

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1865 OF 2008

JOTIN JONKEY

... APPELLANT

VS.

TOMOK KOMUT AND ANR.

... RESPONDENTS

WITH CRIMINAL APPEAL NO. 1866 OF 2008

O R D E R

Altogether, four persons, namely, Jotin Jonkey (appellant in Criminal Appeal No. 1865 of 2008), Raja Padung (appellant in Criminal Appeal No. 1866 of 2008), Talom Takoh and Arun Tamuk (accused Nos. 2 & 3/respondents in Criminal Appeal No. 1866 of 2008) were put on trial for offence under Section 376/34 of the Indian Penal Code ("IPC" for short). The Additional Sessions Judge, FTC-Basar (Arunachal Pradesh) by judgment and order dated 28th April, 2004 passed in Sessions Case No. 444 of 2002 held all of them guilty of offence under Section 376 of the IPC.

2. Jotin Jonkey, Arun Tamuk and Talom Takoh were held to be juvenile at the time of the incident being less than sixteen years of age. No substantive sentence was inflicted on them and they were sentenced to pay a fine of Rs. 30,000/- each and in default to undergo rigorous imprisonment for two years. They were released on probation of good conduct on their executing good behaviour bonds for a period of one year with surety of Rs. 5,000/- each. Appellant Raja Padung was held not to be juvenile being above sixteen years of age on the date of the occurrence. He was, however, found below eighteen years on the date of incident. He was sentenced to two years rigorous imprisonment with a fine of Rs. 10,000/-, in default, to further undergo rigorous imprisonment for one year.

3. Raja Padung, aggrieved by his conviction and sentence, preferred Criminal Appeal No. 134 of 2004. The said appeal was dismissed by Order dated 11th January, 2007 as infructuous.

4. Aggrieved by the inadequacy of the sentence, the informant preferred Criminal Revision No. 8(AP) of 2004 before the Gauhati High Court. The High Court by its impugned judgment set aside the finding of the trial court and held that Jotin Jonkey and Talom Takoh cannot be treated as juvenile. So far as the appellant Raja Padung is concerned, it affirmed the finding of the trial court that he is not a juvenile. Taking into account the manner in which the occurrence has taken place and the nature of the crime, the High Court enhanced the sentence and convicted the aforesaid, Jotin Jonkey, Talom Takoh and Raja Padung to suffer rigorous imprisonment for a period of ten years and to pay a fine of Rs. 10,000/- each, in default, to suffer rigorous imprisonment for a further period of one year.

5. In view of the submissions made by Mr. Vijay Hansaria, learned Senior Counsel appearing on behalf of the appellants, we do not deem it expedient to give in detail the facts of the case. Suffice it to say that the appellants and Talom Takoh have been held to be guilty of offence under Section 376 and sentenced to suffer rigorous imprisonment for ten years and fine with the default clause

and all of them were held to be below eighteen years on the date of the incident.

6. Mr. Hansaria submits that the Appellants being less than eighteen years of age on the date of the occurrence, they have to be treated as juvenile. He submits that his point is not res integra and this Court had occasion to consider this in the cases of Hari Ram vs. State of Rajasthan reported in 2009 (13) SCC 211 and Ashwani Kumar Saxena vs. State of M.P. reported in 2012 (9) SCC 750.

7. Mr. Anil Shrivastav, learned counsel appearing on behalf of the respondent-State of Arunachal Pradesh very fairly submits that the matter stands concluded by the aforesaid judgments of this Court.

8. Undisputedly, the two appellants and Talom Takoh were less than eighteen years of age on the date of the occurrence and, therefore, have to be treated as juvenile. Once it is held so, the sentence awarded by the High Court of ten years rigorous imprisonment is impermissible.

9. It has been pointed out by Mr. Hansaria that appellant Raja Padung has already remained in jail for about two and a half years. In that view of the matter, we are of the opinion that no purpose will be served by sending his case back to the Juvenile Justice Board for awarding appropriate sentence, as in our opinion, the sentence already undergone by him shall meet the ends of justice. Raja Padung is on bail, he is discharged of his bail bonds.

10. So far as appellant Jotin Jonkey and the convict Talom Takoh are concerned, there is nothing on record to show as to the period of sentence they have already undergone. Talom Takoh has not preferred any appeal before this Court. But as his case also stands on the same footing as that of Jotin Jonkey, we deem it expedient to extend the benefit of this judgment to convict Talom Takoh also. As we have held the aforesaid two appellants/convicts as juvenile, we remit the matter to the Juvenile Justice Board to pass appropriate sentence.

11. In the result, the appeals are partly allowed with the directions aforesaid.

.....J.
(Chandramauli Kr. Prasad)

.....J.
(V. Gopala Gowda)

New Delhi; the
March 12, 2013

ITEM NO.101

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1865 OF 2008

JOTIN JONKEY

Appellant (s)

VERSUS

TAMOK KOMUT & ANR.

Respondent(s)

(With office report)

WITH APPEAL(CRL) NO. 1866 of 2008

(With office report)

Date: 12/03/2013 These Appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Vijay Hansaria, Sr. Adv.
(Crl.A. 1866/08) Mr. Avnish Pandey, Adv.
Mr. Shankar Divate, Adv.

(Crl.A. 1865/08) Mr. Rajiv Mehta, Adv. (N.P.)

For Respondent(s) Mr. Anil Shrivastav, Adv.
(State of Arunachal Pradesh)

UPON hearing counsel the Court made the following
O R D E R

The appeals are partly allowed in terms of the signed order.

(S.K. Rakheja)	(Indu Satija)	
Court Master	Court Master	

(Signed order is placed on the file)