

(2010) 09 UK CK 0152

In the Uttarakhand High Court

Case No : Leave to Government Appeal No. of 2003 in Government Appeal No. 373 of 2003

State of Uttaranchal

APPELLANT

Vs

Baldhar and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 09 UK CK 0152

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Sri B.S. Parihar, Brief holder for the present for the State/appellant.
2. Sri Pramod Tiwari, Advocate holding brief of Sri Rajendra Singh, counsel for the complainant.

Delay condonation application

3. Delay condonation application is allowed. Delay in filing the appeal is condoned.

4. Heard.

5. This appeal alongwith application for leave to appeal, is filed on behalf of State against judgment and order dated 28.10.2002 passed by learned Additional Sessions Judge/Ist Fast Track Court, Haridwar in Sessions trial No. 295 of 1991, whereby respondents namely Baldhar, Subey Singh and Om Prakash are acquitted of charge of the offence punishable u/s 302/34 IPC. The trial court has convicted another accused Manoj S/o Subey Singh u/s 302 IPC and sentenced him to imprisonment for life and also directed to pay fine of Rs. 3,000/-.

6. Learned Counsel for the appellant/State submitted that prosecution witnesses PW-1 Manoj Chaturvedi and PW-2 Dharma Pal Singh have supported the

prosecution story, as such the trial court has erred in law in not believing the testimony.

7. Perusal of the impugned judgment and order shows that role of firing shot at the deceased, is assigned to the Manoj who has been convicted. As to the others, the trial court has discussed the evidence and opined that their implication due to enmity can not be ruled out.

8. We have gone through the impugned judgment and order and considered the submissions of the learned Counsel for the State/appellant and learned Counsel for the complainant, we are of the view that it is not a fit case for granting leave to appeal.

9. Therefore, the application No. 373 for leave to appeal is rejected. Leave is refused. The appeal stands dismissed summarily.