

(2019) 11 UK CK 0105
In the Uttarakhand High Court
Case No : Criminal Appeal No. 38 Of 2005

Santa Singh & Others

APPELLANT

Vs

State State Of Uttaranchal (Now Uttarakhand)

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Juvenile Justice (Care & Protection Of Children) Act, 2000 — Section 2(k)
Code Of Criminal Procedure, 1973 — Section 207, 313, 374
Indian Penal Code, 1860 — Section 34, 323, 324, 307

Citation : (2019) 11 UK CK 0105

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : B.S. Adhikari, learned, A.K. Sah, Sachin Panwar

Final Decision : Partly Allowed

Judgement

R.C. Khulbe, J

1. This appeal, preferred by the appellants u/s 374 of Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 10.03.2005 passed by learned Additional Sessions Judge/Third FTC, U.S. Nagar (Rudrapur) in Sessions Trial No.364 of 2002, State v. Santa Singh & others, whereby the learned Sessions Judge has convicted each of the appellant as under: -

Section

Sentence of Imprisonment

Fine

Imprisonment in default of fine

307/34 IPC

Five Years' R.I.

Rs.2,000/- each

Six months' additional R.I.

323/34

Six months' R.I.

324/34

One year's R.I.

506 IPC

Three months' R.I.

2. All the aforesaid sentences were directed to run concurrently.

3. Before proceeding any further with the merits of appeal, the following facts needs to be mentioned: -

A. According to the certificate issued by the Principal, Primary Public Montessary School, Shaktifarm, Sitarganj (U.S. Nagar), the date of birth of appellant no.2 Bhaan Singh @ Bhagwan Singh is 15.03.1984.

B. According to the Marks Sheet issued by the Board of High School & Intermediate Education, U.P., the date of birth of appellant no.3 Dalip Singh is 04.06.1988.

C. At the time of recording the statement u/s 313 Cr.P.C. on 23.2.2005, the age of Dalip Singh was stated as 18 years while Bhagwan Singh was stated to be 20 years of age.

D. The occurrence took place on 05.11.2001. Thus, at the time of occurrence, appellants Bhagwan Singh and Dalip Singh were below 18 years of age. According to Section 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000, 'juvenile' or 'child' means a person who has not completed eighteenth year of age. Since both these appellants viz. Bhagwan Singh and Dalip Singh had not completed eighteen years of age, hence they were juvenile on the date of occurrence.

E. In such view of mater, the case of appellants Bhagwan Singh and Dalip Singh is remitted back to the Juvenile Board, Udham Singh Nagar for passing appropriate orders in the matter in accordance with law after making due inquiry about the juvenility of these accused/appellants.

4. Now, I will advert to the merits of present appeal as far as appellants Santa Singh and Mangal Singh are concerned.

5. According to the prosecution story, PW2 Kulwant Dass lodged the FIR on 05.11.2001 with the averments that in the wee hours i.e. at 3 AM of that day, he along with his cousin brother Bhajan Dass was returning from the field after

having supervision of the field and motor, as usual. Then, due to a previous animosity, accused persons, being armed with deadly weapons, came out of field. Appellant Santa Singh exhorted his sons to surround the complainant and his associate; when Bhajan Dass tried to flee, then Bhagwan Singh shot a fire which was missed; then the accused caught the complainant and began to beat him with their respective weapon; they surrounded him and began to beat him due to which he suffered injuries near his eye and hand; and when he tried to flee, accused Bhagwan Singh shot the fire which struck on his chest and he fell down being soaked with blood. On the noise raised by the people of village, the accused ran away extending a threat to kill. With these averments, the FIR was lodged.

6. The matter was investigated and after completion of investigation, the Investigating Officer submitted the charge-sheet against the appellants.

7. The case was, accordingly, committed to the court of Sessions after complying with the provisions of Section 207 Cr.P.C.

8. Learned Sessions Judge, U.S. Nagar (Rudrapur) framed the Charge against the appellants, to which they pleaded not guilty and claimed to be tried.

9. To prove its case, the prosecution has examined PW1 Bhajan Dass, PW2 Kulwant Dass, PW3 Dr. Jagdish Chandra Mandal and PW4 Sudhir Kumar Tomar.

10. Thereafter, the statements of the appellants were recorded u/s 313 of Cr.P.C. who denied the allegations made against them. However, they did not produce any oral or documentary evidence in defence.

11. After appreciating the evidence on record and hearing learned counsel for the parties, the Trial Court, vide the judgment and order, under challenge, has convicted and sentenced the appellants, as afore-stated. Feeling aggrieved, the present appeal has been filed.

12. Heard learned Counsel for the parties and perused the entire evidence available on the record.

13. Mr. B.S. Adhikari, learned Counsel appearing for the appellants, fairly submits that, the conviction of the appellants, as recorded by the Court below is perfectly justified as per the evidence recorded before the trial court and he also does not want lay any challenge on the same; he only confined his prayer to the extent that the sentence awarded by the trial court may be reduced to some extent. The reasons shown for such a prayer are that appellants Santa Singh and Mangal Singh are the son and father who are the bread earners in their family; appellant Santa Singh is running in his seventies while the appellant Mangal Singh is now 36 years of age; a period of 18 years has elapsed since the incident took place; and lastly, the appellants were sentenced to five years' rigorous imprisonment, out of which, they have served a reasonable period.

14. After considering the entire facts and circumstances of the case, this Court is

of the view that it would be just and proper to reduce the sentence of the appellants Santa Singh and Mangal Singh to eighteen months' R.I. u/s 307/34 IPC.

15. For the reasons recorded above, the appeal preferred by the appellants Santa Singh and Mangal Singh is partly allowed. The conviction part of the appellants Santa Singh and Mangal Singh u/s 307/34, 323/34, 324/34 and 506 IPC is maintained. However, the sentence of imprisonment, awarded to the appellants Santa Singh and Mangal Singh by the Court below u/s 307/34 IPC, is hereby reduced to eighteen months' R.I. and accordingly they are sentenced to 18 months' rigorous imprisonment instead of 5 years. These appellants, however, shall deposit the fine, as imposed upon them by the Court below.

16. As far as conviction and sentence part of appellants u/s 323/34, 324/34 and 506 IPC is concerned, the same is left intact.

17. The appellants/accused Santa Singh and Mangal Singh shall now undergo the sentence, as modified by this Court. However, the period already undergone by them shall be adjusted from the records as per rules.

18. A copy of this judgment and order along with the LCR be sent to the Court below for compliance regarding the accused Bhagwan Singh and Dalip Singh.