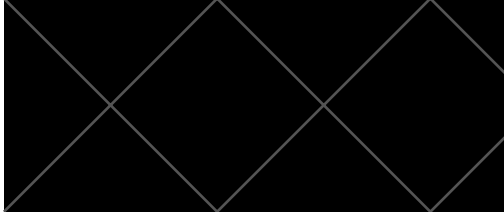


HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
CRIMINAL APPEAL No.626 OF 2019



... Appellant

nd

The State of Telangana

... Respondent

DATE OF JUDGMENT PRONOUNCED: 10.04.2025

Submitted for approval.

HON'BLE SRI JUSTICE K.SURENDER

And

HON'BLE SRI JUSTICE E.V.VENUGOPAL

- 1 Whether Reporters of Local newspapers may be allowed to see Yes/No the Judgments?
- 2 Whether the copies of judgment may be marked to Law Yes/No Reporters/Journals
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Yes/No Judgment?

K.SURENDER, J

E.V.VENUGOPAL, J

*** HON'BLE SRI JUSTICE K.SURENDER**
And
HON'BLE SRI JUSTICE E.V.VENUGOPAL
+CRIMINAL APPEAL No.626 OF 2019

% Dated 10.04.2025

#



... Appellant.

And

\$ The State of Telangana

... Respondent

! Counsel for the Appellant: Sri Mohd.Azhar

^ Counsel for the Respondent: Sri Arun Kumar Dodla
Addl. Public Prosecutor

>HEAD NOTE:

¹ (2023) 12 SCC 401

² 2023 LiveLaw (SC) 857

HON'BLE SRI JUSTICE K.SURENDER
And
HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.626 OF 2019

JUDGMENT: *(per Hon'ble Sri Justice K.Surender)*

1. This appeal has been filed by the appellant/accused, aggrieved by the judgment dated 27.6.2019 in SC PCS No. 70 of 2018 passed by the learned I Additional Metropolitan Sessions Judge-cum-Special Judge for Trial of Cases under the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act'). The appellant was convicted under Section 6 of the POCSO Act, 2012, and Sections 364, 377, 302, and 201 of IPC, and was sentenced to rigorous life imprisonment along with a fine of Rs. 1,000/-.

2. Briefly, the facts of the case are that on 29.6.2017, a complaint was filed by PW1 stating that his younger son, who was around 10 years old at the time, had been missing from his home since 28.6.2017 without any information. Upon receipt of the complaint, PW12 registered a case in Cr. No. 152 of 2017 under Section 363 of IPC and issued a FIR.

3. On 5.7.2017, it was found that the CCTV camera near Badi Masjid, Barkas, had recorded visuals of the missing boy on

28.6.2017 in the company of one person, later identified as the appellant herein. Inquiries revealed that the appellant was a minor at the time. Subsequently, on 6.7.2017, PW12 and other police personnel went to the appellant's residence and found that he was 17 years old. The appellant was then taken to the police station, accompanied by his father, and was produced before PW13.

4. PW13 interrogated the appellant, showing him the CCTV footage that depicted the missing boy in his company. Upon questioning, the appellant allegedly confessed to kidnapping PW1's minor son (deceased), committing unnatural intercourse with the deceased on the terrace of Government High School, Barkas, and then killing him by twisting and binding his hands and legs with a cloth before throwing the dead body to the side of the terrace. At the appellant's instance, the dead body of the deceased was recovered and identified by PW1.

5. Since a prima facie case was made out against the appellant, the Section of law was altered from Section 363 of IPC to Sections 364, 377, 302, and 201 of IPC, along with Sections 5(m) read with 6

of the POCSO Act, 2012. Thereafter, the appellant was produced before the Probation Officer as per the Juvenile Justice Act.

6. Initially, the case was registered under Sections 364, 377, 302, and 201 of IPC and Sections 3 read with 4 of the POCSO Act before the Juvenile Justice Board, as the appellant was classified as a child in conflict with the law. Subsequently, after assessing the appellant, the Juvenile Justice Board transferred the case to the Children's Court (Court of I Additional Metropolitan Sessions Judge Cum Special Judge for Trial of Cases under the POCSO Act, 2012), deeming it fit to be tried by the Children's Court. The Board concluded that the appellant should be tried as an adult. Thereafter, the appellant was produced before the Children's Court, which, upon due assessment, determined that the appellant should be tried as an adult, as specified under Section 19(1)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court took cognizance of the case against the appellant and framed charges under Section 6 of the POCSO Act and Sections 364, 377, 302, and 201 of IPC.

7. Learned Sessions Judge found the death of the deceased to be homicidal, based on the Post-Mortem Examination (PME) and Inquest Reports. Relying on circumstantial evidence, including the identification of the appellant by PWs 1 to 4 (his neighbors), the discovery of the deceased's body at the instance of the appellant, Ex.P10/DNA report confirming that the deceased was the son of PW2 (mother of the deceased), the CCTV footage filed in CD-ExP11, which showed the deceased last seen in the appellant's company, and the medical evidence supporting the prosecution's case, the Court concluded that the appellant had performed unnatural intercourse with the deceased. This was corroborated by Injury No. 4 in the PME report. Furthermore, the murder was established through injuries found in the PME report—Injuries 1 to 3—caused by a head injury inflicted with MO1/Iron water pipe (which was seized from the scene of the offence). Based on this evidence, the appellant was found guilty.

8. Sri Mohd.Azhar, learned counsel for the appellant would submit as follows:

1. **Violation of Section 15 of the Juvenile Justice Act:** The preliminary assessment was not conducted in compliance with

the mandatory four criteria established in *Barun Chandra Thakur v. Master Bholu*. Section 15 requires an assessment of the juvenile's mental and physical capacity, his ability to understand the consequences and circumstances of the alleged offence, and whether he should be tried as an adult. It was argued that the Board failed to conduct this assessment properly, making its order mechanical.

2. **Violation of Section 19 of the Juvenile Justice Act:** As per the Supreme Court's judgment in *Ajeet Gurjar v. State of Madhya Pradesh*, after receiving the preliminary assessment from the Board, the Children's Court must apply its independent judicial mind to determine whether the child should be tried as an adult. The said requirement was not met.
3. Learned counsel further submits that even the circumstances did not make out a complete chain to determine that it was the appellant who had committed crime. The alleged complaint was filed on 29.06.2017 and the appellant was arrested on 05.07.2017. Even the CCTV footage only shows the appellant and the boy, however, does not show that the appellant took the deceased physically by force.
9. On the other hand, Sri Arun Kumar Dodla, the learned Additional Special Public Prosecutor would submit that the learned Sessions Judge, having considered the preliminary assessment

made by the Board under Section 15 of the Juvenile Justice Act, has gone through the report and after being satisfied that the appellant needs to be tried as an adult, the trial was undertaken. No prejudice is caused to the appellant since the enquiry was conducted in accordance with Sections 15 and 19 of the Juvenile Justice Act.

10. It is not in dispute that the appellant was a child in conflict with the law at the time of the commission of the offence.

11. After the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the Act"), a further category was introduced for juveniles between the ages of 16 and 18 years involved in heinous offences. They are subjected to a preliminary assessment to determine whether they should be tried as a child by the Board or as an adult by the Children's Court. If the Board is of the opinion that the juvenile should not be tried as an adult, the Board will continue with the trial as envisaged under the Act. The requirement of conducting a preliminary assessment has been specified in Section 15 of the Act.

12. As per Section 15 of the Act, when the alleged offence is heinous and the child has completed or is above the age of 16 years, the Board is required to conduct a preliminary assessment regarding his mental and physical capacity to commit such an offence, his ability to understand the consequences of the offence, and the circumstances in which he allegedly committed the offence. After such assessment, the Board must pass an order in accordance with sub-section (3) of Section 18. If the Board is of the opinion that the child needs to be tried as an adult, the case must be transferred to the Children's Court having jurisdiction to try such an offence. Otherwise, the Board itself will proceed to try the matter as a summons case under the Cr.P.C.

13. As per Section 19(1), upon receipt of the preliminary assessment from the Board, the Children's Court will decide whether there is a need for the trial of the child as an adult in accordance with the Cr.P.C, and pass appropriate orders after trial, subject to the provisions of Section 19 as well as Section 21. However, under Section 19 (1)(ii) if the Children's Court finds that there is no need for the child to be tried as an adult, it may conduct

an inquiry as a Board, and pass appropriate orders, in accordance with the provisions of Section 18.

14. The preliminary assessment required under Section 15 of the Act is significant, and cannot be considered a mere formality due to the consequences attached to it. In **Barun Chandra Thakur v. Bholu**¹, the effect of an order of preliminary assessment was explained by the Hon'ble Supreme Court. At paragraphs 47 and 48, it was held as follows:

“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.”

¹ (2023) 12 SCC 401

15. Considering the impact that the result of the preliminary assessment by the Board can have on a child in conflict with the law, if the Board decides that they are to be tried as an adult, the determination of whether the assessment was thoroughly and correctly conducted becomes essential.

16. The Supreme Court, in ***Barun Chandra Thakur*** (*Supra*), examined the proceedings arising from the preliminary assessment made under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The preliminary assessment conducted by the Board under Section 15 of the Act, which concluded that the respondent should be tried as an adult, was under consideration.

The relevant paragraphs are extracted below:

“64. The obligation of the Board in making the preliminary assessment on the four counts mentioned in Section 15 of the Act is largely dependent upon the wisdom of the Board without there being any guidelines as to how the Board would conduct such preliminary assessment.

67. 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.

68. 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.

70. The language used in Section 15 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.

71. 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.

72. 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.

74. Coming to the last count i.e. the assessment regarding the circumstances in which the offence is alleged to be committed is again an attribute which could have many factors to be considered before such an assessment could be made. There could be a number of reasons for a person to commit a crime. It could be enmity, it could be poverty, it could be greed, it could be perversity in mind and many others. There could be coercion. There could be threat to one's life and property. There could be allurements in terms of the material and physical gains. Crime could be committed on account of stress or depression also. It could be on account of the company that one keeps. One could commit crime in order to help his family and friends. All these and many more could be termed as circumstances leading to the commission of crime.

Proviso to Section 15(1) directory or mandatory

77. The world acknowledges that children in conflict with law should be treated differently than adults in conflict with law. The reason is that the mind of the child has not attained maturity and it is still developing. Therefore, the child should be tested on different parameters and should be given an opportunity of being brought into the mainstream if, during his juvenility, has acted in conflict with law. To understand psychology of the child, huge rounds of studies have been made not only recently but from age old times and child psychology is a subject which is being studied world over and there are institutes specifically dealing with the developments and research on the said subject. The enactments dealing with children are enacted world over.

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.”

17. The Hon’ble Supreme Court, in the above case, extensively explained the importance of the preliminary assessment and the factors that must be considered by the Board during its assessment. It is a delicate task requiring expertise and has significant implications for the trial of the case. Due to its importance, the Hon’ble Supreme Court, in the above judgment, also directed the Central Government, the National Commission for Protection of Child Rights, and the State Commission for Protection of Child Rights to consider issuing guidelines or directions to formulate a framework that may assist and facilitate the Board in

conducting the preliminary assessment under Section 15 of the 2015 Act.

18. In light of the Supreme Court's directions in the above case, the National Commission for Protection of Child Rights has developed guidelines outlining key procedures that enable the Juvenile Justice Board to conduct preliminary assessments in accordance with the guiding principles.

19. The guidelines issued by the National Commission specify the determinants of a preliminary assessment. These are extracted below:

*"2.4 Determinants of a preliminary assessment-
The preliminary assessment has to be carried out in terms of the following four determinants-*

a. physical capacity of the child to commit alleged offence- Child's locomotor abilities and capacities, particularly with regard to gross motor functions (such as walking, running, lifting, throwing...such abilities as would be required to engage in most antisocial activities due to which children come into conflict with the law). The expert shall not delve into assessing the physical age of the child as a part of the preliminary assessment. The age determination is concluded before the initiation of preliminary assessment by the JJB and therefore, the experts shall not repeat the process at this stage. The role of the experts with regard to assessing physical capacity of the child to commit the alleged offence is only limited to assessing the aspects as have been mentioned above in light of the physical capacities that may be required to carry out the offence.

b. mental capacity of the child to commit alleged offence- Child's ability to make social decisions and judgments, for these are the critical executive functioning abilities that operate in the social context that offense takes place in. Thus, reporting on the child's "mental capacity" would draw on

all the variables in the mental health and psychosocial assessment including substance abuse problems, life skills deficits, neglect or poor supervision by family or poor role models; experience of abuse and trauma; mental health disorder or other (neuro) developmental disabilities such as attention deficit hyperactivity disorder; intellectual disability.

c. the circumstances in which the child allegedly committed the offence- Psychosocial vulnerabilities, including life events and mental health problems that the child is afflicted with, i.e., factors relating to family, school, peer relationships, trauma and abuse, mental health, and substance use. Circumstances, therefore, do not refer merely to the immediate circumstances of the offense itself, i.e., the last event that occurred and led the child into conflict with the law. In fact, the offense behavior, including its immediate circumstances, is a (cumulative) consequence of a whole plethora of other circumstances that have been occurring over relatively long time periods of the child's life (perhaps since early childhood). Thus, we take a longitudinal (versus a cross-sectional) perspective of circumstances of the offense.

d. ability to understand the consequences of the offence- Child's knowledge and/or understanding of social consequences (what other people will say or how they will perceive the behaviour and consequently what opinion society would form about the child including labelling and stigmatization), interpersonal consequences (how the behaviour might affect personal relationships in terms of loss of trust, affection and respect of family and friends) and legal consequences of their actions (knowledge of relevant laws on sexual abuse/rape/robbery/ dacoity etc. and violation of rules leading to serious consequences for the child in terms of punishment).

2.5 Sitzings for conducting preliminary assessment- The psychologists and other experts must be given optimal opportunity to interact with the child. It is important that appropriate time and space is given for building rapport with the child and for carrying out the assessment by admitting the child through in-patient or out-patient setting as deemed appropriate. However, in case the expertise is availed from outside District, the child should be assessed through in-patient facility.”

20. Further, under Chapter 3 of the guidelines, which defines the role of the Juvenile Justice Board and other experts, Clause 3.1 mandates that the Board take the assistance of psychologists, psycho-social workers, or other experts who have experience working with children in difficult circumstances. It reads as follows:

“3.2 In case the Board does not have at least one member who is a practicing professional with a degree in child psychology or child psychiatry, the Board shall take assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. In such cases the Board would record specific reason(s) for the same.”

21. The judgment of the Hon’ble Supreme Court and the guidelines that were framed on the basis of the judgment were after the Juvenile Justice Board’s assessment in the present case.

22. Sections 15, 18(3), and 19 of the Act are extracted below:

“15. Preliminary assessment into heinous offences by Board.—(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Criminal Procedure Code, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of Section 101:

Provided further that the assessment under this section shall be completed within the period specified in Section 14.”

Section 18: Orders regarding child found to be in conflict with law.

(1)...

(2)...

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

"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 atmosphere;

(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](#).

(2).....

(3).....

(4)....

(5)...."

23. As seen from the provisions, there are safeguards at two stages in the enactment when the offence is alleged to have been committed by a child aged between 16 to 18 years to be tried as an adult. Under Section 15, the Board has to mandatorily conduct a preliminary assessment regarding the mental and physical capability of the accused to commit such an offence. Further, the ability to understand the consequences of the offence and the circumstances under which the alleged offence was committed must also be considered by the Board. On the basis of the said

preliminary assessment, the Juvenile Justice Board can pass an order under Section 18(3) of the Act by transferring the case for trial to the Children's Court having jurisdiction. In the first step, a preliminary assessment is required by the Board, and after transfer to the Children's Court, in the exercise of powers under Section 19, the Children's Court has to make an independent assessment whether to try the child as an adult. The Hon'ble Supreme Court, in **Ajeet Gurjar v. The State of Madhya Pradesh**², held that though the word 'may' is used in opening part of sub-section 1 of Section 19, the same has to be read as 'shall'. The Hon'ble Supreme Court, in Ajeet Gurjar's case (supra), held as follows:

“7. What is required to be done by the Juvenile Justice Board is holding an inquiry for making a preliminary assessment with regard to the mental and physical capacity of the juvenile in conflict with law to commit such offence, ability to understand the consequences of the offence and circumstances in which the juvenile has allegedly committed the offence. Based on the preliminary assessment, sub-section (3) of Section 18 empowers the Juvenile Justice Board to pass an order for transferring the trial of the case to the Children's Court which has jurisdiction to try such offences. Thus, the order of transfer is based on only a preliminary assessment.

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

² 2023 LiveLaw (SC) 857

and thereafter pass an appropriate order subject to the provisions of Sections 19 and 21 of the JJ Act.

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.”

24. In the present case, the final report by the Juvenile Justice Board containing the findings of the preliminary assessment of the appellant is extracted below:

“BCL produced from home. We have perused the Preliminary Assessment Reports of BCL given by DPO, Member and Prl. Magistrate and have also perused the Psychological Assessment Report of BCL received from the Superintendent, Government Hospital for Mental Care, Hyderabad. Considering the entire record and all the reports after stated, this Board is of

the considered view that the BCL was and he has been physically and mentally fit and has the capacity to commit the offences under Sections 364, 377, 302, and 201 of IPC and sections 3 r/w 4 of POCSO Act, 2012, that the BCL has the ability to understand the consequences of such offences and the circumstances in which the offence was committed reveal that the BCL was not under the influence of anyone before or while committing the offence and that he has been alone all through the commission of the offence. This board has also found that the BCL has not suffered from any psychological disturbance/ailment at any time or during the commission of the offence. Hence, this Board concludes that the BCL should be tried as an adult having regard to the gravity of the offences alleged against him. The offences under Sections 364, 377, and 302 of IPC and section 3 of POCSO Act are heinous offences as per S.2(33) of JJ Act, 2015. The BCL is aged between 17-18 years as per his age certificate given by Osmania General Hospital. Having regard to the findings of this Board on Preliminary Assessments of BCL done as per Section 14(3) of the Act, this case is found to be fit to be transferred to the Children's Court (Hon'ble I Addl. Metropolitan Session Judge, Nampally, Hyderabad) by invoking Section 18(3) of JJ Act, 2015."

25. Learned Sessions Judge, on the basis of the preliminary enquiry, held as follows:

"4. The child in conflict with law was produced before this Court and on due assessment of the child in conflict with law by this court, this court came to a conclusion that he has to be tried as an adult as specified under Section 19(1)(i) of Juvenile Justice (Care and Protection of Children) Act, 2015 wherein Section 19 of The Juvenile Justice (Care and Protection of Children) Act, 2015 speaks about 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 atmosphere.

5. This Court took cognizance of the case against the accused for the offences punishable under Sections 364, 377, 302 and 201 of IPC and under Section 3 r/w 4 of The Protection of Children from Sexual Offences Act, 2012."

26. Learned Sessions Judge found that, based on the findings of the Juvenile Justice Board, the accused has not preferred any revision, and the findings have attained finality to treat the accused as an adult, and accordingly, the case was tried.

27. The Juvenile Justice Act was enacted in the best interest of Children (who have not completed 18 years) alleged and found to be in conflict with law, and for their rehabilitation through several processes to ensure that the child's needs are met and their basic human rights are protected.

28. Any enactment has to be read as a whole to find out its purpose, scope, and its application. A reading of Section 19 in the context of deciding whether a child can be tried as an adult shows that the provision makes it mandatory for the Children's Court to independently assess the child regarding his (i) mental and physical capacity to commit such offence; (ii) ability to understand the consequences, and (iii) the circumstances under which the offence was committed. The Children's Court cannot brush aside its duty of independent assessment by relying on the assessment report by the Board under Section 15 of the Act.

29. Though the guidelines of the National Commission were issued subsequent to the Board's assessment in the present case, however, Section 19 of the Juvenile Justice Act clearly stipulates the assessment that the Children's Court must conduct before deciding to try the child as an adult. It cannot be an empty formality by the Children's Court, and the assessment by Children's Court cannot be wholly on the basis of the preliminary assessment made by the Board. The intent of the Legislature is clear and mandates the assessment of the child at two stages. The first stage is by the Board, which is a preliminary assessment, and after the case is sent to the Children's Court, the Judge of the Children's Court has the mandatory duty to make an independent assessment about the necessity of trying the child as an adult.

30. As seen from the judgment of the learned Sessions Judge, the learned Sessions Judge stated that, "*on due assessment of the child in conflict with law, this Court has come to a conclusion that he has to be tried as an adult as specified under Section 19(1)(i) of the Juvenile Justice Act.*"

31. By no stretch of imagination, can such findings of the learned Sessions Judge be deemed as an assessment, which is mandatory under Section 19(1)(i) of the Juvenile Justice Act. The assessment of the learned Sessions Judge is bereft of any reasoning. The details of the assessment that were made ought to have been narrated by the learned Sessions Judge before concluding that the child/accused could be tried as an adult.

32. Learned Sessions Judge further found that the child in conflict with law has not preferred any revision and that the findings have reached finality, which is also improper and incorrect. The child in conflict with law not questioning the preliminary assessment of the Board will not in any manner complete the requirement of an independent assessment by the Children's Court Judge before trying him as an adult. The child not questioning the preliminary assessment of the Board will not absolve the Children's Court Judge from making an independent assessment of the mental and physical capacity of the child, and his/her ability to understand the offence and the circumstances under which the offence was committed.

33. The Legislature has deemed it appropriate and necessary that there should be a two-stage independent assessment regarding the mental and physical capacity, the ability to understand the consequences, and also the circumstances under which the offence was committed, since the trial by a Juvenile Justice Board and the Children's Court vary, and the Children's Court can inflict punishment on the child as an adult. The maximum punishment and detention in a special school could be up to 3 years or till attainment of 21 years of age, under the Juvenile Justice Act. Whereas, if a child, is tried as an adult, it can also result in capital punishment. When there is such a variation in the punishment that could be inflicted by the Board and the Children's Court, it is mandatory that the assessment, firstly by the Board and secondly by the Children's Court, has to be strictly followed. As already discussed, placing reliance on the assessment of the Board, without there being an independent assessment by the Children's Court, is bad in law and caused prejudice to the appellant.

34. For the reasons discussed, the Judgment of the Children's Court is hereby set aside.

35. Following the judgment of the Hon'ble Supreme Court in **Ajeet Gurjar v. The State of Madhya Pradesh's**, the case is remanded back to the Children's Court for conducting an inquiry in accordance with Section 19(1) of the Act. If the Children's Court comes to a conclusion that the appellant can be tried as an adult, there need not be a *de novo* trial and the Children's Court can pass judgment on the basis of evidence available on record and the independent assessment made by it. The Children's Court shall give preference to this case and dispose of it as expeditiously as possible. The facts of the case are not discussed since we find an illegality in the Children's Court abdicating its duty under Section 19 to conduct an independent assessment.

36. Criminal Appeal is ordered accordingly.

K.SURENDER, J

E.V.VENUGOPAL, J

Date: 10.04.2025

Note: LR copy to be marked.

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**HON'BLE SRI JUSTICE K.SURENDER
And
HON'BLE SRI JUSTICE E.V.VENUGOPAL**

CRIMINAL APPEAL No.626 of 2019

Date:10.04.2025

kvs