

**(2009) 04 AHC CK 0144**

**Allahabad High Court (Lucknow Bench)**

**Case No:** None

Gauri Shankar and another

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** April 9, 2009

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

**Final Decision:** Allowed

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### **Judgement**

S. C. Chaurasia, J.

This criminal appeal has been filed against judgment and order dated 21.03.2009 passed by Shri Buddhiram, Additional Sessions Judge (Court No. 5), Pratapgarh.

Three accused persons, namely, Gauri Shankar, Santosh Singh and Ashok Kumar were charged under Section 302/34 and 307/34 IPC read with Section 25 Arms Act. Out of the aforesaid three accused, accused Ashok Kumar has been acquitted. Accused appellant Santosh Singh has been convicted under Section 302 IPC and sentenced to imprisonment for life with fine stipulation whereas accused appellant Gauri Shankar has been convicted under Section 323 IPC and sentenced to six months rigorous imprisonment.

We have carefully gone through the trial court's judgment. The Additional Sessions Judge has accepted the entire prosecution case. He has found the prosecution story that accused appellant Gauri Shankar was in possession of a Tangara (a heavy cutting weapon like an axe) and had yielded Tangara blows upon two persons i.e. Suresh Bahadur and Harikesh Bahadur, who were present at the spot at the time of the incident from the reverse side of the Tangara, to be true. From the judgment it also comes out that the accused persons were present at the spot from before and were armed with the weapons attributed to them. The accused had even challenged the complainant party and had exhorted to kill them.

It is much surprising that one of the accused persons, i.e. Gauri Shankar, who was also charged for the offence under Section 302/34 IPC and 307/34 IPC has been

convicted only under Section 323 IPC notwithstanding the fact that the court below had found the place of incident, presence of the accused persons and manner of assault to have been amply proved by the prosecution evidence on record. The defence version put forward by accused appellant Gauri Shankar that he had received injuries in the incident was discarded by the court below.

For the first time we have come across a trial in which accused person, who was charged under Section 302/34 IPC and 307/34 IPC and where the prosecution case has been found to have been proved beyond all shadow of doubt by the trial court and the defence version has been discarded, such accused has been convicted only under Section 323 IPC.

The facts of the case speak volumes and we would have passed orders on the judicial side, but since we are of the view that the matter may be referred to Hon"ble the Chief Justice, we need not divulge further.

Let the file be placed before Hon"ble the Chief Justice for his Lordship's consideration and for passing necessary orders/instituting inquiry, if so deemed proper in the facts of the case.

The file shall be placed before Hon"ble the Chief Justice within one week from today.

09.04.2009

anb/

Hon"ble A. Mateen, J.

Hon"ble S. C. Chaurasia, J.

Admit.

Learned Government Advocate may file objection, if any, within three weeks.

Summon lower court record and list thereafter.

Submission of learned counsel for the appellants is that Gauri Shankar appellant no. 1 has been convicted under Section 323 IPC and sentenced only for six months rigorous imprisonment and at present he is on interim bail.

Accordingly we direct that Gauri Shankar appellant no. 1, convict of Sessions Trial No. 505 of 1999, be released on bail on his furnishing a fresh personal bond and two fresh sureties each in the like amount to the satisfaction of Chief Judicial Magistrate, Pratapgarh.

Court below is directed to send to this Court photocopies of bond and sureties filed by appellant Gauri Shankar to be preserved in the record maintained here.