

Court No. - 45

Case :- CRIMINAL APPEAL No. - 1607 of 2021

Appellant :- Udayveer Singh

Respondent :- State of U.P.

Counsel for Appellant :- Ram Neta Singh

Counsel for Respondent :- G.A.

Hon'ble Manoj Misra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

We have heard Sri R.N. Singh for the appellant, Sri J.K. Upadhyay, learned AGA for the State and perused the record.

The appellant is the husband of the deceased and has been convicted under section 302 IPC on the basis of circumstantial evidence. The incriminating circumstances of which the court below took notice were that the deceased died in the wee hours of the morning in her matrimonial home where she resided with the appellant; that the autopsy report disclosed it to be a case of strangulation as the hyoid bone was found fractured; and that there was no plausible explanation with regard to the manner in which the deceased got strangled.

Consequently, by shifting the onus on to the accused to explain the circumstances in which the deceased suffered those injuries, the trial court convicted the appellant.

Learned counsel for the appellant submits that from the statement of P.W.-8 (*the minor son of the deceased*) it appears that the deceased had committed suicide as her body was found hanging and the door had to be broke open to retrieve her body. It has been submitted that once the son of the deceased, examined by the prosecution, disclosed it to be a case of suicide, the appellant was entitled to the benefit of doubt.

Learned AGA has opposed the bail prayer and has submitted that P.W.-8 is a minor. His testimony would have to be treated with great amount of caution and since the medical evidence has ruled out a case of ante-mortem hanging but has disclosed it to be a case of strangulation and there appears no ligature mark, the testimony of P.W.-8 would of no help to the appellant. It was submitted that the appellant has not set up a defence that he was out of the house at the probable time of death of the deceased rather, there is no explanation whatsoever, therefore, under the circumstances, the trial court was justified in shifting the burden on the appellant by virtue of Section 106 of the Evidence Act to record conviction.

We have given our thoughtful consideration to the rival submissions.

Taking into account that the appellant is the husband of the deceased and was residing under the same roof with the deceased and the medical evidence suggests that the deceased died due to strangulation, we are of the prima-facie view that it is not a fit case for bail at this stage.

The bail prayer of the appellant is therefore rejected at this stage.

The hearing of the appeal is expedited. Office shall prepare the paper-book of the appeal within next three months.

List this appeal for hearing in the month of ***October, 2022***.

Order Date :- 19.5.2022

C. MANI