

(2010) 07 AHC CK 0347
In the Allahabad High Court

Kamlesh and Others and Mahendra @ Thakur	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 364
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) 07 AHC CK 0347

Hon'ble Judges : Yogendra Kumar Sangal, J; Abdul Mateen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the appellants Shri Ravi Singh Shishodiya and Shri Niraj Sahu as well as learned Additional Government Advocate.

2. Since both appeals arise out of one and the same judgment, the same are being taken up together for the purpose of consideration of bail. These appeals have been preferred by the appellants, namely, Kamlesh, Jageshwar, Ram Prakash, Gendan Lal and Mahendra alias Thakur against judgement and order dated 23.03.2010 passed by learned Special Judge, SC/ST Act, FTC-6, Hardoi in Session Trial No. 711 of 2000 (arising out of Crime No. 48 of 2000, police station Sandi, district Hardoi) whereby the appellants have been convicted as under:

1. Appellants, namely, Kamlesh, Ram Prakash and Gendan Lal have been convicted u/s 364 IPC and sentenced for maximum term of life imprisonment with fine stipulation.

2. Appellants, Jageshwar and Mahendra alias Thakur have been convicted under Sections 364 IPC read with 3(2)(5) SC/ST Act and sentenced for a maximum term of life imprisonment with fine stipulation.

3. We have gone through the judgment of the court below as well as lower court record.

4. It comes out that one Bhikham Das was kidnapped by the accused-appellants on 29.04.2000 in the midnight at 00.00 hours of which FIR was lodged on 04.05.2000 at 14.45 hours while the distance to the police station from the place of incident is 9 km. This kidnappee-Bhikham Das was later on recovered in the night of 04./05.05.2000. Argument advanced by learned Counsel for the appellants is that Bhikham Das, as per prosecution case, was kidnapped by the accused-appellants of which FIR was lodged on 04.05.2000 and on the same day, in the night, he was recovered. The prosecution in support of its case examined various witnesses, out of those prosecution witnesses PW-2 (Suresh Pal) was declared hostile and thus testimonies remain of PW-1 (complainant) and PW-3 (Kidnappee). Submission is that the testimonies of PW-1 & PW-3 are not so trustworthy so as to convict the appellants u/s 364 IPC. Further argument is that there is no question of making the case by the prosecution u/s 3(2)(5) SC/ST Act.

5. It has also been argued by learned Counsel for the appellants that on the date of recovery of Bhikham Das, two cases were also registered against the appellants; one u/s 307 IPC with respect to firing on police party; and other under 3/25 Arms Act with respect to recovery of firearms but both the cases (relating to Session Trial No. 712 of 2000, 713 of 200, 714 of 2000, 715 of 2000, 717 of 2000, 718 of 2000 & 719 of 2000 respectively) were resulted into acquittal of the appellants vide order dated 22.03.2010 passed by learned Special Judge, SC/ST (PA) Act, FTC-6, Hardoi thus the case of prosecution cannot be said to be reliable for convicting the appellants under Sections 364 IPC read with Section 3(2)(5) SC/ST Act. Further it has been argued that the appellants were on bail during the course of trial and they did not misuse the liberty of bail granted to them and the appeal will take considerable long time for reaching at its logical conclusion.

6. Taking into consideration overall aspects of the matter and without commenting any further on merits of the case, we find it a fit case for bail.

7. Let appellants, namely, Kamlesh, Jageshwar, Ram Prakash, Gendan Lal and Mahendra alias Thakur, convicts of aforesaid Sessions Trial, be released on bail on each of them furnishing personal bonds and two sureties each in the like amount to the satisfaction of Chief Judicial Magistrate, Hardoi.

8. Realisation of half of the fine is stayed and remaining half of the fine shall be deposited by the appellants within one month from the date of their release on bail.

9. The court below is directed to transmit to this Court forthwith photocopies of bond and sureties filed by appellants to be preserved in the record maintained here.