

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:7367-DB

Reserved on :- 27.10.2023

Delivered on :- 25.01.2024

Court No. - 9

Case :- JAIL APPEAL No. - 528 of 2013

Appellant :- Gauri Shankar

Respondent :- State of U.P.

Counsel for Appellant :- Jail Appeal In Person, Amar Singh(Amicus Curiae), Dhananjai Kumar Singh, Dhananjai Singh Amicus Curiae

with

Case :- JAIL APPEAL No. - 527 of 2013

Appellant :- Raju

Respondent :- State of U.P.

Counsel for Appellant :- Jail Appeal In Person, Dhannanjay Kumar Singh

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Sri Dhananjai Kumar Singh, learned Amicus Curiae for the appellants, Sri Arunendra, learned A.G.A. for the State and perused the entire record.

2. Under challenge in these appeals is the impugned judgment and order dated 28.08.2012 passed by the learned Additional District & Sessions Judge, Court No.10, Lucknow in Sessions Trial No.765 of 2009 and Sessions Trial No.1401 of 2008, which emanated from same Case Crime No.509 of 2008, under Sections 302, 307, 326 and 452 of the Indian Penal Code¹, Police Station Thakurganj, District Lucknow, whereby the appellants, namely, Gauri Shankar and Raju have been convicted and sentenced to undergo life imprisonment with a fine of Rs. 20,000/- each for the offence under Section 302 read with Section 34 I.P.C. and in default of payment of fine, they have further been directed to undergo one year's additional imprisonment. They have also been convicted and sentenced to undergo ten years' rigorous imprisonment with a fine of Rs. 20,000/- each for the offence under Section 307 read with Section 34 I.P.C and in default of payment of fine, they have further been directed to undergo one year's additional imprisonment. They have also been convicted and sentenced to undergo ten years' rigorous imprisonment with a fine of Rs. 20,000/- each for the offence under Section 458 I.P.C and in default of payment of fine, they have further been directed to undergo one year's additional imprisonment. All the sentences were directed to run concurrently. However, the appellants were acquitted of charge under Section 326 read with Section 34 I.P.C.

¹ hereinafter referred to as "I.P.C."

3. Since the aforesaid appeals have been preferred to assail the impugned judgment and order dated 28.08.2012 passed by the learned Additional District & Sessions Judge, Court No.10, Lucknow in Sessions Trial No.765 of 2009 and Sessions Trial No.1401 of 2008, which emanated from same Case Crime No.509 of 2008, under Sections 302, 307, 326 and 452 of the I.P.C., Police Station Thakurganj, District Lucknow, therefore, they have been heard together and are being decided by a common judgment.

4. The prosecution case, in nutshell, is that the first informant, Smt. Uma submitted a written report, Ext. Ka-1 on 10.07.2008 stating therein that Gauri Shankar, who is son of real sister of the first informant, used to live with his wife, Laxmi for a long time in a hut at Thakurganj, Lucknow whereas the first informant, Smt. Uma used to live with her family in a hut in Sarai Mali Khan. Her son, Rajjan also lived with the first informant. The accused, Gauri Shankar used to take Rajjan, son of the first informant to his house. The appellant, Gauri Shankar used to beat up Laxmi, therefore, their relation became strained and Laxmi started living with Rajjan. Thereafter, Rajjan kept Lakshmi as his wife. Due to aforesaid reason, on 10.07.2008 at about 2:30 A.M., Gauri Shankar and his younger brother, Raju entered the hut of the first informant, Smt. Uma. Gauri Shankar and Raju poured acid on Rajjan with intention to kill him, due to which, his body was seriously burnt and bruised. Rajjan was

taken to Trauma Hospital, where his treatment started. However, the deceased died on 10.07.2008 at about 03:20 PM due to ante-mortem acid burns, regarding which, the first informant, Smt. Uma gave another written information, Ext. Ka-2 to the police station concened.

5. On the basis of written report, Ext. Ka-1 submitted by the first informant, P.W.-1, Smt. Uma, initially, a first information report, Ext. Ka-5 came to be lodged against the accused/ appellants on 10.07.2008 under Sections 307, 326 and 452 I.P.C. However, on the basis of information regarding death of the deceased, Ext. Ka-2, Section 302 I.P.C. came to be added.

6. The Investigating Officer recorded the statements of the injured/ deceased and other witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared a site plan thereof, Ext. Ka-14.

7. Upon conclusion of investigation, the Investigating Officer submitted charge sheets, Ex. Ka-16 and 17 against the appellants, Gauri Shankar and Raju respectively.

8. The postmortem report of the deceased has been conducted by Dr. S.K. Rai, P.W.-5, which has been proved by him as Ext. Ka-4. As per postmortem report

² hereinafter referred to as "Cr.P.C."

of the deceased, following ante-mortem injuries were found on the person of the deceased:-

"Superficial to deep Acid burn present on allover the face allover, neck front and back of chest, front of upper part of abdomen and both upper limb, skin is corrugated at places."

9. According to the postmortem report, Ex. Ka-4, the cause of death of the deceased is reported to be shock as a result of ante-mortem acid burn.

10. According to the injury report of Laxmi, who is the wife of the appellant, Gauri Shankar, which has been proved by Dr. S.R. Samaddar, P.W.-11 as Ext. Ka-19, following injuries were found on her body:-

"20x8 cm area of pachi scalding (dribbling clean wound) at lateral aspect of Left leg 15 cm below from knee joint."

According to P.W.-11, Dr. S.R. Samaddar, the aforesaid injury could have been caused by some liquid chemical.

11. According to the injury report of Rohit, P.W.-3, nephew of the Rajjan, deceased, which has been proved by Dr. S.R. Samaddar as Ext. Ka-20, following injuries were found on his body:-

"(i) 5x2 cm black burn area at Rt elbow lateral aspect no scalding or smell."

"(ii) 10x5 cm area of patchy blackening on skin dribbling downward."

According to P.W.-11, Dr. S.R. Samaddar, the aforesaid injury could have been caused by some liquid chemical.

12. The accused/ appellants were charged under Sections 302/34, 307/34, 326/34 and 458 I.P.C., who pleaded not guilty and claimed to be tried.

13. In order to bring home guilt of the accused/ appellants, the prosecution has examined Smt. Uma, complainant as PW-1, Sunil Verma as P.W.-2, Rohit as P.W.-3, S.I. Virendra Kumar Singh as P.W.-4, Dr. S.K Rai as P.W.-5, Constable 1359 Rajesh Kumar as P.W.-6, S.I. Tej Narayan Singh as P.W.-7, S.O. Sanjay Maurya as P.W.-8, the Investigating Officer Pradeep Kumar Srivastava as P.W.-9 and the Investigating Officer T.P. Singh as P.W.-10 and Dr. S.R Samaddar as P.W.-11.

14. The accused/ appellants, in their statements, recorded under Section 313 Cr.P.C., have stated the prosecution story to be false. They also stated to have been falsely implicated in this case and claimed to be innocent.

15. No evidence in defence was adduced by the accused/ appellants before the learned trial court.

16. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 28.08.2012, whereby the accused/ appellants came to be convicted as aforesaid. The learned trial court, while convicting the appellants,

has placed reliance upon testimonies of P.W.-1, Smt. Uma, the first informant, and P.W.-2, Sunil Verma and corroboration of their testimonies by medical evidence. However, the learned trial court had not relied upon testimony of P.W.-3, Rohit as also statement of the deceased, Rajjan, which was recorded shortly before his death under Section 161 Cr.P.C. by the Investigating Officer while he was alive.

17. Aggrieved by the aforesaid impugned judgment and order dated 28.08.2012, the appellants have preferred the instant appeals.

18. Learned Amicus Curiae appearing for the appellants has submitted that the finding of guilt of the appellants arrived at by the learned trial court is perverse and contrary to the evidence available on record, therefore, it deserves to be set aside.

19. His further submission is that this crime was committed by some unknown culprits, however, the present appellants have been falsely implicated in this case due to prior enmity. He has also submitted that charges for the offence under Sections 302/34, 307/34 and 458 I.P.C. have not been duly proved against the present appellants, therefore, their conviction under Sections 302/34, 307/34 and 458 I.P.C. is unsustainable.

20. His next submission is that the prosecution has not examined any independent witness in support

of its case. P.W.-1, Smt. Uma and P.W.-3, Rohit are related to the deceased. Therefore, no reliance on testimonies of such related witnesses can be placed. However, learned trial Court failed to appreciate this aspect, therefore, the impugned judgment deserves to be set aside.

21. His further submission is that the learned trial Court has erred in placing reliance on the testimony of P.W.-2, Sunil Verma for convicting the present appellants. He has also submitted that the learned trial Court has wrongly relied upon testimonies of the prosecution witnesses, whose testimonies suffer from gross infirmities and are full of contradictions too.

22. Learned Amicus Curiae appearing for the appellants has also submitted that the appellant, Raju had no motive to commit this offence. There is nothing on record to show that he was sharing common intention with the co-accused, Gauri Shankar to kill the deceased, therefore, his conviction for the offence under Section 302 read with 34 I.P.C. is unsustainable.

23. Learned Amicus Curiae for the appellants has also submitted that the incident is said to have occurred on 10.07.2008. The deceased died on 10.07.2008. However, having regard to nature of injuries caused, the appellants could not have been convicted for the offence under Section 302 read with Section 34 I.P.C.; rather his submission is that, in case, the prosecution story is found to be duly proved by this

Court, the conviction of the appellants for the offence under Section 302 read with Section 34 I.P.C. awarded by the learned trial court deserves to be modified to one under Section 304 Part II read with Section 34 I.P.C.

24. Per contra, learned A.G.A. for the State has submitted that the accused/ appellants rightly came to be convicted by the learned trial Court vide impugned judgment and order dated 28.08.2012, which is well discussed and reasoned. The accused/ appellants were named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. The medical evidence also supports and corroborates the prosecution case. The witnesses of fact are natural witnesses, who were present at the spot at the time of the incident. Even otherwise, it is the prerogative of the prosecution to examine only such witnesses on the basis of whose testimonies, the prosecution proposes to prove its case beyond reasonable doubt. The appellant, Raju along with the appellant, Gauri Shankar entered the hut of the deceased at about 02:30 AM. The appellant, Gauri Shankar had motive to commit this offence. Therefore, he was sharing the intention to kill can easily be inferred in such a situation. He, therefore, submits that interference by this Court is neither warranted nor justified. The appeal being devoid of merits deserves to be dismissed.

25. Having heard the learned Amicus Curiae for the accused/ appellants, learned A.G.A. for the State and upon perusal of record, it transpires that the date of incident is stated to be the intervening night of 9/10.07.2008 at 2:30 A.M. The first information report was lodged on 10.07.2008 at 8:15 A.M. by mother of the deceased, Smt. Uma, who has been examined as P.W.-1. Though the distance of police station from the place of occurrence is reported to be 1.5 kms. only, however, having regard to the fact that the first informant, P.W.-1., Smt. Uma is a lady whose son was seriously injured in this incident, therefore, the fact that the first information report came to be lodged on 10.07.2008 at 08:15 hrs, cannot be said to be so delayed so as to provide time for consultation to falsely implicate someone. It is also necessary to point out that according to written report, Ext. Ka-1, the appellants were known to the first informant against whom named first information report came to be lodged.

26. We find that though the prosecution case is based on the ocular testimonies of the witnesses, however, specific motive for committing this crime has been assigned to the appellant, Gauri Shankar. It is stated in the written report, Ex. Ka-1 that the appellant, Gauri Shankar used to live with his wife, Laxmi. The appellant, Gauri Shankar is nephew of the first informant. According to the written report, Ex. Ka-1, the appellant, Gauri Shankar is the son of the real

sister of the first informant, Smt. Uma. He is, thus, cousin brother of deceased. The appellant, Raju is brother of the appellant, Gauri Shankar.

27. It is the case of the prosecution that the deceased, Rajjan used to visit the house of the appellant, Gauri Shankar. Since the appellant, Gauri Shankar used to beat up his wife, Laxmi, therefore, his relation with his wife, Laxmi was strained, which led her to leave the house of the appellant.

28. It is also the prosecution's case that about four days prior to the date of incident, the deceased brought Laxmi, wife of the appellant, Gauri Shankar to his house to keep her as his wife. Due to this enmity, the appellant, Gauri Shankar along with his younger brother, Raju the other appellant, entered the hut of Rajjan and poured acid upon him with the intention to kill him. The deceased got seriously injured and Laxmi, wife of the appellant, Gauri Shankar also got injured.

29. According to the injury report of Laxmi, wife of the appellant, Gauri Shankar, which has been proved by Dr. S.R. Samaddar, P.W.-11 as Ext. Ka-19, following injuries were found on her body:-

"20x8 cm area of pachi scalding (dribbling clean wound) at lateral aspect of Left leg 15 cm below from knee joint. "

According to P.W.-11, Dr. S.R. Samaddar, the aforesaid injury could have been caused by some liquid chemical.

30. According to the injury report of Rohit, P.W.-3, nephew of the Rajjan, deceased, which has been proved by Dr. S.R. Samaddar as Ext. Ka-20, following injuries were found on his body:-

"(i) 5x2 cm black burn area at Rt elbow lateral aspect no scalding or smell.

(ii) 10x5 cm area of patchy blackening on skin dribbling downward."

According to P.W.-11, Dr. S.R. Samaddar, the aforesaid injury could have been caused by some liquid chemical.

31. The first informant, Smt. Uma has been examined as P.W.-1, who has proved the written reports, Ext. Ka-1 and Ext. Ka-2. She has supported the prosecution case as contained in written report, Ext. Ka-1 and has stated that on the date of incident, she was present in the hut where the deceased was also sleeping. According to this witness, in the same hut, her another son, Basudev, wife of Basudev, namely, Asha and her grand child, P.W.-3, Rohit were also sleeping. The appellant, Gauri Shankar and his younger brother, appellant Raju entered the hut. The appellant, Gauri Shankar was carrying a jug containing acid, which Gauri Shankar poured on Rajjan with an intention to kill him.

32. P.W.-2, Sunil Verma, in his testimony, has stated that in the intervening night of 09/10.07.2008 at about 2:30 A.M., he was performing his duty as a guard

at Vodafone Tower situated at Sarai Mali Khan, Police Station Thakurganj, District Lucknow. Near this tower, the deceased, Rajjan used to live with his brother, Basudev, mother, Smt. Uma, P.W.-1 and other family members in a tin shed. On the date of incident, he heard screams, therefore, he rushed to Rajjan's tin shed and saw the appellants, Gauri Shankar and Raju running away from the tin shed of Rajjan, who were known to him prior to the date of incident. In the tin shed of Rajjan, P.W.-2, Sunil Verma saw Rajjan, whose face, chest, back of chest and arms were burnt and a young child, Rohit, P.W.-3 was also injured. Laxmi, wife of the appellant, Gauri Shankar had also sustained injuries.

33. P.W.-3, Rohit is a child, aged about seven years, who, in his testimony, has stated that on the date of incident, the appellants, Gauri Shankar and Raju had poured acid upon his uncle, Rajjan. This witness has also stated that he received injuries from acid.

34. Upon a close scrutiny of testimonies of witnesses of fact, P.W.-1, Smt. Uma, who is the first informant and mother of the deceased, and P.W.-3, Rohit, who is nephew of the deceased, we find that they used to live with the deceased in a hut. There is nothing on record to show that P.W.-1, Smt. Uma and P.W.-3, Rohit resided somewhere else. Therefore, being mother and nephew of the deceased, we find the presence of P.W.-1, Smt. Uma and P.W.-3, Rohit on the

date and time of incident with the deceased to be natural.

35. So far as the presence of P.W.-2, Sunil Verma is concerned, he has stated on oath that on the date of incident, he was performing his duty as a guard at Vodafone Tower, which is situated near the hut of the deceased. According to this witness, distance between mobile tower, where he was performing his duty as a guard, and hut of the deceased is about fifteen meters only. He reached at the place of occurrence after hearing screams and saw the appellants running away from the place of occurrence and immediately thereafter, he saw the deceased lying in an injured condition. He also saw Laxmi, wife of the appellant, Gauri Shankar and Rohit, P.W.-3, in an injured condition. Therefore, we find presence of this witness to be natural, which cannot be doubted. There is nothing on record to show that this witness was a planted witness. Therefore, the fact that P.W.-2, Sunil Verma heard screams and thereafter reached at the spot and saw appellants running away from the hut of Rajjan as stated above, also appears to us to be quite natural.

36. When we examine the testimonies of P.W.-1, Smt. Uma and P.W.-2, Sunil Vema in the light of postmortem report, Ext. Ka-4 wherein the cause of death of deceased is reported to be shock as a result of ante-mortem acid burn, we find that the postmortem report, Ext. Ka-4 also corroborates the prosecution case

as unfolded by the prosecution witnesses i.e. P.W.-1, Smt. Uma, P.W.-2, Sunil Verma and P.W.-3, Rohit.

37. We have also been able to notice that the statement of the deceased was recorded under Section 161 Cr.P.C. on 10.07.2008 at about 09:30 AM by P.W.-4, the Investigating Officer, Virendra Kumar Singh. However, after the death of the deceased, this statement was proved as Ext. Ka-3 by P.W.-4, Virendra Kumar Singh during trial. In this statement recorded under Section 161 Cr.P.C., the deceased had stated that four days prior to the date of incident, he had brought Laxmi, wife of the appellant, Gauri Shankar in his house and kept her as his wife. The appellant, Gauri Shankar came to his house to take Laxmi back, however, Laxmi did not agree. Therefore, the appellant, Gauri Shankar threatened them of dire consequences. Due to this enmity, in the intervening night of 09/10.07.2008 at about 2:30 A.M. the appellant, Gauri Shankar and his brother, Raju entered the hut of the deceased, Rajjan and poured acid upon him and Laxmi. They cried, which led the appellants to flee away.

38. As discussed above, P.W.-2, Sunil Verma has stated to have seen the appellant Gauri Shankar and his younger brother, Raju, fleeing away from the hut of Rajjan at about 2:30 A.M. when he reached there, after hearing screams.

39. It is also pertinent to mention that P.W.-3, Rohit is a child witness. The learned trial court has

found that he was a tutored witness. We have also examined his testimony in its entirety. Before recording his testimony, the learned Trial Judge has made every effort to ascertain as to whether he is competent to testify or not? After being satisfied that he was capable of deposing, his statement has been recorded, who has stated that on the date of incident, he was present in the hut and he also saw the appellants entering hut. They were carrying jugs containing acid. The appellants, Gauri Shanker and Raju poured acid upon the deceased, Rajjan causing injuries to him. This witness also got injured due to sprinkling of the acid poured upon the deceased, Rajjan. He is an injured witness, who has received injury. The nature of injury sustained by this witness is such, which cannot be self inflicted. Therefore, in our considered view, the entire statement of P.W.-3 could not be rejected in toto. Since, he has received acid injuries, therefore, this fact lend support to the prosecution's case insofar as the prosecution says that on the date of incident, acid was poured on the deceased, which caused various injuries to the deceased. Due to sprinkling of acid, Laxmi and witness, P.W.-3, Rohit also got injured.

40. Hon'ble the Supreme Court in **Maqsoodan v. State of U.P.**³ has held that presence of injured witnesses at the time and place of occurrence cannot be doubted as they had received injuries during the course of incident and they should normally be not disbelieved.

³ **(1983) 1 SCC 218**

41. According to postmortem report, Ext. Ka-4, the injured/ deceased, Rajjan died on 10.07.2008 at about 3:20 P.M. His statement under Section 161 Cr.P.C. was recorded by P.W.-4, S.I. Virendra Kumar Singh at about 09:30 AM. The deceased died within six hours of his statement having been recorded under Section 161 Cr.P.C. There is nothing on record to suggest that due to injuries sustained by the deceased, he was unable to speak and give statement to the Investigating Officer.

42. In **Sri Bhagwan vs. State of Uttar Pradesh**⁴, Hon'ble the Supreme Court while placing reliance upon statement of the victim recorded under Section 161 Cr.P.C., who subsequently died within a short span of time as his dying declaration, has held in paragraph No.25 as under:-

"Keeping the above principle in mind, it can be stated without any scope for contradiction that when we examine the claim made on the statement recorded by PW 4 of the deceased by applying Section 162(2), we have no hesitation in holding that the said statement as relied upon by the trial court as an acceptable dying declaration in all force was perfectly justified. We say so because no other conflicting circumstance was either pointed out or demonstrated before the trial court or the High Court or before us in order to exclude the said document from being relied upon as a dying declaration of the deceased. We reiterate that having regard to the manner in which the said statement was recorded at the time when the crime was registered originally under Section 326 IPC

⁴ **(2013) 12 SCC 137**

within the shortest time possible within which it could be recorded by PW 4 in order to provide proper medical treatment to the deceased by sending him to the hospital, with no other intention pointed out at the instance of the appellant to discredit the contents of the said statement, we hold that the reliance placed upon the said statement as the dying declaration of the deceased was perfectly justified. Having regard to our above conclusion, the said submission of the learned counsel for the appellant also stands rejected."

43. Thus, if we survey the entire prosecution evidence as stated above, we find that the deceased himself, in his statement recorded under Section 161 Cr.P.C., had stated that the appellants, Gauri Shankar and Raju poured acid upon him and Laxmi, due to which, they received injuries. The injuries sustained by the deceased are stated to be acid burn according to postmortem report. After making such statement under Section 161 Cr.P.C., the deceased died within a span of about six hours. He had stated that while the appellant, Gauri Shankar and his brother, Raju were fleeing away, they were seen by P.W.-2, Sunil Verma, who was working as a guard at Vodafone Tower. The statement of P.W.-2, Sunil Verma is also consistent, who has stated that on hearing screams, he reached at the spot and saw the appellants, Gauri Shankar and his brother, Raju, running away from the tin shed of Rajjan, who were known to him prior to the date of incident.

44. In the case of **Babu v. State of T.N.**⁵, Hon'ble the Supreme Court has held that in India Falsus

⁵ **(2013) 8 SCC 60**

in uno, falsus in omnibus does not apply. It is merely a rule of caution. In such cases, the Court has to separate grain from chaff.

45. It is borne out from the records that Laxmi and for that purpose, Basudev and his wife, Asha have not been examined by the prosecution. However, we find that the learned trial court has recorded a categorical finding that despite serious and sincere efforts made by the prosecution, whereabouts of aforesaid witnesses could not be traced and, therefore, they could not be examined. Therefore, defence cannot derive any benefit out of it. In this regard, it is apposite to refer to a judgment rendered by Hon'ble the Supreme Court in the case of **Rohtash Kumar v. State of Haryana**⁶, wherein it has been held that keeping in view the provisions contained in Sections 231 and 311 of Cr.P.C. and Sections 114 and 134 of Evidence Act, the prosecution need not examine all its witnesses. The discretion lies with the prosecution whether to tender or not all witnesses to prove its case. Adverse inferences against the prosecution can only be drawn, if the withdrawal of a witness was with oblique motive.

46. Thus, if we scrutinize the statements of P.W.-1, Smt. Uma, P.W.-2, Sunil Verma and P.W.-3, Rohit coupled with the statement of the deceased recorded under Section 161 Cr.P.C. before his death, which has been proved by P.W.-4, Virendra Kumar Singh as Ext.

⁶ **(2013) 14 SCC 434**

Ka-3, we find that the prosecution has been successful in proving the fact that on 10.07.2008 at about 02:30 AM, the appellants entered the hut of Rajjan and poured acid upon him causing injuries to the deceased. As a result whereof, the deceased, Rajjan died. Laxmi and P.W.-3, Rohit had also received acid injuries in this incident. The appellants were seen running away from the place of occurrence immediately after the commission of offence by P.W.-2, Sunil Verma.

47. However, it is pertinent to mention that in the postmortem report of the deceased, Ex. Ka-4, we do not find any such finding that ante-mortem injuries sustained by the deceased due to pouring of acid by the appellants were sufficient, in the ordinary course, to cause death. Dr. S.K. Rai, in his testimony as P.W.-5, has also not stated that such injuries were sufficient to cause death in ordinary course.

48. Therefore, in view of the aforesaid undisputed fact, we deem it appropriate to hold the appellants guilty of the offence under Section 304 Part II read with Section 34 I.P.C. and sentence each of them to ten years' rigorous imprisonment. However, having regard to the injuries received by Rohit, P.W.-3, the appellants are also liable to be sentenced for the offence under Section 324 read with Section 34 I.P.C., for which the appellants are sentenced to three years' rigorous imprisonment. The conviction of the appellants for the offence under Section 458 I.P.C. and sentence awarded therefor, as recorded by the learned trial

Court, are affirmed. All the sentences shall run concurrently. Consequently, the conviction of the appellants recorded by the trial Court for the offence under Section 302 read with Section 34 I.P.C. and sentence for life imprisonment as also the conviction of the appellants recorded by the learned trial Court for the offence under Section 307 read with Section 34 I.P.C. and sentence awarded therefor, are hereby set aside. The appellants are acquitted of charges under Sections 302 read with Section 34 and 307 read with Section 34 I.P.C.

49. These appeals are, accordingly, **partly allowed.**

50. The appellants, Gauri Shankar and Raju are on bail. Their bail bonds are cancelled. Sureties are discharged. The appellants are directed to surrender before the Court concerned to serve out the remaining sentence within a period of eight weeks from today, failing which, the learned trial Court concerned shall issue warrant for their arrest for serving out the sentence.

51. Let the lower Court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

52. Learned Amicus Curiae, Sri Dhananjai Kumar Singh shall be entitled to Rs.21,000/- (Rupees Twenty

One Thousand Only) from the High Court as fee for his services.

(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)

Order Date :- 25.01.2024
Mahesh