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(2011) 05 AHC CK 0386

Allahabad High Court

Case No: Criminal Appeal No. 2614 of 2011

Tara and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision: May 3, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304, 323, 34

Hon'ble Judges: Naheed Ara Moonis, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Naheed Ara Moonis, J.
Heard learned Counsel for the Appellants and learned A.G.A. for the State.

2. Admit.

3. Summon the lower court record.

4. A prayer for bail has been made in this criminal appeal, which has been filed against a judgment and order dated 27.4.2011, passed by Additional Sessions Judge, Court No. 2, Azamgarh, in Session Trial No. 03 of 2007, State v. Tara and Ors. arising out of case crime No. 67 of 2004, under Sections 323/34, 304(ii)/34 IPC, P.S. Mubarakpur, District Azamgarh, convicting and sentencing the Appellants u/s 323/34 IPC for six months rigorous imprisonment and u/s 304(ii)/34 IPC for eight years rigorous imprisonment with a fine of Rs. 4,000/- each, with default stipulation.

5. According to the prosecution case on 4.3.2004 a first information report was lodged by the complainant with the allegation that the Appellants and one other person namely Lalman had brutally assaulted the complainant and one Sheshnath with lathi-danda and bricks on account of which Sheshnath had received injuries over his head and he was admitted to the government hospital at Mubarakpur where the doctors had referred him to

Sadar Hospital Azamgarh. According to the medical report one injury was found over the head of injured Sheshnath and he was treated at the Sadar Hospital Azamgarh and while he was taking to B.H.U. Hospital he succumbed to injuries on 11.7.2004.

6. It is contended by the learned Counsel for the Appellants that according to the post-mortem report of the deceased Sheshnath, one injury is found over his head and the doctor has given opinion that the injury over the head was serious but in the post-mortem report it is mentioned that he had died due to shock and septicaemia. It is not ascertainable who has caused the fatal blow and there is inconsistency in the statement of the complainant with the medical evidence. It has not been disclosed where the deceased was treated. The Appellants have been assigned the role of causing injuries with lathi-danda to the complainant and deceased. General role of assaulting has been assigned to all the Appellants and no specific role for causing fatal injury has been assigned to anyone of them. The Appellants have been awarded maximum sentence of eight years rigorous imprisonment u/s 304(ii)/34IPC and for other offence they have been convicted for lesser sentence. The Appellants were on bail during the trial and they had never misused the liberty of bail. There is no likelihood of early hearing of the appeal in near future. In case, they are enlarged on bail they will not misuse the liberty of bail.

7. Per contra the learned AGA has opposed the prayer of bail of the Appellants and submitted that on account of brutally assault the deceased Sheshnath fell unconscious and he remained unconscious till he died. There is active participation of all the Appellants in the commission of aforesaid offence and they have rightly been convicted by the trial court. Therefore they do not deserved to be enlarged on bail.

8. Having considered the submissions made by the learned Counsel for the Appellants as well as the learned AGA and looking to the facts and circumstances of the case, without expressing any opinion on the merits of the case, the prayer for bail of the Appellants is allowed.

9. Let the Appellants, Tara, Ram Dhari and Ramesh, convicted and sentenced in Session Trial No. 03 of 2007, State v. Tara and Ors. arising out of case crime No. 67 of 2004, under Sections 323/34, 304(ii)/34 IPC, P.S. Mubarakpur, District Azamgarh, be released on bail on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned. In the event of depositing 50% of the fine, balance 50% amount shall remain stayed.

10. However, it is open to the complainant to move an application for cancellation of bail in case the Appellants misuse the liberty of bail.