



2026:CGHC:4041-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 932 of 2019

[Arising out of judgment dated 25.05.2019 passed in Special Sessions Trial No.61/2017 by 5th Additional Sessions Judge / Children's Court / Special Judge, under the POCSO Act, Durg, District Durg, Chhattisgarh.]

- Rajkumar @ Raja Dewangan S/o Shiv Kumar, aged about 19 years, R/o Sikola Basti, Ward No. 15, Police Station- Mohan Nagar, District- Durg, Chhattisgarh.

... Appellant

versus

- State of Chhattisgarh through Station House Officer, Police Station- Mohan Nagar, District - Durg, Chhattisgarh.

... Respondent

For Appellant :- Mr. Rahil Arun Kochar, Advocate.

For State-Respondent :- Mr. Rahul Tamaskar, Government Advocate, & Dr. S. K. Dewangan, Panel Lawyer.

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal &
Hon'ble Shri Justice Arvind Kumar Verma

Judgment On Board

(23.01.2026)

Sanjay K. Agrawal, J

1. The appellant herein - Child in Conflict with Law (for short, "the CCL") has been convicted and sentenced by the Children's Court,

Durg, District Durg, Chhattisgarh vide impugned judgment dated 25.05.2019 for the heinous offences as defined in Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity “the Act of 2015”) which states as under:-

Conviction	Sentence
Under Section 363 of the IPC	Imprisonment for 6 months with fine of ₹ 200/-.
Under Section 366 of the IPC	Imprisonment for 6 months with fine of ₹ 200/-.
Under Section 376(2) of the IPC and Section 6 of the POCSO Act [However, sentenced under Section 376(2) of the IPC as the same is higher in degree to that of Section 6 of the POCSO Act]	Imprisonment for 10 years with fine of ₹ 500/-

Prosecution Story:-

- The CCL was juvenile and found involved in offences as mentioned in the opening para of this judgment, accordingly, he was charge-sheeted before the jurisdictional Juvenile Justice Board (for short “the JJB”) for the said offences. The JJB finding him more than 16 years and less than 18 years of age as the date of birth of the CCL is 22.02.2000 on the basis of his mark-sheet of Class-II and Aadhaar Card (annexed with the original record) and the date of offence is 12.11.2016, meaning thereby on the date of

offence the CCL was aged about 16 years 9 months 10 days, proceeded to hold preliminary assessment under Section 15(1) of the Act of 2015 and called for the Psychologist Report vide order dated 07.04.2017, with regard to mental and physical capacity of CCL to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offences. However, on 02.05.2017, the Psychologist report was received to the JJB and, thereafter on the same day JJB had preliminarily assessed the case of the CCL and passed order under Section 18(3) of the Act of 2015 and transferred the case to the Children's Court having jurisdiction to try the offence i.e. the Children's Court, Durg, District Durg constituted under the provisions of the Commissions for Protection of Child Rights Act, 2005, finding the CCL aged about 16 years 9 months and 10 days at the time of commission of offence and said act of the CCL is heinous offence under Section 2(33) of the Act of 2015, however, the copy of the Psychologist report was not served to either the CCL or his counsel or his guardian.

3. The Children's Court, Durg, District Durg receipt the case from JJB on 16.05.2017 and after receipt of case from the JJB and the preliminary inquiry report conducted under Section 15(1) of the

Act, 2015, on 04.07.2017 framed the charges against the CCL for offences under Sections 363, 366, 376 of the IPC and Section 6 of the POCSO Act and held that the CCL has committed heinous offence and did not make any further inquiry as envisaged under Section 19(1) of the Act of 2015. The Children's Court did not hold that there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and after trial, passed the impugned judgment and convicted and sentenced the CCL for offences as mentioned in the opening paragraph of this judgment.

4. Feeling aggrieved against the judgment of conviction and order of sentence, the CCL i.e. the present appellant has preferred this appeal under Section 374(2) of the CrPC calling in question legality, validity and correctness of the same.

Submission of the parties:-

5. Mr. Rahil Arun Kochar, learned counsel for the appellant, would submit that neither the JJB conducted the inquiry in accordance with Section 15 of the Act of 2015 read with Rules 10 and 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short "the Rules of 2016") nor the Children's Court conducted any further inquiry under Section 19(1)(i) of the Act of 2015 read with Rule 13 of the Rules of 2016 and, therefore,

the entire trial deserves to be quashed and the appellant is entitled for acquittal.

6. Mr. Rahul Tamaskar & Dr. S.K. Dewangan, learned State counsels, would submit that the preliminary assessment was conducted under Section 15(1) of the Act of 2015 and the Psychologist report was called by the JJB, thereafter, the order under Section 18(3) of the Act of 2015 was passed and the case was transferred to the Children's Court having jurisdiction. They would further submit that the Children's Court, Durg, District Durg, has also proceeded in accordance with law, therefore, the impugned judgment of conviction and order of sentence deserves to be maintained and the present appeal deserves to be dismissed.
7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records meticulously.

Discussion & Analysis:-

8. Admittedly, the date of offence is 12.11.2016 and as per mark-sheet of Class-II and Aadhaar Card (annexed with the original record) the date of birth of the appellant herein/CCL is 22.02.2000, therefore, on the date of offence, the CCL was aged about 16 years 9 months and 10 days, and the offence mentioned

in the opening paragraph of this judgment is a heinous offence. The JJB was required to conduct an inquiry as per Section 15(1) of the Act of 2015 read with Rules 10 & 10A of the Rules of 2016. However, it appears from the record of the JJB that the JJB called the report of the Psychologist, which was received by the JJB on 02.05.2017 and on the same day order of transferring the case to the Children's Court having jurisdiction under Section 18(3) of the Act of 2015 was passed without serving the copy of the Psychologist report to the appellant herein/CCL, or his guardian or his counsel, which ought to have been served and reasonable opportunity to respond to the Psychologist report ought to have been granted to the appellant herein/CCL, but the said procedures have not been followed by the JJB.

9. In this regard, the decision of the Supreme Court in **Barun Chandra Thakur v. Master Bholu and another**¹, may be noticed herein profitably in which their Lordships have considered the manner and procedure of conducting inquiry by the Board, whether the child in conflict with law is to be tried as an adult by the Children's Court or by the Board itself, treating her to be a child and it has been held that if the child in conflict with law is tried as an adult by the Children's Court, it involves consequences of serious nature and having a lasting effect for the

¹ (2023) 12 SCC 401

entire life of the child, and it has serious civil consequences, therefore, reasonable opportunity must be afforded. It has been observed as under: -

“Effect of an order of preliminary assessment

47. The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children's Court or by the Board itself, treating him to be a child. There are two major consequences provided in the 2015 Act, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under Section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the said removal of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to Section 24(1). Another consequence, which may also have serious repercussions, is that as per Section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to Section 24(2).

48. These consequences are serious in nature and have a lasting effect for the entire life of the child. It is well settled that any order that has serious civil consequences, reasonable opportunity must be afforded. The question is of what would be a reasonable opportunity in a case where a preliminary assessment is to be made by the Board under Section 15.”

10. Thereafter, their Lordships dealt with the question as to what would be a reasonable opportunity in a case where a preliminary assessment would be made by the Board under Section 15 of the Act of 2015 and it is held that the expression “may” in the proviso to Section 15(1) and the requirement of taking assistance of experienced physiologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practising professional with a degree in child psychology or child psychiatry. It has been observed by their Lordships as under: -

“83. Therefore, looking to the purpose of the 2015 Act and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practising professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practising professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor.

84. xxx xxx xxx xxx xxx

Conclusion

85. We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under Sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under Section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then

it would itself conduct an inquiry as a Board and pass appropriate orders under Section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under Section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision."

11. In the case in hand, the procedure prescribed in Rule 10(5) of the Rules of 2016 has not been followed which provides that in the cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statements of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board and a copy of which shall also be given to the child or parent or guardian of the child. Also Rule 10(9) of the Rules of 2016 has not been followed in the present case which provides that the Board shall take into account the report containing circumstances of apprehending the child and the offence alleged to have been committed by him and

the social investigation report in Form 6 prepared by the Probation Officer or the voluntary or non-governmental organisation, along with the evidence produced by the parties for arriving at a conclusion and the JJB has simply passed order transferring the case to the jurisdictional Children's Court under Section 18(3) of the Act of 2015 which is a flagrant violation of the provisions contained in the Act of 2015 read with the Rules of 2016 as well as the principles of law laid down by their Lordships of the Supreme Court in the matter of **Barun Chandra Thakur** (supra).

12. Not only this, in the instant case, there is also total non-compliance of Section 19(1) of the Act of 2015. The Supreme Court in the matter of **Ajeet Gurjar v. State of Madhya Pradesh**² has held that the procedure prescribed under Sections 15 and 19(1) of the Act of 2015 are mandatory in nature and observed as under:-

“9. There are two parts to sub-section (1) of Section 19. The first part requires the Children's Court to decide whether there is a need for trial of the child as an adult as per the provisions of the Criminal Procedure Code, 1973. If the Court is satisfied that the child needs to be tried as an adult as per the provisions of CrPC, the Children's Court can proceed with the trial and thereafter pass an appropriate order subject to the provisions of Sections 19 and 21 of the JJ Act.

² (2023) 15 SCC 678

10. Clause (ii) of sub-section (1) of Section 19 is very crucial which indicates that though the word “may” have been used in the opening part of sub-section (1) of Section 19, the same will have to be read as “shall”. Clause (ii) provides that after examining whether there is a need for a trial of the child as an adult, if the Children's Court comes to the conclusion that there is no need for the trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Juvenile Justice Board has different consequences.

11. Therefore, holding an inquiry in terms of clause (i) of sub-section (1) of Section 19 is not an empty formality. The reason is that if the Children's Court comes to the conclusion that there is no need to try the child as an adult, he will be entitled to be treated differently in the sense that action can be taken against him only in terms of Section 18 of the JJ Act.

12. The observation of the High Court that the order passed under sub-section (3) of Section 18 has attained finality completely ignores that the order under sub-section (3) of Section 18 is not a final adjudication on the question of trying the child as an adult. The reason is that the order under sub-section (3) of Section 18 is based on a preliminary assessment made under Section 15. As such order is based only on a preliminary assessment, the law provides for a further inquiry in terms of sub-section (1) of Section 19 by the competent Children's Court. Hence, the Children's Court cannot brush aside the requirement of holding an inquiry under clause (i) of sub-section (1) of Section 19.”

13. Coming to the facts of the present case, it appears from the records that on receipt of the case from the JJB, the Children's Court only relied upon the preliminary assessment report submitted by the JJB and did not take pain to conduct further

inquiry as mandated under Section 19(1) of the Act of 2015 read with Rule 13 of the Rules of 2016 as directed by their Lordships of the Supreme Court in the matter of Ajeet Gurjar (supra) and passed order without taking decision under Section 19(1) of the Act of 2015 and registered the case in contravention of Rule 13 of the Rules of 2016 and further on 04.07.2017 the charges were framed against the appellant without holding that there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973. However, the copy of the preliminary inquiry was not supplied to the CCL and no reasonable opportunity of hearing was afforded to his counsel to make submission on the preliminary inquiry report. As such, the order dated 04.07.2017, framing of charges, of the Children's Court is totally contrary and violation of provisions contained under Section 19(1) of the Act of 2015 read with Rules 13(1) & 13(6) of the Rules of 2016. The provisions contained under Section 19(1) of the Act of 2015 as well as the Rules 13(1) and 13(6) deserve to be noticed herein:-

Section 19 of the Act of 2015:-

"19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal

Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly astrosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.”

Rule 13 of the Rules of 2016:-

“13. Procedure in relation to Children’s Court and Monitoring Authorities.—(1) Upon receipt of preliminarily assessment from the Board the Children’s Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (4) xxx xxx xxx
- (5) xxx xxx xxx

(6) The Children’s Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

14. In view of the aforesaid discussion and analysis, it is quite vivid that there is complete violation of Section 15(1) of the Act of 2015 read with Rules 10 & 10(A) of the Rules of 2016 as well as Section 19(1) of the Act of 2015 read with Rules 13(1) and 13(6) of the Rules of 2016 which is held to be mandatory in light of the decisions of the Supreme Court in the matters of **Barun Chandra Thakur** (supra) and **Ajeet Gurjar** (supra) and which has further

been reiterated in the matter of **Thirumoorthy v. State, represented by the Inspector of Police**³.

15. Since the CCL, as of now is nearly aged about 26 years as his date of birth is 22.02.2000 on the basis of mark-sheet of Clas-II and Aadhaar Card, there is no possibility of finding out the mental and physical capacity of the accused/appellant to commit the offence or to assess her ability to understand the consequences of the offence and circumstances in which he allegedly committed the offence on 12.11.2016. As such, this Court is of the considered opinion that it is not a case where the matter be remitted to the JJB for conducting inquiry afresh in accordance with Section 15(1) of the Act of 2015 read with Rules 10 & 10A of the Rules of 2016 or to the Children's Court for conducting inquiry in accordance with Section 19(1) of the Act of 2015 read with Rules 13(1) and 13(6) of the Rules of 2016. Furthermore, the proceedings right from the stage of the JJB to that of the Children's Court have not been conducted in accordance with the Act of 2015 and the Rules of 2016 and also the principles of law laid down by their Lordships of the Supreme Court in the matters of **Barun Chandra Thakur** (supra), **Ajeet Gurjar** (supra) and **Thirumoorthy** (supra) have not been followed and even the clock cannot be reversed to examine the mental and physical capacity of the appellant on the date of

³ 2024 SCC OnLine Sc 375

incident. Therefore, the entire trial stands vitiated as having been undertaken in gross violation of the mandatory requirements of the Act of 2015 as well as the Rules of 2016.

Conclusion:-

16. In view of the above, We are left with no option, but to quash and set aside the impugned judgment dated 25.05.2019 passed by the Children's Court, Durg, District Durg. Since the appellant is stated to be on bail, he need not surrender. However, his bail bond shall remain in operation for a period of six months as per provisions contained in Section 437-A of the CrPC.

17. Let a certified copy of this judgment along with the original record be transmitted to the concerned Children's Court and all the Juvenile Justice Board for information and needful action.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Kumar Verma)
Judge

Ankit