

(2010) 09 UK CK 0141

In the Uttarakhand High Court

Case No : Criminal Jail Appeal No. 16 of 2009

Bhawani Ram @ Pappu Ram @ Desi

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 374(2)
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2010) 3 UC 1498

Hon'ble Judges : Prafulla C. Pant, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : Sri I.S. Mehra, Amicus Curiae Present, for the Appellant; Sri S.S. Adhikari, learned A.G.A. and Sri B.S. Parihar, Brief holder Present for the State, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal, preferred u/s 374(2) of the Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure.) is directed against judgment and order dated 01.05.2009 passed by Sessions Judge, Champawat in Sessions trial No. 04/2006, whereby the said court has convicted Appellant Bhawani Ram @ Pappu Ram @ Desi under Sections 302 and 307 Indian Penal Code. The Appellant has been sentenced to imprisonment for life, and also directed to pay the fine of Rs. 25,000/- u/s 302 Indian Penal Code. He has been further sentenced to rigorous imprisonment for the period of ten years, and also directed to further pay the fine of Rs. 25,000/- u/s 307 Indian Penal Code.

2. Heard Learned Counsel for the parties and perused the lower court record.

3. Prosecution case is that one Janak Bahadur Chandra (PW-1) lodged the first information report (exhibit A-1) at police station Tanakpur on 09.10.2005 at about 08.15 a.m. stating that his cousin sister Devki Devi used to live with her family in Mohanpur Aam Bagh. Her husband was posted in Army. She went alongwith his son Ravi for worshipping to her ancestral house. Her sister-in-law

Smt. Jhhapu Devi remained in her house in Aambagh with her children. On 08.10.2005 some miscreants entered the house and committed MAARPEET with Jhhapu Devi and also assaulted Laxman @ Roshan (son of Devki Devi). Jhhapu Devi died on the spot. On the basis of said report crime No. 570/05 was registered against unknown persons at police station Tanakpur which was investigated by PW-13 S.H.O. Rakesh Chand Thapliyal. Postmortem examination of dead body of Jhhapu Devi was conducted by Pw-11 Dr. K.C. Thakur who recorded as many as 08 ante mortem injuries on the autopsy report (exhibit A-10). During the investigation, accused Appellant Bhawani Ram @ Pappu Ram @ Desi was arrested and his statement was recorded u/s 164 of Code of Criminal Procedure. After completion of investigation, chargesheet (exhibit A-18) was filed against Appellant for his trial in respect of offence punishable under Sections 302 & 307 Indian Penal Code.

4. After the case was committed to the court of Sessions for trial, prosecution got examined PW-1 Janak Bahadur Chandra, PW-2 Jeeva Nand Bhatt, PW-3 Ghananand Bhatt, PW-4 Harish Kandpal, PW-5 Lalit Ram, PW-6 Chandra Bahadur, PW-7 Magan Chand, PW-8 Laxman Singh, PW-9 Constable Nanda Ballabh, PW-10 Dr. Deepak Chand Gehtori, PW-11 Dr. K.C. Thakur, PW-12 Dr. Sammer Chandra, PW-13 Rakesh Chandra Thapliyal and PW-14

Ajay Chaudhary and recorded their statements u/s 164 of Code of Criminal Procedure.

5. The trial court after hearing the parties convicted the accused of the charge of offence punishable u/s 302 Indian Penal Code for committing murder of Jhhapu Devi and also u/s 307 Indian Penal Code for attempting to commit the murder of Roshan @ Laxman (PW-8). The convict has filed this appeal challenging the conviction and sentence recorded by trial court against him.

6. Learned Amicus curiae raised only one point before us that Appellant Bhawani Ram @ Pappu Ram @ Desi was minor (juvenile) on the date incident i.e. 08.10.2005. In this connection a report was called from Juvenile Board through District Judge, Champawat. The Juvenile Board after making enquiry and collecting the evidence submitted its report dated 13.08.2010 to this Court in which categorical finding is given that on 08.10.2005 Bhawani Ram was juvenile. On the basis of the record, Juvenile Board opined that date of birth of accused Appellant Bhawani Ram is 06.05.1989. That being so, on the date of incident (08.10.2005), the Appellant was aged 16 years 05 months and two days.

7. In view of the principle of law laid down in case of Pratap Singh Vs. State of Jharkhand and Another, , we are of the view that in the facts and circumstances of the case, accused Appellant Bhawani Ram is entitled to get the benefit of the Juvenile Justice (Care and Protection of children) Act, 2000.

8. Therefore, we allow this appeal partly. We decline to interfere with the conviction recorded vide its judgment and order dated 06.05.2009 passed by Sessions Judge, Champawat in Sessions trial No. 04/06. However, considering

that the Appellant is juvenile sentence awarded against him is set aside. Appellant is in jail. Appellant Bhawani Ram @ Pappu Ram @ Desi shall be set at liberty forthwith. Let a copy of judgment be sent to the Sessions Judge, Champawat for compliance.