

**(2009) 04 AHC CK 0130**

**Allahabad High Court (Lucknow Bench)**

**Case No:** None

Gulley alias Triveni and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** April 1, 2009

**Hon'ble Judges:** Abdul Mateen, J and Suresh Chandra Chaurasia, J

**Final Decision:** Dismissed

### **Judgement**

S.C. Chaurasia, J.

Heard learned counsel for the appellants and learned Additional Government Advocate on the prayer for bail in both these criminal appeals.

Since these appeals arise out of the same Sessions Trial, as such, prayer for bail of both the appellants is being considered jointly.

These appeals have been filed by the appellants against judgment dated 17.12.2007 passed by Additional Sessions Judge, (Fast Track Court No. 3), Gonda in Sessions Trial No. 17 of 2006 whereby both the appellants have been convicted under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced for the maximum term of life imprisonment with fine

It has been argued by the learned counsel for the appellants that at the very inception, in the F.I.R. which was lodged by Ramadhar (P.W.1), names of appellant Jawahir, coaccused Tufani; who happens to be the brother of appellant Jawahir, as well as two unknown persons were mentioned, but during the course of trial, Ramadhar (P.W.1), the complainant of the case, stated that although he had given written F.I.R, but the name of appellant Gulley alias Triveni who had also participated in the commission of crime, some how or the other has been omitted to be mentioned in the F.I.R. .

As it comes out, at about 12.00, in the midnight of 12/13.3.2005, one of the appellants, namely Jawahir along with other coaccused Tufani and two unknown

persons waylaid deceased Pairulal and inflicted injuries on the vital parts of his body by means of Banka. Pairulal died after receiving injuries on the spot. The occurrence was witnessed by P.W. 2 Shiv Kailash and P.W.5 Nankai Devi.

The argument raised by the learned counsel for the appellants is that if appellant Gulley alias Triveni would have participated in the crime, his name ought to have figured in the F.I.R., but his presence has not come out at the very inception when the F.I.R was lodged. It has been submitted that name of Gulley alias Triveni has been introduced later on in the statements of witnesses recorded during trial. It has been emphatically submitted that right from the beginning, the case of the prosecution was that appellant Jawahir along with Tufani and two other unknown persons had inflicted Banka injuries upon Pairulal due to which he died on the spot. It has also been stated that the incident is of midnight and no body had witnessed the occurrence and the appellants have been falsely implicated.

We have gone through the judgment, lower court record and the F.I.R. (Ext. Ka7) lodged by Ramadhar (P.W.1). In the F.I.R. name of Gulley alias Triveni does not find place with respect to participation in the commission of crime. However, names of Jawahir as well as Tufani and two unknown persons find place in the F.I.R. as well as in the statements of the witnesses. It has also been argued that appellant Gulley alias Triveni was on bail during trial and he did not misuse the liberty of bail granted to him.

Taking into consideration the overall aspect of the matter, we are of the view that appellant Gulley alias Triveni (appellant in Criminal Appeal No. 62 of 2008) deserves to be enlarged on bail and prayer for bail of appellant Jawahir (appellant in Criminal Appeal No. 370 of 2008) deserves to be rejected.

Let appellant Gulley alias Triveni, convict of Sessions Trial 17 of 2006 be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Chief Judicial Magistrate, Gonda.

Realization of half of the amount of fine is stayed and the remaining half of the fine shall be deposited by the appellant Gulley alias Triveni within one month from the date of his release on bail.

Court below is directed to transmit to this Court photocopies of bond and sureties filed by appellant Gulley alias Triveni to be preserved in the record maintained here.

So far as prayer for bail of appellant Jawahir is concerned, his prayer for bail is rejected.

A copy of this order shall also be placed on the record of Criminal Appeal No. 370 of 2008, Jawahir versus The State of U.P.