

SUPREME COURT OF INDIA

Babban Rai

Vs.

State of Bihar

(B Agarwal, T Chatterjee and D Jain JJ.)

07.08.2007

ORDER

1. Heard learned Counsel for the parties.
2. The two appellants, along with accused Viswanath Rai, Dharmu Rai, Ram Dayal Rai and Baleshwar Rai, were convicted by the Trial court under Sections 302 and 302/149 of the Indian Penal Code, 1871 [hereinafter referred to as "I.P.C."] and sentenced to undergo imprisonment for life. Dharmu Rai was further convicted under Sections 324 and 148 I.P.C. and sentenced to undergo rigorous imprisonment for one year on both counts. Ram. Dayal Rai was further convicted under Sections 323 and 147 I.P.C. and sentenced to undergo rigorous imprisonment for a period of six months and one year respectively. Baleshwar Rai was further convicted under Sections 341 and 148 I.P.C. and sentenced to undergo rigorous imprisonment for a period of six months and one year respectively. Babban Rai was further convicted under Sections 341 and 147 I.P.C. and was sentenced to undergo rigorous imprisonment for six months and one year respectively. Accused Dharam Nath Rai was also convicted under Section 147 I.P.C. and sentenced to undergo rigorous imprisonment for one year. All the sentences were ordered to run concurrently. On appeal being preferred, the High Court confirmed the convictions and sentences. Hence, the special leave petition was filed before this Court by accused Babban Rai, Ram Dayal Rai, Dharam Nath Rai and Dharmu Rai. Special leave petition in relation to Ram Dayal Rai and Dharmu Rai was dismissed by this Court on 24th September, 2001, whereas leave was granted in relation to accused Babban Rai and Dharam Nath Rai.
3. By order dated 17th January, 2007, a Report was called from the Trial Court in relation to the age of these two appellants on the date of occurrence after giving opportunity to the parties to adduce evidence. Pursuant to the said order, an inquiry was conducted by the Trial Court and Report. dated 3rd April, 2007, has been submitted, according to which appellant-Babban Rai was under sixteen years of age whereas appellant-Dharam Nath Rai was about eighteen years of age on the date of alleged occurrence.
4. Learned Counsel appearing on behalf of the State has not challenged the finding in relation to the age of appellant-Babban Rai; therefore, it is not necessary for us to go into the correctness of finding in relation to the age of this appellant. So far as Dharam Nath Rai is concerned, he has filed

objection to the finding. Learned Counsel pointed out that, in support of the age of this appellant, his father was examined as a witness during the course of inquiry who deposed that Dharam Nath Rai was born in the month of April, 1972. It appears that, pursuant to the order of the Trial Court, during the course of inquiry, a Medical Board was constituted which conducted ossification test and recorded that the age of Dharam Nath Rai on 22th March, 2007 on which date the Report was prepared, was between 35 to 40 years. If the age of this appellant is taken to be 35 years, then his year of birth would be 1972, which is in conformity with evidence of father of the appellant, who was examined as a witness in this case and in case his year of birth, as deposed to by his father as 1972 is accepted, he would be definitely below sixteen years of age and entitled to claim protection under Juvenile (Care and Protection of Children) Act, 2000. This being the position, we are of the view that the Trial Court was not justified in holding that appellant Dharam Nath Rai was not under sixteen years of age on the date of alleged occurrence, i.e., 16th March, 1987.

5. So far as the convictions of these two appellants, as confirmed by the High Court, are concerned, learned Counsel appearing on behalf of the appellants is not in a position to point out any error in the order of the High Court whereby convictions of the appellants have been confirmed. Having gone through the impugned judgment and the records, we also do not find any ground to hold that the High Court was not justified in upholding the convictions of the appellants. This being the position, we are of the view that the High Court has not committed any error in upholding convictions of the appellants. Now, the question arises in relation to sentences. In view of our aforesaid finding that these two appellants were juvenile on the date of alleged occurrence and they have now attained majority, it would be just and expedient to set aside their sentences and pass an order of releasing them as they cannot be sent to remand home.

6. Accordingly, the appeal is allowed in-part and, while upholding convictions of the appellants, their sentences are set aside and they are directed to be released forthwith, if not required in connection with any other case.