to adumbrate.*

70 *A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.”*

6 Apart from this, in respect of the assessment regarding the circumstances in which the offence is alleged to have been committed, it was noticed that there could be number of reasons for a person to commit a crime; it could be enmity, poverty, greed, perversity in one’s mind, coercion, threat to one’s life and property, allurements etc. It was observed that crime could be committed on account of stress or depression and all this, and many more could be termed as circumstances leading to the commission of crime.

 The Apex Court made reference to the research carried out on this topic by the National Law University, Odisha in collaboration with UNICEF as well as guidance notes on preliminary assessment report for Children in Conflict in Law developed by Department of Child and Adolescence Psychiatry (NIMHANS) and their Lordships have reproduced the guidance notes which bear a great significance in the present case.

7 Section 15 is to be read along with Rule 10(5) of the Rules of Juvenile Justice (Care and Protection of Children) Rules, 2017, which contemplate a proper exercise to ascertain the mental condition of the child and to ascertain whether the mind of the

child has attained maturity or whether it is still developing and that is the reason why in case of heinous offences, the children who have crossed age of 16, but not yet attained majority, are to be tested on different parameters. The individual assessment of the adolescent's mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment provided by Section 15 of the Act of 2015. The report of preliminary assessment would be decisive in transferring the case of a child between 16 to 18 years to the Children's Court. The fate of the child in conflict with law rest upon this exercise as, whether he shall be treated as a child, since when he committed the offence, he was below 18 years of age, or he shall be tried in an adult system. Therefore, this step in the whole exercise assumes great significance and it cannot be a perfunctory affair, as it is not the heinous nature of an offence per se or the seriousness of the accusations, which would be the determinative factor to be arrived at, with the assistance of experienced psychologist or psycho social workers or other experts.

The point of time when the determination is to be carried out is very important. The physical and mental assessment has to be assessed in proximity to the time, when the alleged offence is committed as the psychologist shall be in a position to reflect upon his mental capacity to commit such offence along with his ability to understand the consequence of

his act. This exercise, therefore, involve a trained mind of a psychologist or other expert to assess the mental state.

The lapse of time or passage of time may remove the impression upon the mind of a child and if he is subjected to assessment after three years like in the present case, as his psychiatric evaluation took place after he was arrested, and he is treated as an adult, when the Sessions Court after more than two years declared him as a child in conflict with law, he was transferred to the Observation Home. In his transformation from 17 years 4 months to 20 years i.e. 10/4/2018 to 19/5/2021, he remain incarcerated as an adult and his young mind has definitely undergone substantial emotional variations and though I am not an expert, to assess how much change the mind has undergone, which has affected his thought process, his capability to respond to the system but one can just imagine a young boy being incarcerated on the accusation of committing a heinous crime and therefore, when his assessment takes place after three years, the question is whether it is a true assessment of his mental capacity to commit an offence.

The psychiatric evaluation report which is expected to ascertain the mental capacity of the applicant to commit an offence, has assessed his mental capacity after three years of the offence having been committed by him.

In a very perfunctory manner, the Principal Magistrate as well as the Sessions Court for Dindoshi in the impugned orders have relied upon the preliminary assessment report, particularly, as regards his mental condition and his capacity to understand the consequences of commission of the act, without reflecting upon his mental condition at the time when he committed the offence. The report from the NIMANS has clearly opined as under :-

“According to adolescent neurodevelopment science, brain maturation during adolescence occurs between the ages 10 and 24 years during which time, the brain undergoes a rewiring process that is not complete until the age of 25 years (Arain et al., 2023)

The brain is in a state of transition, and continues to develop throughout the period of even late adolescence and early adulthood. Consequently, it would be incorrect to assume that the mental capacities, i.e. cognitive and socio-emotional or psychosocial abilities would remain the same as age increases.”

NIMHANS has clearly opined that the retrospective application of the preliminary assessment test will be ineffective and would amount to grave miscarriage of justice.

8 In the wake of the observations in *Barun Chandra Thakur* (supra), I deem it appropriate that by setting aside the impugned orders, the Juvenile Justice Board with the assistance of the Psychiatrist who had examined the CCL and submitted his mental health report, to ponder over the said issue and to work out on the traits, shown by the CCL, while he was examined. The circumstances surrounding him at the relevant time, when the offence was committed, shall also be taken into account and

though I understand that the clock cannot be set back nor can the mental age of the CCL be shrunk, let the experienced psychiatrist prepare a fresh psychiatric evaluation report after taking into account the aforesaid observations specifically recorded in the backdrop of the decision in Barun Chandra Thakur, and the report of NIMHANS.

Both these documents i.e. the copy of the judgment of the Apex Court and the report of NIMHANS shall be forwarded to the psychological expert for his/her due consideration.

The expert shall the prepare a fresh Psychiatric Evaluation Report, which could determine whether the applicant deserved to be tried as an adult, which shall be placed before the JJ Board.

The necessary exercise, as directed, shall be carried out within four weeks from receipt of the order and JJB shall pass a fresh order within four weeks thereafter. Depending upon the outcome of the said report, liberty is vested in the applicant to assail the same either before this Court or before the Sessions Court.

Impugned orders dated 14/7/2023 and 23/9/2021 are set aside.

Revision Application stand allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J)