
(2010) 09 AHC CK 0499
In the Allahabad High Court
Case No : Criminal Appeal No. 1437 of 2010

Kadir	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 09 AHC CK 0499

Hon'ble Judges : Jayashree Tiwari, J;Imtiyaz Murtaza, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the appellant and the learned A.G.A. for the State and perused the lower court's record.
2. Prayer for bail has been made on behalf of the appellant who has been convicted by Additional Sessions Judge, court No. 9, Ghaziabad in S.T. No. 463 of 2006, u/s 302 I.P.C. read with Section 34 I.P.C. and sentenced him to undergo life imprisonment with a fine of Rs. 10,000/- and in default of payment of fine further six months imprisonment.
3. The prosecution case in brief is that on 27.1.2006 a written report has been lodged by Vijaypal Singh to the effect that marriage of Prabha, informant's daughter was solemnized with Ishwar about nine years ago. She had two children namely Vishal and Chhaya. Informant's daughter was working in the sabji mandi where Kadir and Naeem were also working. Some money was borrowed by Kadir from Prabha and when she demanded money he threatened to kill her. The murder of her daughter was committed in the mid night of 25/26.1.2006. After receiving this information, the first informant came there, then her son Vishal, who was aged about eight years, told that in the midnight of 25/26.1.2006 Kadir and Naeem were quarreling with his mother in the room. Due to quarreling he woke up and saw in the candle light. Naeem was catching hold his mother's hand and Kadir was cutting the neck of his mother with knife. Report of this occurrence has been lodged and investigation commenced.

4. After the investigation chargesheet has been submitted against the accused person and the Sessions Judge considering the evidence adduced by the prosecution convicted the appellants, as aforesaid.
5. Learned Counsel for the appellant submitted that there is inordinate delay in lodging the first information report. It is further submitted that occurrence took place in the mid night of 25/26.1.2006 and after the inquest report and post mortem examination report first information report has been lodged against the appellant on 27.1.2006. It is further submitted that trial court has convicted the appellant on the basis of testimony of child witness.
6. On the contrary learned A.G.A. opposing the prayer for bail submitted that there are sufficient evidence against the appellant and Sessions Judge has rightly convicted the appellant on the basis of evidence available on record.
7. We have perused the Judgment of Sessions Judge.
8. Perusal of the Judgment indicates that child witness has assigned the role of cutting neck of his mother to Kadir by a knife. The role of appellant Naeem is only of catching hold.
9. Considering the respective submissions of learned Counsel for the parties, facts and circumstances of the case and role of appellant, in our opinion the appellant Kadir is not entitled to be released on bail.
10. Accordingly, prayer for bail made on behalf of appellant Kadir is rejected.
11. Office is directed to prepare paper books and list for final hearing.