

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-452-2023
Reserved on: 17.02.2023
Pronounced on: 03.05.2023

Bholu, a ‘Juvinile in conflict with law’ ...Petitioner

Versus

Central Bureau of Investigation ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate,
for the petitioner.

Mr. R.S. Dhaliwal, Advocate for
Mr. Rajeev Anand, Advocate,
for the respondent-CBI

ANOOP CHITKARA, J.

Criminal Case before Sessions Court	RC-8(S) SC-3 CBI,Lodhi Road, New Delhi, Under Section 302 IPC
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Earlier

FIR No.	Dated	Police Station	Section
250	08.09.2017	Bhondsi, Gurugram	302 IPC, 34 IPC & 25,54,59 of Arms Act, Section 12 POCSO Act, Sections 75 JJ Act

Aggrieved by the order dated 17.10.2022 passed by the Principal Magistrate, Juvenile Justice Board, Gurugram treating the child-in-conflict with law (for short, ‘CCL’) (Master Bholu as an adult) and recommending the transfer of the trial under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as ‘J.J. Act’) to Children’s Court; and appellate Court affirmed the said order vide judgment dated 13.12.2022, the child in conflict with law has come up before this Court.

2. Vide order dated 20.12.2017, the Juvenile Justice Board, Gurugram had passed an order directing the child-in-conflict with law (CCL) (hereinafter referred as ‘minor accused’) and had treated the minor accused as an adult and had transferred the

trial to children's Court. The minor accused had challenged the said order before the Sessions Court which had affirmed the same. After that, he had challenged both the orders before this Court and vide order dated 11.10.2018 this Court set aside the order passed by Principal Magistrate as well as the Children's Court and remanded the matter to the Board for afresh consideration.

3. Aggrieved by the order dated 11.10.2018 passed by this Court, father of deceased as well as CBI had gone to the Hon'ble Supreme Court of India. Vide judgment dated 13.07.2022 passed in ***Criminal Appeal No.950 of 2022*** titled as ***Barun Chandra Thakur Versus Master Bholu and another*** and in ***Criminal Appeal No.951 of 2022*** titled as ***CBI Versus Bholu***, the Hon'ble Supreme Court had agreed with the final directions passed by this Court but not agreed with the reasoning. It would be appropriate to refer para Nos. 84 and 85 of the judgment passed by the Hon'ble Supreme Court which reads as follows:

"84. The mental age as per the applicable formula based on the IQ of the child would be less than 16 years. The Board, provided only 30 minutes time to the child, his lawyer, his father and also to the counsel for CBI to peruse the 35 pages of the report, which was too little to peruse and comprehend and given any evidence in rebuttal. The CBI counsel had admitted that it did not have officers or the required infrastructure to conduct the investigation under the Act, 2015. For all the above reasons, the High Court remitted the matter to the Board after setting aside both the orders of the Board and the Children's Court to consider afresh and assess the intelligence, maturity, physical fitness and as to how the child in conflict with law was in a position to know the consequences of the offence. The exercise was to be undertaken within a period of six weeks. The High Court further directed that while conducting the preliminary assessment afresh, opinion of the psychologist of the Government Hospital (Institute of Mental Health, University of Health Sciences, Rohtak) be obtained. This Court may not agree with the reasoning given by the High Court on all counts and also the direction given for conducting further tests. However, we have no hesitation in agreeing with the ultimate result of the High Court in remanding the matter for a fresh consideration after rectifying the errors on lack of adequate opportunity.

85. That High Court taking into consideration all these aspects set aside the order of the Board, and remanded the matter and also directed for getting further examination of the child, and this exercise was to be undertaken within 6 weeks. Today, after 3½ years, we are not in a position to give any opinion as to whether any further test can be carried out at this stage as the age of the child is now more than 21 years. However, we leave it to the discretion of the Board or the physiologist who may be consulted as to whether any fresh examination would be of any relevance/assistance or not. We have referred to in detail the kind of analysis or assessment required to be made under Section 15. The Act, 2015 or the Model Rules do not lay down any guidelines or framework to facilitate the Board in making a proper preliminary assessment on the relevant aspects. The only liberty given to the Board is to obtain assistance of an experienced physiologist or a psycho social worker or other expert. In the present case, the only assistance taken is to get the mental IQ of the child. Beyond that, regarding the ability to understand the consequences and also the circumstances in which the alleged offence was committed, no report was called for from any psychologist.”

4. After that, vide impugned order dated 17.10.2022, the Juvenile Justice Board was of the considered view that the minor accused Master Bholu possessed mental as well as physical capacity to commit the alleged offence and also had ability to understand its circumstances and its consequences. Based on such reasoning which followed from the detailed discussions, the Juvenile Justice Board was of the opinion that there was a need for the trial of the child-in-conflict with law as an adult and subsequently the matter was transferred to the Children’s Court under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. In paragraph 5 of the impugned order, the Juvenile Justice Board had observed that in compliance of the directions of Hon’ble Supreme Court they had directed the empanelled psychologist to submit her opinion.

5. After that, the matter was sent to PGIMS, Rohtak for constitution of a Board to give its opinion as directed by the Hon’ble Supreme Court. Accordingly, a

Board was constituted which submitted its opinion dated 16.09.2022 and opined that there is no valid test which can be administered to the child-in-conflict with law which can retrospectively assess mental capacity as directed by the Board. It was further opined that respective assessment of the child-in-conflict with law was possible based on all medical records, detailed FSL report, Nureo Physiological Report etc. After that, clinical assessment of the juvenile was conducted by the Institute of Mental Health, University of Health Sciences, (PGIMS), Rohtak and who submitted its opinion on 24.09.2022 and then a detailed report on 28.09.2022. Based on that, the Juvenile Justice Board also had a personal interaction with the juvenile. In paragraph 11 of the impugned order, the Juvenile Justice Board has discussed the mental age and referred to the guidance notes by NIMHANS. After the test, the Board gave its finding that IQ of the juvenile in conflict was 92 which comes in the category of average intelligence functioning. In the said IQ, alighting was also applicable to a minor above sixteen years of age.

6. A reference to the findings would reveal that IQ of the minor was 92 and of average intelligence functioning. Further, the findings would point out about his mental fitness at the time of commission on the crime and the said fact was corroborated and supported by clinic assessment report which opined that there was no evidence of any physical, mental illness or intellectual impairment.

7. The Social Investigation Report (SIR) pointed out that the minor accused was aggressive, short temper and lacked stability but all the stages had been developed recently as it transpired during the interaction with the Board. During the personal interaction with the Board, they also found that the relations of the minor's parents were cordial and they would rarely enter into quarrel.

8. As per the clinical assessment, nothing came to suggest that the child-in-conflict with law was suffering from any parental neglect or poor family supervision. Rather the findings pointed out that he belonged to upper socio-economic strata and had access to all the basic necessities. There was no evidence that because of the minor being an under performer in academics his parents have remanded him on this count.

Even there was no allegation of abuse, trauma or even substance abused by the minor.

9. The Juvenile Justice Board has mentioned all the facts in detailed from paragraphs Nos. 11 to 15 of the impugned order which for the sake of brevity are not being reproduced. The final opinion of the Board that minor accused (child-in-conflict with law) had sufficient ability to understand the consequences of the offence is based on detailed assessment of all material facts and procedures followed in accordance with the rules. I do not find any illegality in the said order and also do not find any deviation from the directions given by the Hon'ble Supreme Court.

10. The minor accused had challenged the order of Juvenile Justice Board before Sessions Judge, Children Court, Gurugram by filing an appeal under Section 101 of J.J. Act, 2015. I have also gone through the said judgment dated 13.12.2022, the concerned Sessions Judge has dealt with every aspects in great details.

11. The minor accused was born on 03.04.2001 and the age remains undisputed. On the date of alleged incident i.e. 08.09.2017, the age of minor accused was around 16 years and 5 months, thus, he was between the age bracket of 16 to 18 and despite being a minor, given the legislative mandate under Section 15 of the J.J. Act the offence being heinous i.e. of murder and child having completed sixteen years of age. The Board was under a legal obligation to conduct preliminary assessment with regard to the child's mental and physical capacity to commit such offence and his ability to understand its consequences and also circumstances of such commission of the offence. After considering the Social Investigation Report (SIR), mental assessment report, physical report and interaction with the child, the Board found an opinion that the child needed to be tried as an adult and consequently transferred the matter under Section 18(3) to the Children's Court which had the jurisdiction Court.

12. The Social Investigation Report (SIR) and the interaction with the Board did not find any factor which would undermine his mental or physical capacity or the family circumstances or that as the child was abused. The Juvenile Justice Board has strictly adhered to all the directions passed by the Hon'ble Supreme Court of India while deciding the matter afresh. In the appeal, the Sessions Court also dealt with each

and every aspect of the mater in detail by referring to the legal provisions. At the time of adjudication of the present criminal revision petition, neither the appreciation of prima facie factor, nor application of law would lead to any other conclusion except that the child-in-conflict with law had to be treated as an adult.

13. Given the child’ age under 18 years, this Court exercises restrain in not adhering to the manner in which the child was murdered. Afraid from any prejudices being caused to the child-in-conflict with law, this Court is further restraining to discuss the preliminary evidence pointing out towards the petitioner’s mental ability to understand the consequences of the crime, his physical capacity to do the same and his awareness of the circumstances that would lead to death.

14. In the entirety of facts and circumstances of the case, the impugned order suffers from no illegality and rather in fact are in absolutely in tune with the directions of the Hon’ble Supreme Court and have been passed in the light of provisions of the J.J. Act and call for no interference.

15. The Criminal Revision Petition is dismissed. All pending miscellaneous applications, if any, stand disposed of.

The trial is expedited.

(ANOOP CHITKARA)
JUDGE

03.05.2023
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.