IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1153 of 2018

Mumtaz Ahmed Nasir Khan
R/o.117/125, Room No.10,
Sharbatwala Building,
Maulana Azad Road, Dunkan Road,
Mumbai – 8. ... Appellant/
Original Complainant.

v/s.

The State of Maharashtra
(Through J.J. Marg Police Station)

2. Shoeb Mohamed Akram Shaikh
Through his father
Mohd. Akram Shaikh
R/o: Room No.1603, Zain Tower,
Temkar Street, Mumbai … Respondents/
Original CCL-2

WITH
CRIMINAL WRIT PETITION NO.1346 OF 2018
WITH
CRIMINAL APPLICATION NO.262 OF 2018
IN
WRIT PETITION NO.1346 OF 2018

Mohamed Huzaifa Javed Ahemd Ansari
Through his Guardian
Javed Ahmed Ismail Ansari
R/at: 125/14, Kalvert Building,
M.A.Road (Duncan Road),
Mumbai – 400 008

At present lodged at Children Home,
Dongri Mumbai. … Petitioner
(Ori. Accused/CCL-1)

v/s.

The State of Maharashtra
(at the instance of
Senior Inspector of Police,
J.J.Marg Police Station
vide C.R. No.228 of 2016) ...Respondents

Ms. Gayatri Gokhale a/w.Ms. Samruddhi Salvi i/b. Rizwan Merchant & associates for the appellant.

Mr. Mubin Sollkar a/w. Mrs. Tahera Qureshi i/b Yakub Shaikh for respondent no.2.
Mr. Nitin Sejpal a/w. Akshata Desai for petitioner in wp 1346/18.
Mr. A.S. Patil, APP for the State.

CORAM : DAMA SESHADRI NAIDU, J.

JUDGMENT RESERVED ON : 20th June 2019
JUDGMENT PRONOUNCED ON : 15th July 2019

JUDGMENT

Introduction:

A boy, on the verge of attaining adulthood—to be precise, seventeen and half years old—faces an allegation he has inhumanly killed a three-and-half-year-old child. Motive uncertain, the offence remains heinous.

2. Another boy, only a little younger—sixteen and half years—

faces the allegation of, first, conspiring with the older boy in the offence and, second, helping him, later, to "make the evidence disappear," besides screening that older boy from police detection, too.

Procedural History:

3. The Juvenile Justice Board ("the Board") assesses the older juvenile's physical health, mental maturity, and other collateral factors, and decides to try him, under Section 15 of the Juvenile Justice Act, 2015, as if he were an adult. After applying the same standards, it, however, decides to try the younger one as a juvenile. The Board's decision engendered before the Sessions Court two appeals: One by the Government against the Board's decision to try the younger boy as a juvenile; the other by the older boy against its decision to try him as an adult.

4. The Sessions Court, on the merits, through its Orders, dated 21st February 2018, dismissed both the appeals. Now against the two appellate orders, the victim's father, instead of the Government, filed Appeal No.1153 of 2018. The older juvenile, too, has filed Writ Petition No.1346 of 2018, in which the victim's father joined as an intervener.

Facts:

5. On 5th December 2016, the complainant received a phone call from his wife that their daughter, three-and-half-year old, went missing. He rushed home, searched for his daughter, and then lodged a

complaint with the jurisdictional police. The next day, the police registered a crime under Section 363 of IPC. Until 18th December the case saw no progress. The next day, an anonymous person called the complainant over the phone and demanded a ransom of one crore rupees. The calls continued the next three days. When the police tracked the calls, they led to the older juvenile; they took him into custody. On the information provided by him, the police recovered the baby's dead body.

6. The older juvenile, on interrogation, has allegedly revealed that, first, he applied chloroform to the baby and, later, strangulated her by the cord of a mobile charger. He is said to have disposed of the dead body helped by the younger juvenile. In the investigation, the police have also learned how the older juvenile used to boast of his criminal ability or acumen, and how he enticed into his house the baby playing in their residential complex. They have also gathered evidence about the role the younger juvenile played not only in disposing of the body but also in trying to conceal the older juvenile's identity from the police: the use of different phones, sim cards, and, as a whole, the technological adventures. So the police added to the crime Sections 302, 385, 201, and 34 of IPC.

7. As both the accused are juveniles, the Board took up their case for determining whether they should be tried as juveniles or adults, under Section 15 of the Act. It has held that the older one should be

tried as an adult and the younger one as a juvenile. The appeals rejected, the complainant and the older juvenile have filed Appeal No.5160 of 2018 and WP No.1346 of 2018 respectively. The nomenclature of the proceedings does not seem to jibe with the statutory mandate, for what lies is only a revision under Section 102 of the Juvenile Justice Act. Yet one is an appeal and the other a criminal writ petition.

Submissions:

Victim's Father (Appellant in Appeal No.1153 of 2018 and Intervener in WP No.1346 of 2018):

8. Ms. Gayatri Gokhale, instructed by Rizwan Merchants & Associates, the appellant's counsel, has strenuously contended that the murder is gruesome, and both the juveniles played equal role in that one. According to her, it is a misnomer to call these two accused juveniles, because of both the depravity of the crime and their near adulthood—just a few months short of 18 years.

9. Ms. Gokhale has taken pains to take me through the record, especially a few portions of the chargesheet as well as the orders of both the Juvenile Justice Board and the Sessions Court. First, she contends there is voluminous evidence on record that the younger juvenile has harboured common interest since inception and conspired with the older one. To drive home her point, she has read out the statements of a couple of witnesses. Second, according to her, after the murder, the

younger juvenile has continued to act in concert with the older one and did all he could to give different colour to the crime, to make the evidence disappear, and to screen the older juvenile from the needle of suspicion.

10. To conclude, Ms. Gokhale has submitted that to attract Section 34 IPC, it is unnecessary that the co-accused should have committed any overt act. Thus, the younger juvenile's participation in the crime, she stresses, amounts to his committing the heinous crime by himself, as defined under section 2(33) of the Juvenile Justice Act. And in that background, he must be tried as an adult, Ms. Gokhale concludes.

11. Besides highlighting Section 15 of the Act, Ms. Gokhale draws my attention to Section 19 of the Act and stresses that the Magistrate trying the offence has ample powers to declare a juvenile an adult, even disregarding the Board's opinion.

12. About the older juvenile, Ms. Gokhale, for the intervening second respondent, has highlighted, what she calls, the callous attitude the older juvenile has displayed throughout. She has referred to the social status and seemingly normal childhood of the older juvenile. According to her, with no poverty and no familial deprivation, the older juvenile had no justification for committing such monstrous crime.

13. Ms. Gokhale stresses that the Court ought to be guided by

the *prima facie* allegations, at this stage. And that is what, she points out, the Board and the Session Court have done; they have been, in fact, solely guided by what has been brought on record until now.

14. Eventually, Ms. Gokhale has taken me to a few parts of the chargsheet to highlight how both the juveniles used the technology and how their street-smart attitude helped them not only to commit the crime but also to hide it, for a while though. According to her, their conduct even post-murder deserves no sympathy. Thus, she urges this Court not to interfere with concurrent findings of the Board and the Sessions Court.

Younger Juvenile (Respondent in Appeal No.1153 of 2018):

15. On the contrary, Shri Mobin Solkar, the younger juvenile's counsel, has submitted that even *prima facie* the younger juvenile's role commenced only after the older one committed the alleged murder. In this context, he contends that none of the Sections 302, 385, 201, 363, r/w 34 of the IPC applies to the alleged role the younger juvenile has played. So, the contention that the younger juvenile has harboured a common intention and conspired to kill the child attracting Section 34 of Indian Penal Code (IPC), Shri Solkar stresses, falls to the ground.

16. Only as a matter of hypothesis does Shri Solkar want the Court to treat Section 201 of IPC as applying to the allegations the younger juvenile has faced. Then, he has drawn my attention to section 2(33) to underline the fact that any offence to be labeled heinous must

be punishable with a minimum punishment of seven years and above. The punishment under section 201 of IPC, according to him, even for a capital offence, is a minimum of three years, extendable up to seven years. With that statutory prop, he asserts that any offence under Section 201 cannot be termed 'heinous'.

17. On his part too, Shri Solkar has taken me through the statements of various witnesses to stress that until the murder was committed, the younger juvenile was nowhere in the picture. In the same vein, he submits that post-murder, there are, indeed, certain allegations against the younger juvenile. But none amounts to a heinous crime. Thus, he urges this Court to dismiss the appeal.

Older Juvenile (Appellant in WP No.1346 of 2018):

18. Shri Nitin Sejpal, the older juvenile's counsel, has taken me to the definitional dynamics of Section 2 of the Act, with a particular reference to sub-sections (12), (13), (33), (35), (40) and (54). According to him, there is nothing much to distinguish between the younger and the older juveniles (technically called CCL-1 and CCL-2 respectively). Yet the JJ Board has given the benefit of the Act only to the younger juvenile.

19. To elaborate, Shri Sejpal submits that both the juveniles are almost of the same age, but for a few months between them. Their social background, family circumstances, and physical as well as mental capacity shows the same pattern as revealed by the social investigation.

Then, Shri Sejpal has stressed that drastic may be the allegations but even the older juvenile has always enjoyed the presumption of the innocence, as statutorily secured under Section 3 of the Act.

20. Shri Sejpal has taken me through every observation in investigation report to hammer home his contentions that the older juvenile is a normal child, brought up in a family with values. In that context, he has submitted that the father is well educated, the family is respected, and none in that family has been accused of any crime hitherto.

21. Elaborating on the older juvenile's credentials, Shri Sejpal submits that when the alleged incident took place, the older juvenile was pursuing his eleventh class. Even in judicial custody, he continued his education and cleared the Board examination, that is Class 12th, as well. The Social opprobrium the family has already suffered apart, the Court's decision to try the older juvenile as an adult will jeopardize his future, including educational and career prospects.

22. True, Shri Sejpal has also referred to the alleged police brutality and how they have extracted confessions from him. I am afraid they fall beyond the scope of this adjudication. Nor has the appeal refers to the alleged police brutality. Eventually, Shri Sejpal has referred to a judgment of this Court in *Saurabh Jalinder Nangre and others v. State of Maharashtra*[1]. Based on that decision, he submits

1[] 2019 (1) Crimes 253 (Bom.)

that the prosecution and the Juvenile Justice Court have failed to establish anything heinous against the older juvenile.

23. Finally, Shri Sejpal submits that mere incorporation of, for instance, Section 302 would not foreclose a juvenile's option—even right—to be tried only as a juvenile. Thus, summing up his submission, Shri Sejpal urges this Court to reverse the concurrent findings of the Juvenile Justice Court and the Sessions Court. Consequently, he wants the older juvenile, too, tried as a juvenile.

Discussion:

24. To preface, let me invoke William Shakespeare. In *Winter's Tale*, (Act 3, Scene 3), through a shepherd, he bemoans the terrible teens: I would that there were no age between sixteen and three-and-twenty, or that youth would sleep out the rest, for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting . . .*[2]*

25. Two juveniles—one aged seventeen and half years and the other sixteen and a half years—face the allegation of killing a child of three and a half years. To face the trial, they must first be assessed whether they are mentally and physically still juveniles or have the maturity of an adult. For this, we must, to begin with, survey the statutory scheme.

2**[]** Paraphrased: I wish that the ages between sixteen and twenty-three didn't exist, or that young men would spend them asleep. Otherwise there is nothing between those ages but getting . . . acting dishonestly toward their elders, stealing, fighting . . .

Statutory Stipulations:

26. Juvenile Justice (Care and Protection of Children) Act, 2015, governs the issue. It is a law that concerns the "children alleged and found to be in conflict with the law and children in need of care and protection." The enactment has its constitutional foundations in clause (3) of Article 15, clauses (e) and (f) of Articles 39, Article 45, and Article 47 of the Constitution of India. Traveling beyond the Municipal Law, we find that "the Government of India has acceded on the 11th December 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations." This Convention prescribes a set of standards to be adhered to by all State parties in securing the best interest of the child. The 2015 Act models itself after the standards prescribed in the Convention's Beijing Rules, 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, and the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993.

27. This Act applies to all matters affecting the children needing care and protection and children in conflict with the law. Under Section 2 (12), a "child" means a person who has not completed eighteen years of age. A "child in conflict with law", under Section 2 (13), means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of the offence. And "heinous offences", as defined under

Section 2(33), include “the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more.”

28. Under Section 2 (35) a "juvenile" means a child below the age of eighteen years. Thus a “child” and a “juvenile” seem synonymous —both having the threshold of 18 years. Sub-section (4) defines an "observation home." And sub-section (54) defines "serious offences". As the definition is inclusive, any offences for which the punishment, under the IPC or any other law in force, is imprisonment between three to seven years.

29. Section 3 enumerates the “general principles to be followed in the administration of the Act.” Among those principles, the principal are these: (a) The presumption of innocence: every child shall be presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years. (b) Dignity and worth: all humans shall be treated with equal dignity and rights. (c) Participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his or her interest. (d) Best Interest: all decisions about the child shall be in the best interest of the child and to help the child develop full potential. (e) Non-stigmatic semantics (words): adversarial or accusatory words are not to be used against a child. (f) No waiver of rights: no waiver of the child’s any right. (g) Diversion: all measures must be taken to avoid judicial proceedings while dealing

with the children in conflict with the law. The judicial recourse, however, must be in the child's best interest or the society's.

30. Under Section 4 of the Act, the Juvenile Justice Board comprises a Metropolitan Magistrate or a Judicial Magistrate of First Class with prescribed qualifications such as experience, and two social workers, of whom at least one must be a woman. This Board will have the powers of a Metropolitan Magistrate or a Judicial Magistrate of First Class. If a person committed an offence when he was a juvenile but was apprehended after his crossing 18 years, he must be treated, under Section 6, as a child during the process of inquiry. Among the powers, functions, and responsibilities of the Board is its power to adjudicate and dispose of cases of children in conflict with the law in accordance with the process of inquiry specified in Section 14.

31. Under Section 14 of the Act, the Board inquires and passes orders under Sections 17 and 18. The inquiry encompasses all aspects of a child in conflict with the law. Indeed, under subsection (3), the Board preliminarily assesses heinous offences under section 15, in three months after the child is produced before it. Of course, the time may be extended for the reasons recorded. The Board would inquire into or try a heinous offence adopting the procedure of summons cases if the child was below sixteen years when he had committed the offence. For a child above sixteen years, inquiry must be as per Section 15.

32. Now comes the prominent provision for our purpose: Section 15 of the Act. If a child above 16 years is accused of committing a heinous offence, the Board must conduct a preliminary assessment about the child's mental and physical capacity to commit the alleged offence, his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. Then, the Board will pass an order under Section 18 (3) of the Act. It pays to quote Section 15:

> Section 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 subsection (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 Code of Criminal Procedure, 1973 (2 of 1974):
>
> 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.
>
> (italics supplied)

33. As Section 15 permits the Board may, during the preliminary assessment, take the assistance of experienced psychologists or psycho-social workers or other experts. First, the preliminary assessment is "not a trial." Second, it is, instead, an inquiry to assess the child's capacity to commit the alleged offence and to understand its consequences. On inquiry, the Board must satisfy itself in its preliminary assessment about the juvenile's mental and physical capacity, his ability to understand the consequences of the offence, and so on. Then, if the Board is "satisfied on preliminary assessment that the matter should be disposed of", it will follow "the procedure, as far as may be, for trial in summons case under Cr PC." The Board's order is appealable under sub-section (2) of Section 101.

34. Now comes the role of the Children's Court. Once it receives the preliminary assessment from the Board under section 15, it may decide to try the child as an adult under Cr. P.C. If it decides to the contrary, it tries him as a juvenile. The Children's Court, too, "may conduct an inquiry as a Board and pass appropriate orders" under Section 18.

The Adjudicatory Bounds:

35. Against the Board's order under Section 15 of the Act, Section 101 (2) provides for an appeal. The appeal must be before the

Court of Sessions. The appellate court, too, takes the assistance of experienced psychologists and medical specialists, other than those who assisted the Board in its passing the order under appeal. As subsection (4) mandates, there is no further appeal against the Court of Session's order.

36. Indeed, the High Court, under Section 102, has revisional powers. It is, as I see, a generic revisional power. It may, at any time, "call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order". Once the record is placed before it, the High Court may satisfy itself about "the legality or propriety" of any order and "pass such order in relation thereto as it thinks fit."

37. Earlier the Supreme Court has considered the High Court's revisional powers under the now-repealed 2002 Act. In *Jabar Singh v. Dinesh*[3], it has held that the revisional court's powers differ from the appellate court's. They are more restricted. Especially on the findings of a fact, the revisional court does not interfere unless there is illegality or perversity.

What makes a juvenile an adult, besides the numerical called age?

38. A universally accepted ideal is that children are dependent and deficient in the mental and physical capacities, and are in need of

3[ ] 2010 3 SCR 353

guidance. Perhaps, initially, a multi-visual medium like TV; later, a globe devouring internet (appropriately, ominously worded as "world wide web"), and finally—and fatally—the post-truth social media have let the children, especially the adolescents, leapfrog into the adult world. Mostly it is a crash-landing, with disastrous consequences. So the childhood innocence is the casualty. These devices may have made a child bypass his or her childhood, sadly. Then, naturally, the theory of reduced culpability for juveniles relative to adults has taken a statutory dent. The good-old-days icon of a truant child seems to get replaced by the modern-day mascot of a violent predator.

39. If we take the USA as a case in point because there the data are more easily accessible, we can see a dramatic upswing in youth crimes beginning in the 1970s. It caused a new shift in the treatment of juvenile offenders. The public became increasingly alarmed by the reported surge in murders, rapes, and other violent assaults committed by teenagers. So people began demanding their legislatures to act. Some experts have blamed the increase in juvenile crime on the rise in drug abuse, especially the influx of crack cocaine, while others blame a lack of parental guidance due to the decline of the traditional two-parent home. While overall crime increased during the 1980s and 1990s, juvenile crime grew at a disproportionately faster rate. According to one study cited by Richard E. Redding in *Juvenile and Family Court Journal*, from 1987 to 1995 the number of juveniles

arrested for violent crimes such as aggravated assault, murder, manslaughter, and rape rose 60%, while adult violent crime rose only 24% over the same period. But Redding also notes that between 1994 and 1996, there were significant decreases in juvenile crime, including a 31% decrease in juvenile homicide[4].

40. The perception of a juvenile crime wave persists, however, largely because of national media coverage of extreme cases. So concludes Richard E. Redding.[5]

41. As a result, since the mid-1970s, nearly every U.S. state has revised its laws to facilitate the transfer of adolescents from juvenile to criminal court (these laws are thus called the "transfer laws"). Some states have lowered the age at which an adolescent is eligible to be transferred by a judge to criminal court; some states have allowed prosecutors to directly file adolescents' cases in criminal court, before any hearing in the juvenile court; and some states created laws that automatically exclude certain adolescents (based on their age and charged offense) from juvenile court. The specifics of states' transfer laws vary considerably, but the result is that more youth below eighteen are now prosecuted in criminal court rather than juvenile court.[6]

4[] As quoted in Trial of Juveniles as Adults, Kevil Hile, Chelsea House Publishers, Philadelphia, Ed.2003, pp.21 and 22.
5[].Id.
6[] Judging Juveniles, Prosecuting Adolescents in Adult and Juvenile Court, by Aaron Kupchik, New York University Press, Ed. 2006. P.4

42. On transfer to the regular criminal court, the trial may be according to the mainstream criminal procedure, but the punishment, however, must be reformative and rehabilitative—rather than retributive. Then what is the difference between the two trials—the trial before the regular court and that before the children's court?

43. Essentially, the trial in the regular court is offense oriented; in the juvenile court, it is offender oriented. In other words, in the children's court, societal safety and the child's future are balanced. For an adult offender, prison is the default option; for a juvenile it is the last resort. Aaron Kupchik calls the method adopted by the regular criminal courts *vis-a-vis* juveniles the "sequential model of justice." That is, it adheres to a criminal justice model during the trial phase of case processing, but moves toward a juvenile justice model during sentencing, though the quantum varies in both methods. In contrast, the juvenile court follows a justice model throughout.

44. Under the Chapter "Understanding the Scope of the Problem", Aaron Kupchik notes that jurisdictional transfer is hardly an innovation. Since the creation of the juvenile court, judges have been able to designate as adults and transfer to criminal court certain serious offenders who require punishments beyond what the juvenile court can give. The methods, according to him, vary, though. He identifies three methods.

45. The first method is judge-centric. The judge can select for transfer the most serious juvenile court cases, involving either the most severe offenses or chronic offenders. This method is termed "judicial transfer" or "judicial waiver". It was once prevalent. The second method is legislative transfer, or statutory exclusion. This is what Section 15 of the Act advocates. The third is "direct file", or "prosecutorial transfer". This method gives prosecutors "substantial authority without any oversight or judicial supervision."

46. The learned author then quotes from the book, *The Child Savers,* in which its author Anthony Platt responds to how he would ideally like to handle cases of adolescents. He replies:

> If I was going to do social engineering, I suppose what I would do is create a system where the courts would deal with these issues, the [Juvenile] Court and the [Criminal] Court, would be permitted access to impaneled and certified experts in child psychology, child behavior, mental health, where assessments could be done that would be state-of-the-art to evaluate the child's cognitive skills and educational level, where we would have the benefit of a full analysis of the capacity of the individual in front of us and access to expertise at will. And then we can do what is appropriate based on a better understanding [of] who is in front of us.[7]

47. I reckon Section 15 of the Act precisely does this. It takes into the evaluative process the child's behaviour, mental health, cognitive skills, and educational level. The criteria met, then it is "adult time for

7[] Anthony Platt's The Child Savers, as quoted in Judging Juveniles, P.97

adult crime." That said, it is no easy task to apply this adage of adult crime and adult time.

48. In *Rethinking Juvenile Justice*[8], Elizabeth S. Scott & Laurence Steinberg, under the caption "The Psychology of Adolescence and the Regulation of Crime," observe that adolescents differ from adults—and juvenile offenders differ from adult criminals —in ways important to the regulation of youth crime. A vast body of recent research that was not available a generation ago, according to the authors, offers insights into both adolescence and youth crime. The research demonstrates convincingly this developmental stage is distinctive in ways that are relevant both to the involvement of adolescents in crime and to the effective legal responses.

49. According to Elizabeth S. Scott *et al*, first, available scientific knowledge confirms what parents of adolescents surely know—that although teenagers are not childlike, they are less competent decision makers than are adults. Indeed, adolescents' capacities for reasoning and understanding (what might be called "pure" cognitive abilities) approach adult levels by about age sixteen. But the evidence suggests they may be less capable than are adults of using these capacities in making real-world choices. More important perhaps is that the juvenile's emotional and psychosocial development lags behind their cognitive maturation.

8[] Harvard University Press, Ed. 2008, Pp.4-6

50. For example, teenagers are, according to Elizabeth S. Scott *et al*, considerably more susceptible to peer influence than are adults; they are more likely to focus on immediate rather than long-term consequences; they are more impulsive and subject to mood fluctuations. They are, in fact, more likely to take risks and probably less skilled in balancing risks and rewards. Finally, personal identity, the authors opine, is fluid and unformed in adolescence. This is a period when individuals separate from their parents, experiment (often in risky endeavors), and struggle to figure out who they are.

51. Then, Elizabeth S. Scott *et al* note that these developmental factors, in combination, undermine adolescent decision making and contribute to immature judgment—as this term is used in common parlance. Moreover, recent research has elucidated the biological underpinnings of many of these psychological attributes. Studies of brain development show that during adolescence, significant maturation occurs in brain systems and regions involved in long-term planning, impulse control, regulation of emotion, and evaluation of risk and reward. Thus, the immature judgment of teenagers to some extent may be a function of hard wiring.[9]

52. Of course, there are people who scoff at this pro-juvenile slant. For them juvenile offenders are "criminals who happen to be young, not children who happen to be criminal."[10] Finally, Elizabeth

9[] Id., p.--------
10[] Id., p.82

S. Scott *et al* caution that "the categorical waiver of youths on the basis of age and the seriousness of the presenting criminal charges alone is undesirable" on social welfare grounds because almost surely it will lead to adult prosecution and punishment not only of life-course persistent offenders but "also of many normative adolescents who would likely mature out of their inclinations to get involved in criminal conduct." Then, "to avoid sweeping many youths who are not incipient criminals into the adult system," they conclude, "transfer should be precluded for any juvenile with no previous record of serious violent offending"[11].

In the UK:

53. Under the English Legal System, young offenders are usually tried in youth courts (formerly called juvenile courts), which are a branch of the magistrates' court. Other than those involved in the proceedings, the parents and the press, nobody may be present unless authorised by the court. Parents or guardians of children under 16 must attend court at all stages of the proceedings, and the court has the power to order parents of older children to attend.

54. Young persons can, in limited circumstances, be tried in a Crown Court: for example, if the offence charged is murder, manslaughter, or causing death by dangerous driving. They may sometimes be tried in an adult magistrates' court or the Crown Court if a co-defendant in the case is an adult. Following a Practice Direction,

11[] Id., p.243

discussed below, a separate trial should be ordered unless it is in the interests of justice to do otherwise. If a joint trial is ordered, the ordinary procedures apply 'subject to such modifications (if any) as the court might see fit to order'.

55. The trial procedures for young offenders have been reformed in the light of a ruling of the European Court of Human Rights in *T v UK* and *V v UK* (2000). The EC Court has found that Jon Venables and Robert Thompson, who were convicted by a Crown Court of murdering the two-year-old James Bulger in 1993, did not have a fair trial under Art. 6 of the European Convention on Human Rights.

56. Following that decision in *Thompson* and *Venables*, a Practice Direction was issued by the Lord Chief Justice laying down guidance on how young offenders should be tried when their case is to be heard in the Crown Court. The language used by the Practice Direction follows closely that employed in the European decision. It does not lay down fixed rules but states that the individual trial judge must decide what special measures are required by the particular case, considering 'the age, maturity, and development (intellectual and emotional) of the young defendant on trial'.

57. The trial process should not expose that defendant to avoidable intimidation, humiliation or distress. All possible steps should be taken to assist the defendant to understand and participate in the proceedings. It recommends that young defendants be brought into

the court out of hours, so they become accustomed to its layout. Jon Venables and Robert Thompson had both benefited from these familiarisation visits. The police should try to avoid exposing the defendant to intimidation, vilification or abuse. As regards the trial, it is recommended that wigs and gowns should not be worn and public access should be limited. The courtroom should be adapted so that, ordinarily, everyone sits on the same level[12].

Europe:

58. In Western continental Europe, the upper limit of penal liability within the juvenile justice system is 18 years. In some countries this upper-age limit is absolute: strict model. It means minors can never be brought before an adult court. In others, this limit is flexible, so minors can get adult sentences and (in some countries) even be sentenced by an adult criminal court. It is a flexible model.

59. Germany is a striking example of the strict model. In that country, juveniles only come under the youth justice system from the age of 14. The German Jugendgerichtsgesetz (JGG) distinguishes educational measures, disciplinary measures, and punishments. Austria, too, operates, under the strict model. So is Switzerland.

60. The second model in operation in Europe is one in which a flexible upper limit is coupled with relatively low maximum penalties in the juvenile justice system.

12[] English Legal System, Catherine Elliott and Frances Quinn, 17th Ed., Pp.514-15

61. Under the flexible model, most juveniles who appear in court are guaranteed a relatively low maximum penalty, with exceptions for very serious cases. This model operates in the Netherlands. Article 77b of the Penal Code allows courts to try suspects who were 16 or 17 years old at the time of the offence under ordinary adult criminal law if they find grounds to do so in 'the seriousness of the crime, the personality of the offender, or the circumstances in which the crime was committed'. Belgium and France, too, operate this model, with variations as to the juvenile's age.[13]

In the USA:

62. In *Kent v. United States*[14], Kent, 16-year-old, was arrested for various charges. For 24 hours he was in police custody; questioned, he admitted to some offenses. Then Kent was subject to the "exclusive jurisdiction" of the District Juvenile Court, which could "only waive jurisdiction after a "full investigation" of the question of waiver." In Kent's case, the Juvenile Court waived its jurisdiction without a hearing or allowing Kent's counsel to access important Court Social Service files. The U.S. District Court dismissed Kent's claim and tried him as an adult. Later, he was convicted as an adult.

63. When Kent's challenge eventually reached the US Supreme Court, it has considered the factors to be considered before transferring

13[] Reforming Juvenile Justice, Josine Junger-Tas Frieder Dünkel Editors, Springer, Ed. 2009
14[] 383 U.S. 541 (1966)

juveniles to criminal court. According to it, the judges must assess these factors thoroughly before waiving a juvenile to criminal court:

> 1. The seriousness of the alleged offense to the community and whether protecting the community requires waiver;
>
> 2. *Whether the alleged offense was committed in an aggressive, violent, premeditated, or willed manner;*
>
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
>
> 4. The prosecutive merit, i.e., whether there is evidence upon which a [court] may be expected to return an indictment;
>
> 5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults;
>
> 6. *The sophistication and maturity of the juvenile by consideration of his home, environmental situation, emotional attitude, and pattern of living;*
>
> 7. *The record and previous history of the juvenile, including previous contacts with . . . law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation . . . or prior commitments to juvenile institutions*;
>
> 8. *The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available*

to the juvenile court.[15]

(italics supplied)

The Older Juvenile's Characteristics:

(a) The Social Investigation Report, dt.18.08.2018:

64. In the absence of any other criteria, let us examine the case in the light shown by *Kent*. First, we will examine the Social Investigation Report. Prefatorily, the Report classifies, rightly, the offence as heinous. About the older juvenile, it notes he is a normal child; his father is an architect having his own office; the mother a homemaker; and two siblings, younger sisters, both studying.

65. As to the relationship among the members of the family: father & mother—cordial; father & child—cordial; mother & child—cordial; father & siblings—cordial; mother & siblings—cordial; child & siblings—cordial; child & relative—not known. The older juvenile's attitude towards religion, to sum up, is God-fearing; he does his prayers regularly. Of moral code at home, the Report records it to be good, as the father is well-educated and is well aware and concerned about the children's education. "All children are pursuing education. Parents often inquire about daily schedule of children."

66. About the present living conditions, the Report reveals that before the incident, the family was living in its own house. Post-

15**[]** Source: Dean J. Champion and G. Larry Mays, Transferring Juveniles to Criminal Courts: Trends and Implications for Criminal Justice, Praeger, 1991, as quoted in Trial of Juveniles as Adults, p.19

incident, it shifted to paternal uncle's house. Under the caption "other factors of importance if any", the Report notes that after the incident the complainant and the neighbours turned hostile, so the family had to leave the place.

67. About the older juvenile's habits, the Report notes that he does not smoke, drink, gamble, or beg. He uses no drugs. He watches TV and movies, loves playing both indoors and outdoor games, reads books, but does not have specific religious activities. He is fond of sports cars.

68. The juvenile's personality trait is reported to be "cool tempered and noticed to be sensible." The older juvenile's attitude towards school, teachers, classmates and "vice-versa" reveals that he was not so regular to college and average in studies. "He said he is absent from long as he was not keeping well due to harpies that he was infected." Majority of his friends are educated, either of the same age or older, but belong to the same gender. His attitude towards friends reveals that he spends good time with his friends. He is stated to have a good bonding with friends and "so does his friends."

69. Of importance is the neighbours' observations or, more precisely, their absence. The Report reveals that "neighbours are not contacted as the society is a flat system, other flats on the floor were locked & no one was available to interact." This version, first, is difficult to believe and, second, the Report misses a vital opportunity to

assess the juvenile in the eye of the neighbours—the miniature society. Then, on the parental attitude towards discipline in the home and child's reaction, the Report observes that it is "noticed to be good", as the parents stated they often enquire about the daily schedule of children, keep supervision on academics. And the juvenile too affirms it.

70. Another vital factor in the Report concerns whether the "child has been subjected to any form of abuse." The older juvenile informs the authorities that at the time of his admission into OHU, he "was beaten in the police station by police officials" and that the statement was submitted to the Juvenile Justice Board for information. About the "alleged role of the child in the offence", the older juvenile admits that he committed the crime. Despite that, the Report concludes that the child is "manipulative based on verbal statements given by him."

71. The older juvenile's health is normal. As to the emotional factors, he is "observed to be emotionally stable. There is no evidence of any kind of psychological disorder. "*The [older juvenile] expressed his feelings of guilt and regret for his unhealthy action in the offence."* In other words, he is penitent.

72. Now comes the summation part of the Report. Under "Analysis of the case", the Report records that

> "the [older juvenile] accepted his active involvement in the offence & stated that the girl was accidentally death by him.

> [The older juvenile] mentioned that he and his friend Shoeb is partially involved in the offence whereas he refers to this incident with the coincidence."

73. From the above extract, I gather that the older juvenile has admitted that he killed the girl, but that was accidental. He states that his friend, the younger juvenile, has a partial role in the crime. He again reiterates the crime was accidental.

74. Then comes the subjective observation in the Report. It states that the older juvenile "fumbled while providing the details of the incident; his own information is contradicting with the other factors provided by him. And he was not so co-operative during interview sessions and seems to be highly manipulate[ive]."

75. With due deference to the Probation Officer's opinion, I may note that the conclusion does not jibe well with the rest of the Report. If the older juvenile is manipulative, he ought to be crafty and cunning. He must be glib, not fumbling and clumsy. Then, he must not have admitted his guilt. On the contrary, he has, *prima facie*, made a clean breast of the event.

76. Finally comes the "recommendation regarding rehabilitation by Probation Officer." The Report records that the older juvenile is undergoing Class XII exam in OHU, "preparing well for the exam." Now it comes to light, he did clear that examination. The parents were "at present unwilling . . . for the custody" of their child. They felt it better if the child is kept in the

Observation Home for some more time, "as outside environment is unfavourable and it might be harmful to the [older juvenile.]

77. The Report also records that the older juvenile was "counselled against the involvement in the criminal act & he was also motivated for a need to focus on his academic career that will help him" make a better future. But the Report concludes thus: "Considering the gravity of the offence and in the best interest of the [older juvenile], further necessary orders can be passed." This report emanates from the Probation Officer.

(b) Mental Health Report:

78. The Mental Health Report comes from three Mental Health Experts of J. J. Group of Hospitals. It was given on 10th April 2017.

79. The MH Report begins with an observation that the older juvenile "has no psychiatric complaints at present." Then it records, what the juvenile has narrated. The juvenile knew the victim as she used to stay in the same building and often visited his house asking for chocolate, which he regularly kept in the house. Once he ignored the child's request (on the fateful day), she started to snatch at his phone; then he pushed her. When she fell down, a wooden plank fell on her. In that process, she got "accidentally strangulated due to computer wire." He is said to have panicked and hidden her body in a bag (in his house) and threw it from the window to the terrace of a neighbouring structure to evade suspicion.

80. The MH Report records how the older juvenile has further dealt with the incident. He says that he announced the news of the missing girl in the local Masjid. He claims to have tried to keep track of the search operations for the missing child. Some people started voicing concerns that as no ransom calls were made, the child must be in the locality. So he made ransom calls along with his friend, the second juvenile. He further claims to have never gone to the place where he asked the child's father to drop the ransom money.

81. Then, MH Report records the juvenile's mental health assessment. In January 2008, he was taken to Psychiatry OPD in Nair hospital for behavioural problems. "Provisional diagnosis conduct was made and he was kept under observation on OPD basis. His IQ test showed average intelligence and CAT test in 2009 showed conflicts with "authority figures". As per the available documents, he was given medications on 14.11.2009 for his behavioural problems after which they never followed up. Further documents of treatment and further progression of illness is not available. No history of any substance use. No family history of psychiatric illness. No history of any medical or surgical illness.

82. On Mental Status Examination, the MH Report concludes that the older juvenile is "conscious, cooperative, communicative; Attention is aroused and sustained; eye to eye contact initiated and maintained; rapport established; oriented of time, place and person;

speech and thought conscious, coherent, relevant, no delusions. In one word, the MH Report concludes that the older juvenile is normal and suffers from no mental incapacity to commit the offence.

(b) Juvenile Justice Board:

83. The Board comprised the Principal Magistrate and two members, one of whom was absent. In its Report or Order, dt.22.08.2017, the Board has decided to try the older juvenile as an adult and the younger one as a juvenile.

84. After referring to the Social Investigation Report and the MH Report, the Board concludes, "[i]n the circumstances stated above, I do not find any mitigating circumstances in the case of [older juvenile] to extend him the benefit of Juvenile Justice Act." Of course, it takes a lenient view vis-à-vis the younger juvenile, given his limited role in the crime.

(d) The Appellate Court:

85. On appeal, the Special Judge, Children's Court, has observed that the JJ Board has rightly appreciated the Social Investigation Report and Physical & Mental Health Report. The appellate order holds that the older juvenile was of sound mind and had the age of understanding the consequences when he allegedly committed the offence. It, then, concluded, "I am of the considered view that [the older juvenile] cannot be inquired with by the JJ Board in view of the heinous act committed by him, he has to be treated as an adult."

Does the Board's Decision, as Affirmed by the Appellate Court, Brook Interference?

86. It is inadvisable to tinker with an expert's opinion. Yet it remains, after all is said and done, an opinion, at that. The JJ Board has undertaken no independent assessment; it has, in fact, heavily relied on the Social Investigation Report and MH Report. So its opinion, in the strict sense, cannot be branded an "expert opinion." The same reasoning applies to the appellate order, too. That said, the two reports the Board has relied on are, indeed, expert opinions: one rendered by a Probation Officer and the other by a panel of doctors. But neither report brings out into open any exceptional circumstances that compel the older juvenile to face the trial as an adult.

87. So we need to revisit Section 15 of the Act to determine what circumstances compel a juvenile to face the trial as if he were an adult. (1) It must be a heinous offence; here it is. (2) The child must have completed sixteen years; here he has. (3) The Board must have conducted a preliminary assessment; here it has. (4) That preliminary assessment concerns four aspects: (a) the child's mental and (b) physical capacity to commit such offence; (c) his ability to understand the consequences of the offence; (d) and the circumstances in which he allegedly committed the offence. The preliminary assessment, indeed, has been on all these aspects. Agreed. But has the Board found the child fitting into the scheme on all four counts?

88. I reckon of the four aspects—physical capacity, mental ability, understanding, and the circumstances—none is dispensable. They all must be present, for they are not in the alternative. Let us remind ourselves, just because the statute permits a child of 16 years and beyond can stand trial in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subject to adult punishment. It is not a default choice; a conscious, calibrated one. And for that, all the statutory criteria must be fulfilled.

89. Here, the Social Investigation Report records many factors uniformly in the older juvenile's favour. It misses out on one very vital aspect: the neighbourhood perception of the juvenile. It records an improbable circumstance: that in a residential apartment, none was present to provide information on that count. On every other parameter, the Report favours the juvenile. In fact, the juvenile makes a clean breast of the incident or crime and expresses remorse for the accident, as he calls it. It is, true, an extra-judicial confession. So is what the police have extracted from him about the child's death. The older juvenile did report to the Probation Officer about the police brutality and the Report responds to it. It has informed the Board about the juvenile's allegation.

90. Despite the older juvenile's "confession" to crime, the Report records that he has been manipulative and evasive—even contradictory. But the very Report belies it. Perhaps, the gravity of the offence and the

public outcry must have heavily weighed on the Report. Let us take, for want of better evaluative norms, *Kent's* criteria and assess the Board's justification to try the older juvenile as an adult:

(1) The seriousness of the alleged offense to the community and whether protecting the community requires a waiver:

The offence serious—even grave—and the community needs protection. But the Social Investigation Report misses out on gathering the community's opinion whether it needs protection from this juvenile. Is he a predator on the prowl and out to repeat the offence with or without provocation? The older juvenile, in fact, is an ordinary, unremarkable neighbourhood boy.

(2) Was the alleged offence committed in an aggressive, violent, premeditated, or willed manner?

No. Even the extra-judicial confession does not spell out that it was.

(3) Was the alleged offense committed against persons or against property, with a greater weight attached to offenses against persons, especially if personal injury resulted.

The alleged offence answers this claim here.

(4) The prosecutive merit of the complaint; that is, is there evidence upon which the court may be expected to return a guilty verdict?

Very likely (only for the evaluative purpose, though)

(5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are

adults.

It does not apply here.

(6) The sophistication and maturity of the juvenile by consideration of his home, environmental situation, emotional attitude, and pattern of living:

Post the alleged offence, the juvenile seems to have displayed some sophistication in making calls of ransom only to deflect the police attention. But the juvenile's home, environmental situation, emotional attitude and pattern of living are normal or unremarkable. Especially, his family and pattern of living are almost ideal, as per the Report.

(7) The record and previous history of the juvenile, including previous contacts with the law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions.

To this criterion, the answer is a clear no. The juvenile had been pursuing his education, had been under strict parental care, and has no criminal track record.

(8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by using the procedures, services, and facilities currently available to the juvenile court.

On this count, we may note that post the incident, the parents faced social opprobrium and shunning. They were forced to shift to some other place. They preferred the juvenile to be kept in the Observation Home.

91. In the Observation Home, the older juvenile's conduct is

reported as good. He studiously pursued his studies and even cleared the Board examination. Both the Social Investigation Report and the MH Report reveal that the juvenile has been remorseful about the event and displayed a calm, unagitated mind.

92. The explanation to Section 15 of the Act clarifies that the preliminary assessment is not a trial; it is an exercise to assess the child's capacity to commit and understand the consequences of the alleged offence.

93. In this context, if the Board's criteria of evaluation, as affirmed by the Appellate Court, are followed, then every case becomes an open and shut case. If the child is 16 or above and is capable of committing the offence and understanding the consequences, that will suffice. I am afraid it ought to be more than that. The whole endeavour of the JJ Act is to save the child in conflict with the law from the path of self-destruction and being a menace to the society. It is reformative, not retributive. Section 15, I believe, must be read and understood keeping in view the objective that permeates the whole Act and the spirit it is imbued with.

94. That to contain crime, the State must be strict and the punishment must be harsh is an intuitive assertion; but sometimes the solution to the crime are counterintuitive. Steven D. Levitt and Stephen J. Dubner, in their popular book *Freakonomics*[16], have

16[] In the introductory chapter, The Hidden Side of Everything,

hypothesized that the juvenile crime in a few of states of the US has come down thanks to Roe v. Wade, a judgment of the American Supreme Court that legalized abortion. Critics apart, there can be ideas that are worth exploring. It is equally worthwhile, first, to explore for ideas, instead getting stuck in a predictable, plebian approach to societal problems.

95. Let us not forget public opinion is versatile. One day it weeps for the victims and cries vengeance, sometimes more than the victims themselves want. The next, it decries prison as a 'school of crime'.[17]

What Does Neuroscience Say?

96. "Weathering teenagers' adolescence often means just riding out the rough seas with them until calmer waters are reached," observes the noted neuroscientist Frances E. Jensen (with Amy Ellis Nutt), under the Chapter Mental Illness, in his book *The Teenage Brain*[18]. Then under the Chapter "Crime and Punishment", he quotes Steven Drizin of Northwestern University in Chicago, a distinguished legal scholar, to the effect that, "Juveniles function very much like the mentally retarded. The biggest similarity is their cognitive deficit. [Teens] may be highly functioning, but that doesn't make them capable of making good decisions." Frances E. Jensen et al supply the justification for that observation: "Teens, we now know, engage the

17[] Children Who Kill, Edited by Paul Cavadino, Waterside Press in association with British Juvenile and Family Courts Society, Ed.2002, p.173

18[] HarperCollins Publishers, eBook

hippocampus and right amygdala when faced with a threat or a dangerous situation—this is why they are prone to being emotional and impulsive—whereas adults engage the prefrontal cortex, which allows them to more reasonably assess the threat. We know that the risk factors for teens committing violent acts include seeing violence and being the victims of it themselves."

97. Frances E. Jensen et al endorse the view of Valerie Reyna, a teacher and researcher in the Department of Human Development at Cornell University, who summed up the competence of adolescents in the juvenile justice system when she wrote in a 2006 journal article: "In the heat of passion, in the presence of peers, on the spur of the moment, in unfamiliar situations, when trading off risks and benefits favors bad long-term outcomes, and when behavioral inhibition is required for good outcomes, adolescents are likely to reason more poorly than adults do."

98. Merely on the premise that the offence is heinous and that it lends to the societal volatility of indignation, we are bracing for juvenile recidivism. Retributive approach vis-à-vis juveniles needs to be shunned unless there are exceptional circumstances, involving gross moral turpitude and irredeemable proclivity for the crime. Condemned, any juvenile is going to be a mere numeral in prison for a lifetime; reformed, he may redeem himself and may become a value addition to the Society. Let no child be condemned unless his fate is

foreordained by his own destructive conduct. For this, a single incident not revealing wickedness, human depravity, mental perversity, or moral degeneration may not be enough. Just deserts are more than mere retribution.

99. The Society, or restrictively the aggrieved person, views any problem *ex post*; it wants a wrong to be righted or remedied to the extent possible. The courts, especially the Courts of Record, view the same problem *ex ante*. "It involves looking forward and asking what effects the decision about this case will have in the future"[19]. To be more accurate, the courts balance both perspectives. I reckon Section 15 of the Act requires us to balance both the competing perspectives: *ex post* and *ex ante*.

100. So I conclude that the Board, in the first place, has mechanically relied on the Social Investigation Report and MH Report, without analysing the older adult's case on its own. Similarly, the Appellate Court has also endorsed the order in appeal, without exercising the powers it has under Section 101. So both fail the legal scrutiny; they have failed to exercise the jurisdiction vested in them.

About the Younger Juvenile:

101. Given the reversal of findings for the older juvenile, I reckon the younger juvenile's case requires little cogitation. Suffice it to say, that his role in the alleged crime came after the baby's death. In

19[] The Legal Analyst, Ward Farnsworth, The University of Chicago Press, Ed. 2007. P. 5

that context, both the Board and the Appellate Court have felt that he would be chargeable under Section 201 of IPC. That applied, it does not amount to heinous crime.

102. *Prima facie* Section 302 IPC does not apply to the younger juvenile. And how Section 34 IPC applies is too premature a question that needs no answer right now. In *Virendra Singh v. State of M.P.*[20], the Supreme Court has held that vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled: the mental element or the intention to commit the criminal act conjointly with another or others; and the actual participation in one form or the other in the commission of the crime. Thus, Section 34 concerns the question of constructive criminality, and it is a matter of trial. Then, Section 385 attracts a maximum sentence of two years. Finally remains Section 201.

103. As we have already discussed, a heinous offence is the offence for which the minimum punishment is seven years or more. But under Section 201, seven years is the maximum punishment, not the minimum. Therefore, the ratio of *Saurabh Jalinder Nangre* can be applied.

104. Even the Board and the Appellate Court have held that the younger juvenile must be tried only a juvenile. And that finding needs no interference.

20**[]** (2010) 8 SCC 407

Result:

Appeal No.1153 of 2018 is dismissed; WP No.1346 of 2018 is allowed, as a result of which the Order, dt. 21st February 2018 passed by the learned Special Judge for Greater Mumbai in Criminal Appeal No. 680 of 2017 is set aside. So the older juvenile, too, shall be tried as a juvenile. No order on costs.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.