Rajasthan High Court - Jodhpur
Durga vs State Of Rajasthan on 15 April, 2019
Bench: Sandeep Mehta

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

D.B. Criminal Appeal No. 27/2019

Smt. Durga W/o Shri Bherulal Meena, aged about 20 years, R/o Dhariyakhedi, Police Station Suhagpura, Pratapgarh.
(Presently lodged in District Jail, Pratapgarh).
----Petitioner

Versus

State Of Rajasthan
----Respondent

For Petitioner(s) : Mr. Ramesh Purohit
For Respondent(s) : Mr. J.P.S. Choudhary, PP

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

JUDGMENT

Date of Pronouncement: 15/04/2019
Judgment reserved on : 11/02/2019
Reportable

(BY THE COURT: PER HON'BLE MEHTA, J.)

The appellant Smt. Durga (date of birth 03.08.1998) has been convicted and sentenced as below vide judgment dated 12.12.2018 passed by the learned Sessions Judge, Pratapgarh, in Sessions Case No.115/2016:

Offences	Sentences	Fine	Fine Default sentences
Under Section 302 IPC	Life Imprisonment	Rs.5,000/	Six Months' additional simple Imprisonment

Being aggrieved of her conviction and sentences, the appellant has preferred the instant appeal under Section 374(2) Cr.P.C.

(2 of 25) [CRLA-27/2019] Facts in brief are that the complainant Unkar (PW-3) lodged a written report (Ex.P/3) at the Police Station Suhagpura on 16.05.2016 alleging inter alia that on the previous evening i.e. on 15.05.2016, his son Bherulal and his daughter-in-law Durga quarelled with

each other because Durga had not prepared food. They were in a habit of fighting with each other on small issues. The informant took dinner and after pacifying the spouses, he went towards the naala for easing himself. Thereafter, he went to meet Heera. He returned home at 11 o' clock. Thinking that the spouses would have gone to sleep in their room, he put up a cot outside the house and went to sleep. In the night at about 12 o' clock, he again heard the husband and wife quarelling with each other upon which, he woke up and saw Durga having an axe in her hand with which, she had assaulted his son Bherulal on his neck. Bherulal was lying in the Baramada in a bleeding condition. Upon seeing Unkar, Durga threw the axe down and went away. He checked his son for sign of life but found that he had passed away. He alleged that his daughter-in-law Smt. Durga had killed Bherulal by inflicting an axe blow on his neck. On the basis of this report, an FIR No.51/2016 was registered at the Police Station Suhagpura and investigation commenced. The appellant herein was arrested. Her date of birth as entered in the school record was 03.08.1998 and thus, being a juvenile, she was presented before the Principal, Juvenile Justice Board, Pratapgarh.

It may be stated here that despite the appellant, being a 'female' child in conflict with law, at no stage of the case, was any female police officer associated with the investiation.

Be that as it may. After concluding the formalities of investigation, the investigating officer proceeded to file a charge-

(3 of 25) [CRLA-27/2019] sheet against the appellant before the Principal Magistrate, Juvenile Justice Board, Pratapgarh on 27.06.2016 for the offence under Section 302 IPC.

Since the child was arrainged for a heinous offence as defined under Section 2, the Juvenile Justice Board decided to hold an enquiry under Section 15 of the The Juvenile Justice (Care and protection of Children) Act, 2015 (hereinafter referred to as 'the Juvenile Justice Act') to consider whether the child should be tried as an adult. After the statements of two witnesses had been recorded in the purported inquiry under Section 15 of the Act of 2015, the learned Principal Magistrate, Juvenile Justice Board proceeded to pass an order dated 22.08.2016 observing that the child in conflict with law appeared to be posessed of the mental and physical capability to commit a henious offence and that she was in a position to understand the consequences of her act and accordingly directed that the child should be subjected to medical examination through a psychiatrist. The child was sent to the MBH Hospital, Udaipur wherein, she was admitted in the Psychiatry Ward. The Medical Board comprising of three Professors of which, one was from the psychiatry department, carried out the mental and physical assessment of the child and issued its report dated 30.08.2016 in the following terms:

> "Members of the board examined her after admission in psychiatry ward from 27th Aug to 30th Aug 2016 vide indoor reg. no.20588. On mental state examination she was found to be cooperative and communicative, no excitement or retardation, no inappropriateness of mood, hallucinations and delusions were not evident and her higher mental functions are intact and insight is also present. She is aware of the act done by her, she is aware about the consequences and according to her she had conflict with her husband from last 3 yrs off and on and on the day of crime they were

both fighting physically and verbally."

The Principal Magistrate, upon receiving the record,

proceeded to pass an order dated 05.09.2016 observing that as per the secret letter dated 29.08.2016 received from the Probation Social Welfare Officer, Social Justice and Empowerment Department, Pratapgarh., the child accused was feigning mental impairment after killing her husband whereas, the Medical Board's report indicated that she was physically and mentally able person.

Based on this report of the Medical Board, the learned Principal Magistrate, Juvenile Justice Board vide the final order dated 05.09.2016 under Section 15 of the Juvenile Justice Act and directed that the case of the apellant, who was a child in need of care and protection above the age of 16 years on the date of incident, was transferred to the Court of Sessions, Pratapgarh for trial as an adult.

We have carefully perused the order-sheets of proceedings drawn up by the learned Principal Magistrate of the Juvenile Justice Board and find that in none of these proceedings before issuance of the final order dated 05.09.2016 whereby, the learned Principal Magistrate, directed that the assessment of the child had been made under Section 15 of the Juvenile Justice Act and transmitted her case to the Sessions Judge, Pratapgarh for trial, was the child provided any effective opportunity of hearing or legal representation.

Be that as it may. Having appreciated the proceedings of inquiry conducted by the Juvenile Justice Board and the Medical Report, referred to supra, we are of the firm opinion that the same do not stand to scrutiny on the anvil of the mandatory requirements of the Juvenile Justice Act and Rule 10A of The (5 of 25) [CRLA-27/2019] Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter refered to as 'the Model Rules, 2016') which are reproduced herein as below for the sake of ready reference:

"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:

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."

"Rule 10 A. Preliminary assessment into heinous offences by Board.- (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as per provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(6 of 25) [CRLA-27/2019] (3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.

(4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith."

(Emphasis supplied) As per the material available on record, the appellant, who was married (at the tender age of about 14 years) to the deceased for the last three years, was admittedly facing marital strife on a continued basis and thus, unquestionably, she was a child in difficult circumstances.

As is apparent from Sub-Rule 2 of Rule 10A of the Model Rules, 2016, the assistance of the psychologists or psycho-social workers or other experts, which the Board requires for carrying out the preliminary assessment, should have experience of working with children in difficult circumstances. However, neither the assistance of any such psychologist was sought for nor any such psychologist or child psychologist having special experience of working with children in difficult circumstances was associated in the proceedings. Furthermore, we do not approve of the

procedure adopted by the Juvenile Justice Board while making the preliminary assessment inasmuch as, the principles of natural justice were not adhered to and without any justification and without providing legal assitance, the child was sent and admitted in the psychiatry department of the MBH Hospital, Udaipur on the basis of some random secret report (copy whereof was not provided to her). Be that as it may. Rule 10A(4) provides that where the Board, after preliminary assessment under section 15 of (7 of 25) [CRLA-27/2019] the Act, passes an order that there is a need for trial of the child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith. However, a plain reading of the order dated 05.09.2016 indicates that the Board did not provide a copy thereof to the child.

On going through the above order, it is crystal clear that the reasons assigned by the Board in the order dated 05.09.2016 for treating the child delinquent to be fit to be tried as an adult under Section 15 of the Juvenile Justice Act are not cogent, germane and compliant with the requirements of law. The order dt. 05.09.2016 is reproduced herein below for the sake of ready reference:

> "fnukad 05@09@2016 fof/k dh mYya?ku drkZ ckfydk Jherh nqxkZ dks cky lEizs'k.k x`g] mn;iqj ls e; fujks/k&i= Jherh fMEiy ua&2585 fjtoZ iqfyl ykbZu mn;iqj us is"k fd;k x;kA jktdh; ckfydk x`g mn;iqj ls fof/k dh mYya?ku djus okyh ckfydk Jherh nqxkZ dh euksfpfdRld fjiksVZ izkIr gqbZ] ,oa ifjoh{kk dY;k.k vf/kdkjh] lkekftd U;k; ,oa vf/kdkfjrk foHkkx] izrkix<+ dk xksiuh; i= izkIr gqvk] nksuksa "kkfey i=koyh jgsA okn&fe= Jh v:.k i.M~;k ,oa lnL;x.k mifLFkrA mHk; i{kksa dh cgl lquh tkdj i=koyh dk voyksdu fd;k x;kA ifjoh{kk dY;k.k vf/kdkjh] lkekftd U;k; ,oa vf/kdkfjrk foHkkx] izrkix< ds xksiuh; i=kad fnukafdr 29@08@16 esa gLrxr izdj.k esa fof/k dh mYya?ku drkZ ckfydk Jherh nqxkZ ds ifjtu dk uke vafdr djrs gq, mldh vkfFkZd] ikfjokfjd ,oa lkekftd fLFkfr vafdr dj ?kVuk yxHkx pkj ikap ekg iwoZ jkf= dh gksdj ifjokj o iM+kSfl;ksa ds vfHker ds vuqlkj Jherh nqxkZ }kjk mlds ifr HkS:yky dks dqYgkM+h ls okj dj ekj fn;k tkuk vafdr dj mls ean cqf) ,oa ekufld ikxyiu dk ukVd djuk tkfgj fd;k gSA fpfdRlh; esfMdy cksMZ dh fjiksVZ fnukafdr 30@08@16 esa fof/k dh mYya?ku drkZ ckfydk Jherh nqxkZ dh lkekftd ,oa ekufld eukSfLFkfr Bhd gksuk ,oa lkekU; O;ogkj fd;k tkuk vfHkdfFkr fd;k x;k gSA leLr tkap ds vk/kkj ij fof/k dh mYya?ku drkZ ckfydk Jherh nqxkZ }kjk fgfu;l vijk/k dkfjr djuk vfHk;kstu i{k }kjk vfHkdfFkr fd;k x;k gSA pwafd mDr vijk/k dkfjr djrs gq, mDr fof/k dh mYya?ku drkZ ckfydk dh lkekftd ,oa ekufld eukSfLFkfr Bhd gksuk ,oa mlds }kjk dkfjr fd;s x;s vijk/k ds ckjsa esa dkfjr ifj.kkeksa dks tkuuk ,oa mldh mez 16 ls 18 o"kZ ds e/; gksuk ls gLrxr izdj.k dk fopkj.k esjs er esa bl U;k;ky; }kjk fd;k tkuk mfpr izrhr ugha gksrk gSA lkFk gh fizUlhiy eftLVªsV fd"kksj U;k; cksMZ ds lnL;x.k Hkh mDr er ls fMlsUV ugha j[krs gSaA vr% gLrxr izdj.k ds leLr rF;ksa] ifjfLFkfr;ksa ,oa vijk/k dh izd`fr rFkk fof/k dh mYya? ku drkZ ckfydk dh lkekftd] vkfFkZd ,oa ekufld eukSfLFkfr dks n`f'Vxr j[krs gq, ,oa lacaf/kr fjiksVZ ds vk/kkj ij ,oa mez yxHkx 16 ls 18 o'kZ ds chp gksus ds rF; dks n`f'Vxr j[krs gq, rFkk fd"kksj U;k; ckydksa dh ns[kjs[k vkSj laj{k.k vf/kfu;e 2015 esa mYysf[kr /kkjk 18&3 ds vuqlkj fd"kksj U;k; ifj'kn ls gLrxr izdj.k ekuuh; ftyk ,oa l= U;k;k/kh"k egksn;] izrkix<+ dks fopkj.k gsrq varfjr fd;k tkuk U;k;ksfpr (8 of 25) [CRLA-27/2019] izrhr gksrk gSA vr% mDr i=koyh Qsly "kqekj gksdj ntZ uEcj ls de dh tkdj fu;ekuqlkj ckn rdehy ekuuh; ftyk ,oa l= U;k;ky;] izrkix<+ dks izsf'kr dh tkosA

mifLFkr fof/k dh mYya?ku drkZ ckfydk Jherh nqxkZ dks vkxkeh is"kh fnukad 12@09@16 dks ftyk ,oa l= U;k;ky;] izrkix<+ esa mifLFkr j[kus gsrq cky lEizs'k.k x`g] mn;iqj dks ikcan fd;k tkrk gSa ,oa mDr vadu fujks/k&i= esa vafdr fd;k tkosA "

Considered in light of 'Section 15 of the Act and Rule 10A of the Model Rules', we are of the firm opinion that the order dated 05.09.2016 does not stand to scrutiny on the anvil of these mandatory statutory provisions. While undertaking this exercise, the Principal Magistrate failed to advert to the circumstances in which, the offence took place and did not adhere to the presumption of innocence in favour of the child in conflict with law and passed the order dated 05.09.2016 in an absolutely mechanical and laconic manner. In our understanding while invoking Section 15 of the Act and directing the trial of the child as an adult, the Board must remain alive to the situation that the offence had been committed by the child in such a manner which gives rise to an inference that the act was done in a cold blooded or calculated manner which does not co-relate to the child like behaviour of the offender. No such reflection is visible in the order dated 05.09.2016. The order must refer to the circumstances which led to the commission of offence and there must be an active consideration of the fact whether, the child was driven to commit the offence because of the conduct of the victim. The Medical Board's report dated 30.08.2016 is referred to in an absolutely casual manner in the order. It is relevant to mention here that when the child was subjected to interrogation during the course of investigation, she categorically mentioned that she had contracted a love marriage with her husband Shri Bherulal the deceased. After some time, Bherulal started bearing a suspicion in (9 of 25) [CRLA-27/2019] his mind that illicit relations had developed between Durga and his father Unkar. He used to beat her and also treated her like an animal every other day after consuming liquor. In the night of 14.06.2016, Bherural consumed liquor and assaulted her badly. Thereafter, he poured kerosene on her body, on which, she ran away and slept in the bada. On the fateful night i.e. 15.05.2015, she was again badly thrashed and thus she became infuriated. In these difficult circumstances and finding Bherulal to be in an inebriated condition, she gave him a single blow with an axe which proved fatal. Manifestly, the tenor of this statement coupled with the allegations levelled in the FIR indicate that the husband and wife were not keeping on good terms and used to fight with each other on trivial issues. The appellant had been married to the deceased at a very tender age and thus, without any doubt, she cannot be attributed with the mental ability or maturity to understand and weigh the implications of the act which she committed on the spur of the moment after being traumatized by the cruel behaviour of her spouse. The anger of a young girl who is harassed, humiliated and treated cruelly in her matrimonial home and that too by the man with whom, she contracted a love marriage, can very well be understood because the doors of her maternal home are closed for her.

In this background, we are of the firm opinion that the admitted circumstances as reflected from record did not warrant that the appellant's case should have been sent to the Sessions Judge, Pratapgarh for trial as an adult under Section 15 of the Juvenile Justice Act.

(10 of 25) [CRLA-27/2019] Be that as it may. Since the appellant was not provided the copy of the order dated 05.09.2016, manifestly, she was deprived of the opportunity to assail the same in appeal. The Sessions Judge Pratapgarh, framed charge against the appellant for the offence under Section 302 IPC vide order dated 09.02.2017. She pleaded not guilty. The prosecution examined as

many as 12 witnesses in support of its case. The appellant, upon being questioned and confronted with the prosecution allegations in her statement under Section 313 Cr.P.C., denied the same and claimed to have been falsely implicated. However, no evidence was led in defence. Upon conclusion of the trial, the learned Sessions Judge, proceeded to convict and sentence the appellant as above by judgment dated 12.12.2018 immediately whereafter, the appellant was sent to the Central Jail Udaipur to suffer the sentence.

We have gone through the entire prosecution evidence recorded during the trial. PW-1 Ramesh Chandra testified that Durga was married to Bherulal. She was not conceiving and the husband and wife used to quarrel with each other on this issue. The witness heard that Durga had hit Bherulal with an axe. The significant fact which comes out from the evidence of this witness is that Durga (who was a minor child of about 16-17 years as on the date of the incident) was being pressurised by her husband (the deceased) for bearing a child. The deceased husband was probably carrying a grudge in his mind that the appellant was not bearing a child and thus, he was pressurising her on this count. The appellant had every right to resist the same because she was not mature enough, mentally and physically, to bear a child. Thus, weighed on a scale of emotions, the grievance of the appellant (11 of 25) [CRLA-27/2019] was quite genuine and the deceased had no justification in pressurising her on this issue.

PW-2 Shanker Lal is a witness who reached the spot after the incident had occurred. Unkar told him of the incident.

PW-3 Unkar, who was the first informant, testified in his evidence that the husband and the wife used to quarrel with each other because Durga was not bearing a child. She was also burdened with the responsibility of doing the household jobs and thus also, she was feeling aggrieved. The witness repeated the allegations set out in the FIR and alleged that he went inside the house in the night at about 12 o' clock and saw Durga having an axe in her hand. She ran away on seeing the witness. Bherulal was lying dead.

PW-5 Naru, PW-6 Dharmchand and PW-7 Sunil claimed to have reached at the spot after the incident took place. Some of them were associated in the proceedings of seizure etc. undertaken at the spot.

PW-8 Dr. Ramesh Chandra Shukla conducted postmortem on the body of the deceased Bherulal and noticed a solitary incised wound on his neck which proved fatal. The doctor issued the postmortem report (Ex.P/10).

PW-9 Constable Maya was posted at the Police Line, Pratapgarh. She was associated in the detention of Durga. She alleged that Durga gave an information under Section 27 of the Evidence Act in her presence. However, in cross-examination, she admitted that the weapon of offence was recovered while lying at the place of the incident.

(12 of 25) [CRLA-27/2019] PW-10 Omveer Singh, Constable gave evidence regarding the seizure of the axe and the site inspection proceedings.

PW-11 Deepak Kumar was posted as the SHO of the Police Station Suhagpura, District Pratapgarh at the relevant time. He conducted the entire investigation of the matter and filed the charge-sheet against the appellant.

PW-12 Shivlal was associated as motbir in the proceedings pertaining to the detention of the appellant Durga.

On a perusal of this entire calender of witnesses, it is clear that not a single officer from the Special Juvenile Police Unit was ever associated with the investigation. The Constable Maya was only called to attest the detention memo prepared by the SHO Deepak Kumar and therefore, it is manifest that the investigation of the case was not carried out in accordance with the mandatory requirements of the Juvenile Justice Act and the Model Rules which aspect shall be elaborated hereinafter.

It is noteworthy that during the course of the trial and no sooner, the appellant crossed the threshold of 18 years, the learned Sessions Judge, Pratapgarh passed an order dated 19.08.2017 directing that she be sent to the District Jail, Pratapgarh. Ex-facie, the said order is also grossly illegal and contrary to the mandate of Section 10 of the Juvenile Justice Act which prohibits that no child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. After crossing the threshold of 18 years, the child accused had to be sent to the place of safety as per Section 19(3) read with Section 49 of the Juvenile Justice Act and could not have been transferred to the District Jail. We hold that on account of the child being sent to the (13 of 25) [CRLA-27/2019] District Jail, Pratapgarh contrary to the statutory prohibition, all further proceedings of the trial are vitiated.

Section 107(2) of the Juvenile Justice Act reads as below: "107(2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman."

Thus, constitution of a Special Juvenile Police Unit in each district head by a police officer not below the rank of a Dy. S.P. with two social workers having experience of working in the field of child welfare of whom one shall be a woman, is a mandate of law.

Rule 86(5) of the Model Rules reads as below: "86(5).-(5) The police officer interacting with children shall be as far as possible in plain clothes and not in uniform and for dealing with girl child, woman police personnel shall be engaged."

As per Rule 86(5) of the Model Rules, it is a mandate of law that for dealing with the girl child, woman police personnel shall be engaged. However, on a perusal of the entire record, it is clear that neither was the case handled by the Special Juvenile Police Units nor any woman police personnel was ever associated for dealing with the case of the child appellant. In this background, the entire procedure adopted by the investigating officer while investigating the case against the appellant suffers from an irregularity falling short of gross illegality. We are of the firm view that a prejudice

caused to the child offender owing to non- association of a female police officer in the procedure of investigation goes to the root of the matter.

(14 of 25) [CRLA-27/2019] In view of the above discussion made herein above, we conclude as below:

(i) that the entire investigation is vitiated for the reason that no female police officer was associated in the investigation against female child offender. Furthermore, the investigation was not conducted by the Special Juvenile Police Unit as warranted by Section 107(2) of the Juvenile Justice Act;

(ii) that the appellant did not murder her husband in furtherance of any pre-conceived design or in a cold calculated manner, and thus there was no justification for her trial as an adult by a Sessions Court by virtue of Section 15 of the Juvenile Justice Act;

(iii) that the Principal Magistrate failed to adhere to the mandatory requirements of Section 15 of the Act while holding the enquiry and making the assessment;

(iv) that no legal assistance/ effective opportunity of hearing was provided to the appellant child during the preliminary assessment made by the Juvenile Justice Board under Section 15 of the Act and thus also, these proceedings are vitiated;

(v) that the preliminary assessment order is also vitiated for the reason that the appellant was unjustly kept confined in the psychiatry ward of the Hospital and because no psychologist or psycho-social worker having experience of working with children in difficult circumstances (as mandated by Section 15(3) of the Juvenile Justice Act), was associated during the enquiry conducted under Section 15 of the Juvenile Justice Act;

(vi) While holding the inquiry, the Juvenile Justice Board, failed to adhere to the principle that the child shall be presumed to be (15 of 25) [CRLA-27/2019] innocent unless proved otherwise as mandated by Section 3 of the Juvenile Justice Act read with Rule 10A(3) of the Model Rules, 2016. No consideration of this principle is reflected in the order and thus, the illegality is incurable and goes to the root of the matter;

(vii) copy of the order passed under Section 15 of the Act was not provided to the juvenile of thus breaching the mandate of Rule 10A of the Model Rules of 2016;

(viii) that the under-trial child was sent to the District Jail, Pratapgarh vide order dated 19.08.2017 and thus, was treated in gross contravention of the mandate of Section 19(3) read with Section 46 of the Act of 2015 thereby vitiating the entire proceedings before the Sessions Court.

(ix) The child suffered incarceration from 16.05.2016 to 11.02.2019 on which date this Court suspended the sentences awarded to her and thus, she has undergone a custodial period of nearly two years and seven months in a prison which course of action is totally prohibited by law.

Henceforth, the above observations shall be considered to be guidelines in considering cases of juveniles and shall be followed in the letter and spirit.

In arguendo, and considering the facts and circumstances of the case at hand, even if is assumed for a moment that the Juvenile Justice Board was justified in treating the appellant fit to be tried as an adult under Section 15 of the Juvenile Justice Act then too, she could at best be held guilty of the offence under Section 304 II IPC and being below 21 years of age, she would be (16 of 25) [CRLA-27/2019] entitled to benefit of probation. Thus, looking to the custodial period of almost three years already suffered by the appellant, there is no justification to remand the matter to the Sessions Court, Pratapgarh for a fresh trial by strictly adhering to as per the provisions of the Juvenile Justice Act.

We therefore accept the appeal; set aside the impugned judgment dated 12.12.2018 passed by the learned Sessions Judge, Pratapgarh, in Sessions Case No.115/2016 and acquit the appellant of the charge under Section 302 IPC. The sentences awarded to the appellant by the learned Sessions Judge has already been suspended vide order dated 11.02.2019 and she is on bail. Her bail bonds are discharged.

Since we have concluded that the procedure of investigation conducted against the child in conflict with law was suffering from patent irregularity and as, her incarceration in prison was totally unwarranted resulting into gross violation of fundamental rights of the appellant who was minor triable girl and was denied excess to justice without any rhyme and reason, we feel that the appellant deserves to be compensated appropriately.

Hon'ble the Delhi High Court in case case of Court On Its Own Motion vs. Dept. of Women and Child Development and Ors., reported in 2013(3) RCR (Criminal) 382, considered the impact of sending a juvenile to prison and held that such a course of action amounts to deprivation of personal liberty on multiple aspects and is in breach of fundamental rights guaranteed under Article 21 of the Constitution of India. The Hon'ble Court observed as below:

> "10. Today, the concept of personal liberty has received a far more expansive interpretation. The notion that is accepted (17 of 25) [CRLA-27/2019] today is that liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. There can be no cavil in saying that lodging juveniles in adult prisons amounts to deprivation of their personal liberty on multiple aspects.
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> 11. In this backdrop, lodging of juveniles in the prison clearly amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) apart from adverse psychological impact on these children..."

The Hon'ble Bombay High Court had the occasion to consider the aspect of award of compensation in an almost similar situation in the case of Parbatabai Sakharam Taram vs. State of Maharashtra & Ors., reported in 2006 Cr.L.J. 2002 and held as below:

> "20. The learned Counsel appearing for the petitioner has placed reliance for the purpose of seeking compensation against the State on the two decisions of this Court. The first being rendered in the case of Rajeev Shankarlal Parmar and Anr. v. Officer-in-Charge, Police Station Malad, Mumbai and Ors. 2003 (5) Mah LJ 820 and after considering the case Their Lordships found that the petitioner Rajeev who was a juvenile was arrested and detained in prison by the State and found that he was entitled for compensation. The relevant part of the reported judgment in Rajeev's case aptly sums up the case for which the petitioner has knocked the doors of this Court and for the said purpose we are reproducing para Nos. 15 to 21 of the said Judgment as under :-
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> 15. The learned Counsel for the petitioners in this connection referred to two decisions of the Hon'ble Supreme Court in Rudal Shah v. State of Bihar MANU/SC/0380/1983 : 1983CriLJ1644 and Bhim Singh v. State of J. and K. MANU/SC/0064/1985 : 1986CriLJ192 . She also relied upon a decision of the Division Bench of this Court (Aurangabad Bench) in Baban Khandu Rajpur v. State of Maharashtra and Ors. 2002 ALL MR (Cri) 1373. In Bahari Khandu Rajput, though the person was kept in illegal custody only for a period of two and half days, the Court awarded an amount of Rs, 10,000/- to the petitioner therein which was ordered to be paid by the State of Maharashtra. It was, therefore, submitted that in the facts and circumstances, an amount of Rs. 10,000/- per month may be awarded by way of compensation.
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> (18 of 25) [CRLA-27/2019]
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> 16. Considering the facts and circumstances, however, that an offence had been registered against the first petitioner and as stated by the complainant, the accused was of 22 years age, who alleged to have committed offence punishable under Sections 302 and 307 of the Indian Penal Code, and according to the Police Officer, the accused himself had stated his age to be 20 years at the time of arrest (which was disputed by the accused) coupled with the fact that the order dated 7th March, 2003 could not be implemented in view of non-availability of police escort, in our considered opinion, the action cannot be termed mala fide or malicious.
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> 17. In the facts and circumstances, therefore, ends of justice would be met, if the respondent State is ordered to pay to petitioner No. 1 an amount of compensation of Rs. 15,000/- (Rupees Fifteen thousand only). Let such amount be paid within a period of three months from today. Order accordingly.

18. Regarding general guidelines, our attention was invited by the learned Counsel to three decisions referred to above i.e. Sheela Bares, Gopinath Ghosh and Bhola Bhagat.

19. In Sheela Barse, the Apex Court stated:

> If a child is a national asset, it is the duty of the State of look after the child with a view to ensuring full development of its personality. That is why all the statues dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986.

Even where children are accused of offences, they must not be kept in jails. It is no answer on the part of the State to say that is has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in (19 of 25) [CRLA-27/2019] him aversion bordering on hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where, children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

The problem of detention of children accused of an offence would become much more easy of solution if the investigation by the police and the trial by the Magistrate could be expedited. The report of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal Courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are juvenile Courts, they are nothing but a replica of the ordinary criminal Courts, only the label being changed. The same Magistrate who sits in the ordinary criminal Court goes and sits in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command that

they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against Juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach. We would also direct that where a complaint is filed or first information report is lodged against a (20 of 25) [CRLA-27/2019] child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed. If within three months, the charge sheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any. We have already held in Hussainara Khatoon v.

Home Secretary, State of Bihar MANU/SC/0119/1979 : 1979CriLJ1036 that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remained pending before the Magistrate or the Sessions Court for an unreasonable length of time. It is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held upon account of some interim order passed by a superior Court of the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. One of the primary reasons why trial of criminal cases is delayed in the Courts of Magistrates and Additional Sessions Judges is the total inadequacy of Judge strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges. There are Court of Magistrates and Additional Session Judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of Magistrates and Additional Sessions Judges. There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the Courts have to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of Courts, appointing requisite number of Judges and providing number of Judges and providing them the necessary facilities. It is also necessary to set (21 of 25) [CRLA-27/2019] up an Institute or Academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the Court of Magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious, but, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the Court would regard the right to speedy trial as violated. So far as a child accused of an offence punishable with imprisonment of not more than 7 years is concerned, we

would regard a period of three months from the date of filing of the complaint or lodging of the First Information Report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge-sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be quashed. We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of charge sheet and if a charge sheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed. We have by our order dated 5th August, 1986 called upon the State Governments to bring into force and to Implement vigorously the provisions of the Children's Acts enacted in the various States. But we would suggest that instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provision for investigation and trial of offences against children (22 of 25) [CRLA-27/2019] below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who were either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non- implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation.

20. In Gopinath, the Court said; "Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with Juvenile delinquents prevalent in various State is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the First time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court, A way has, therefore, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation, We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with Juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly

followed, would avoid a journey up to the Apex Court and the return journey to the grass-root Court. If necessary and found expedient, the High Court (23 of 25) [CRLA-27/2019] may on its administrative side issue necessary instructions to cope with the situation herein indicated."

21. Another decision on which reliance is placed for the purpose of claiming compensation for illegal detention of Juvenile has been rendered in the case of Salim Ikramuddin Ansari and Anr. v. Officer in Charge, Borivali Police Station, Mumbai and Ors. MANU/MH/0517/2004 : 2004(4)MhLj725 wherein Their Lordships after dealing with the provisions of the Juvenile Justice Act found that the petitioner was wrongfully confined behind the bar for almost three years because of sheer negligence, indifference and inhuman attitude adopted by the authorities and awarded compensation of Rs. 1 lakh on consideration of the totality of the facts and circumstances of the case.

23. We have no hesitation to arrive at a conclusion that this is the case where the State has acted in violation of Articles 21 and 22 of the Constitution of India and Juvenile Act of 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000 and its officials have committed offences punishable Under Section 3 Sub Section 2(i), (ii) and (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for that the State is bound to compensate the victim as provided under Rule 12(4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and particularly in respect of Item No. 18 in the serial number of the schedule, which provides for full compensation on account of damages or loss or harm sustained in victimization at the hands of a public servant. Here, we would like to add -as the original respondent No. 4 having expired, though the State is not able to proceed against him, it is to prosecute all concerned police officers who were part of the investigation team for the offence under Section 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 but the State overlooked violation of these provisions of the said Act and it has failed to prevent atrocities suffered by the petitioner, at the hands of its officials.

27. Now, the only question which remains to be considered is how much compensation should be granted to the petitioner. The victim had been arrested and illegally detained right from the year 1990 when she was of a tender age of 13 years suffered inhumane torture though the petitioner has not in so many words explained that in what manner she was tortured to show that it was an insult to womanhood but one can understand the agony the victim might have suffered in (24 of 25) [CRLA-27/2019] police custody and, therefore, taking all these facts and circumstances into consideration in our opinion a sum of Rs. 5,00,000/- (Rs. Five Lakhs) would be reasonable compensation to which the petitioner is entitled.

28. Therefore, we order the Respondent/ State to pay a sum of Rs. 5,00,000/-(Rs. Five Lakhs) to the petitioner within a period of four weeks from the date of pronouncement of this judgment along with costs of the petition which we quantify at Rs. 10.000/-. We further order and direct the State to conduct a thorough and impartial inquiry by setting up a Special Investigating Team of the State C.I.D. headed by I.P.S. Officer not below the rank of D.I.G. and it should consist of a lady Police Officer not below the rank of Superintendent "of Police and inquiry should be in the direction of the arrest and detention of the petitioner and her prosecution in the three cases. We, by way of abundant caution, would like to observe that none of the Police officials associated with the inquiry

should be in any manner connected with the investigation of the three cases in which the petitioner was tried.

Finding the above observations of the Hon'ble Bombay High Court to be most relevant and germane, we hereby direct that for the blatant violation of the fundamental rights of the accused appellant perpetrated by the circumstances notice herein above, the State of Rajasthan shall make payment of compensation to the tune of Rs.2,00,000/- to the appellant herein. The amount as aforestated shall be deposited in a fixed deposit to be invested in the name of the appellant in a nationalised bank for a period of five years. The interest of the FDR shall be payable on quarterly basis. The compensation as directed above shall be deposited in appellant's name within the next three months. The compliance report shall be submitted for the Court's perusal on 31.07.2019.

A copy of this judgment be placed before Hon'ble the Chief Justice for seeking direction of circulation amongst the Principle (25 of 25) [CRLA-27/2019] Magistrates, Juvenile Justice Boards as well as the Sessions Judges in the State of Rajasthan.

(VINIT KUMAR MATHUR),J (SANDEEP MEHTA),J tikam daiya/-

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