



2026:AHC-LKO:6990-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

CRIMINAL APPEAL No. - 1715 of 2011

Yasin

.....Appellant(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellant(s) : Firoz Ahmad Khan, Kailash Nath Mishra,
Mohd Mustafa Khan, Rahul Mishra, Vijay
Nath Pandey

Counsel for Respondent(s) : Ms. Meera Tripathi, Addl. Government
Advocate for the State of Uttar Pradesh

Reserved on 31.10.2025

Delivered on 30.01.2026

Court No. – 9

HON'BLE RAJESH SINGH CHAUHAN, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

(Per; Hon'ble Abdhesh Kumar Chaudhary)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as to “Cr.P.C.”) has been filed by the appellant/ accused-**Yasin** against the judgment and order dated 22.09.2011 passed by the Additional Sessions Judge,

Court No. 11, Gonda, in Sessions Trial No. 371 of 2009 (*State Vs. Yasin and others*) arising out of Crime Case No. 154 of 2009, wherein he has been convicted for commission of the offence under Section 302 I.P.C. and sentenced to undergo life imprisonment along with a fine of Rs.10,000/-. In case of default of payment of fine, the appellant has been directed to further undergo one-year simple imprisonment.

CASE OF THE PROSECUTION

2. The case of the prosecution in nutshell is that Appellant's wife Haseena Bano died in suspicious circumstances in the intervening night of 29th/30th April, 2009. The Village Chowkidar -Ramzan (*P.W.-3*), on receiving such information reached the house of the Appellant/his Wife, wherein he noticed certain injury marks on the body of the deceased-wife, suggesting that the death was unnatural. Hence, the said Village Chowkidar gave a written report of the incident to Station House Officer, Police Station- Katra Bazar, District- Gonda. The Police recorded the said information in the General Diary as G.D. No.14, dated 30.04.2009 at 10:30 AM and thereafter, proceeded to the place of incident.
3. Upon arriving, Police took possession of the body of deceased and conducted a '*Panchayatnama*' wherein all the members (*Panchs*) unanimously said that the death of deceased appeared to be unnatural and therefore, opined for ascertaining the real cause of death. Accordingly, the dead body of the deceased was sent to District Hospital, Gonda for post-mortem. Dr. R.C. Verma (*P.W.-9*) conducted post-mortem of deceased on 30.04.2009 and submitted a post-mortem report, which revealed the cause of death as "*Shock and Hemorrhage as a result of Ante-Mortem fire arm injuries*". The said post-mortem report also revealed various internal and external Anti-Mortem Injuries on the body of deceased.
4. Following the post-mortem report (*Exhibit- Ka-4*), police registered Case Crime No.154/2009 under Section 302 I.P.C. on 01.05.2009 and started investigation of the case. During the course of

investigation, Investigating Officer collected the blood-stained soil and normal soil from the place of occurrence and seized the clothes worn by deceased at the time of incident and then sent the same to Forensic Science Laboratory, Lucknow for analysis. Furthermore, Investigating Officer recorded the statements of witnesses, namely Nanka @ Heena (P.W.-1), Smt. Ahmada (P.W.-2), Ramjan -Village Chowkidar (P.W.-3) and Munawar under Section 161 Cr.P.C. on 02.05.2009.

5. The statement of the Appellant was recorded under Section 161 Cr.P.C. on 03.05.2009 and statement of Shyam Dhar Pandey (P.W.-6), Krishna Dev Shukla (P.W.-4) on 01.06.2009.
6. Subsequently, on 07.06.2009 *i.e.* after more than a month, the Appellant was arrested and, on his disclosure, the police recovered a country made 12 Bore Katta, used by him for committing offence of murder of deceased from the agriculture field of one Babu Khan. The Police took possession of the said Katta and sent the same to Forensic Science Laboratory, Lucknow and recorded the statement of witness of recovery namely Siddiq and Vikrama(P.W.-7) under Section 161 of the Code of Criminal Procedure, 1973.
7. Investigating Officer after completion of investigation found sufficient incriminating material against the Appellant/Accused and therefore filed a charge sheet against him for Trial under Section 302 I.P.C. The Learned Chief Judicial Magistrate, Gonda, took cognizance of the offence and vide order dated 12.11.2009 committed the case for trial before the Learned Sessions Court. Consequently, Session Trial No.371/2009 was registered.

PROCEEDINGS BEFORE THE TRIAL COURT

8. Learned Sessions Court vide order dated 14.12.2009 framed charge against the Appellant under Section 302 I.P.C. for committing offence of murder of his wife- Haseena Bano. However, the Appellant denied the charge and claimed for trial. Therefore, the case was taken up for Trial.

9. During Trial, Ms. Nanka @ Heena (P.W.-1) and Smt. Ahmada (P.W.-2), both daughters of the Appellant, stated in their deposition that the murder of the deceased-Haseena Bano had been committed by Mr. Babu, Mr. Munnawar and Mr. Shakir Ali, all resident of the same village, on account of a prior land dispute. In view of the said statement recorded during the Trial, the Prosecution moved an application under Section 319 Cr.P.C. for summoning and trying the aforesaid three persons. The Learned Trial Court allowed the said application and summoned them to face trial. Upon their appearance, Learned Trial Court vide order dated 30.03.2010, framed charge against the newly added accused under Section 302 I.P.C. for committing offence of murder of Deceased, to which they denied and claimed for Trial.
10. Prosecution examined following witnesses during the course of trial, for proving the charge against the Appellant:

1.	Nanka @ Heena	P.W.-1	Witness of Fact/ Daughter of Deceased (Eye Witness)
2.	Smt. Ahmada	P.W.-2	Witness of Fact/ Daughter of Deceased (Eye Witness)
3.	Ramzan	P.W.-3	Informant (Village Chowkidar)
4.	Krishna Dev Shukla	P.W.-4	Witness of Fact (Court marriage of daughter-PW1 with Salim)
5.	Lakshmi Narayan Shukla	P.W.-5	Witness of Fact
6.	Shyamdhari Pandey	P.W.-6	To prove extra judicial confession of the Appellant
7.	Vikram	P.W.-7	To prove the recovery of fire arm
8.	Keshari Prasad	P.W.-8	To prove the Inquest Report
9.	Dr. R.C. Verma	P.W.-9	Medical Officer to prove the conduct and report of Post-Mortem
10.	Constable Danbahadur Singh	P.W.-10	To prove the registration of Case Crime No.154/2009
11.	S.I. Shashikant Mishra	P.W.-11	Investigating Officer

11. Apart from the oral evidence led by the prosecution, various documents have also been exhibited and proved running from *Exhibit Ka-1* to *Exhibit Ka-15* and *Article Exhibit-1* to *Exhibit-3*.
12. *P.W.-1*, Ms. Nanka *alias* Heena is the daughter of the appellant. *P.W.-1* in her examination-in-chief deposed that on the date of incident, all the family members were sleeping on the rooftop of the house, whereas the deceased was sleeping in a room on the ground floor. At about 12:00 midnight, a blast like sound occurred, upon hearing which the *P.W.-1* came downstairs through the staircase and switched on her torch. In the said light of torch, she saw Babu, Munnawar and Shakir Ali fleeing from the place of occurrence. Shortly after the incident, all the three aforesaid persons returned after changing their clothes and began digging a grave, uttering that deceased should be buried immediately, otherwise the matter would turn into a police case and you all will get implicated. *P.W.-1* further deposed that the appellant had a land dispute with the aforesaid persons and that due to said dispute, they had inimical relationship with her family. She also deposed in her examination-in-chief that on an earlier occasion, the said persons had beaten and broken the hands of deceased and had also set the house on fire and a case in respect thereof was still pending. According to *P.W.-1*, it was on account of said enmity that Babu, Munnawar and Shakir Ali had killed her mother. The witness further stated that she, along with her father went to police station to lodge a report, however, the police did not register the same. She specifically stated that the Appellant had not committed the murder of the deceased.

During her cross-examination, *P.W.-1* stated that she woke up after hearing explosion like sound and by the time she reached to the deceased- Haseena Bano, she had died. *P.W.-1* admitted that she had not seen anyone causing the blast like sound. Although, *P.W.-1* in her cross examination admitted that Investigating Officer had recorded her statement on the very next date of incident, however, denied the fact that she had not disclosed the name of Babu,

Munnawar and Shakir Ali in her said statement made under Section 161 of Cr.P.C.

13. The Prosecution produced Ms. Ahmada as **P.W.-2**. She is the elder sister of P.W.-1 and the daughter of Appellant and the deceased. P.W.-2 in her testimony supported the version of P.W.-1 and stated that the deceased was murdered by neighbors Babu, Munnawar and Shakir Ali due to a land dispute. Furthermore, P.W.-2 in her testimony stated that she saw Babu, Munnawar and Shakir Ali, fleeing from the place of occurrence from a distance of 10 feet and there was nothing in their hands. P.W.-2, contrary to the testimony of P.W.-1, denied any incident of hearing any sound like bomb explosion etc. Although, P.W.-2 in her cross examination admitted that one Mr. Krishna Dev Shukla had mediated and counseled her parents over their dispute regarding Court marriage issue of P.W.-1 (Heena), however, at the same time she denied that there was any dispute between her parents prior to the incident.
14. Prosecution examined Mr. Ramzan, the village chowkidar and informant of the case as **P.W.-3**. In his testimony, the said P.W. stated that upon hearing the death of deceased, he went to the Appellant's house, wherein the deceased was lying dead, covered by a white sheet. There was blood stained on the sheet. Being curious, P.W.-3 inquired about the cause of death from Appellant. The Appellant stated that the deceased was suffering from cholera and consistent vomiting. He also told that the deceased had fallen down from roof/terrace, which caused her death. According to the said witness, since the circumstances appeared suspicious, he stopped the Appellant and other people from digging the grave and informed the police about the incident. P.W.-3 has proved the original information being G.D. No.14 given by him on 30.04.2009 (**Exhibit-Ka I**) to the police.

P.W.-3 in his cross examination testified that Appellant and his relatives were intending to sort out the matter by burying the dead body of the deceased. He further testified that

although, deceased Haseena Bano and the accused persons Babu, Munnawar and Shakir Ali used to quarrel over a small piece of land belonging to Gram Samaj, however, Babu, Munnawar and Shakir Ali have not committed murder of the deceased due to the said land dispute. P.W.-3 further deposed in his cross examination that the Appellant after his arrest had admitted before the police the commission of the offence of murder, and P.W.-3 was present at the relevant time. He also stated that pursuant to the said confessional statement of the appellant, a firearm was recovered on the appellant's disclosure/identification.

15. The prosecution produced Mr. Krishna Dev Shukla, belonging to the village of appellant as **P.W.-4**. Mr. Shukla, in his testimony, stated that the appellant had confessed the commission of offence of murder before Mr. Shayamdhara Pandey (P.W.-6) on 31.05.2009. He further deposed that in the said extra-judicial confessional statement made before P.W.-6, the appellant admitted that he had killed his wife *i.e.* the deceased in a fit of anger following an altercation related to marriage of his daughter Heena. P.W.-4 also deposed that appellant and the deceased had strained relationship over the issue of marriage of their daughter Heena. He also deposed that the appellant was against the marriage of his daughter Heena (P.W.-1) with Mr. Salim, the son of Mr. Subarati, while the deceased was willing to marry Heena with Salim. P.W.-4, in his further deposition stated that on the request of the deceased Ms. Haseena Bano, he had counselled and attempted to mediate between the appellant and the deceased the day preceding the date of incident, relating to the marriage of their daughter Heena (P.W.-1).
16. Mr. Laxmi Narayan Shukla was examined as **P.W.-5**. In his testimony, this witness has stated that upon learning about the death of the deceased, he reached the appellant's house at about 7:30 AM. At that point of time, no one was aware as to who had committed the murder. He further deposed that the daughters of the appellant

had not named or implicated any person in the commission of the said offence.

17. Mr. Shyamdhar Pandey, son of incumbent Village Pramukh was examined as **P.W.-6**. Mr. Pandey in his testimony, stated that upon learning about the death of the deceased, he visited the appellant's house and found the deceased lying dead. He further deposed that when he inquired about the cause of death, the appellant informed him that the deceased had died after falling from the rooftop. However, noticing a firearm injury on the body of the deceased, P.W.-6, advised the appellant not to bury the body and to inform the police about the incident. Thereafter, P.W.-6 proceeded to attend his day-to-day duty. P.W.-6 further deposed that after about one month of the incident, appellant came to meet him and confessed that he had killed his wife by firing a bullet and requested to save him. Upon being asked about the reason for committing the murder, the appellant stated that his wife was intending to solemnize their daughter's marriage against his wishes, which led to an altercation, and that in a fit of anger he had committed murder. Since, the appellant had committed the offence, P.W.-6 denied to extend any help to him. P.W.-6 denied the suggestion that Babu, Munnawar and Shakir Ali had murdered the deceased due to any prior land dispute, or having more member in the vote-list.
18. Thereafter, Prosecution produced Mr. Vikram as **P.W.-7**. The said witness in his testimony, stated that the appellant was arrested by the police on 07.06.2009 and that pursuant to his disclosure statement and identification, a 12-bore Katta (Country made Pistol) was recovered after being dug out from a maze field belonging to one of the co-accused Babu. The said Katta was wrapped in a polythene and was recovered in his presence. P.W.-7 identified and proved the recovery of the aforesaid firearm and also identified his signature appended on the recovery memo, which was exhibited as **Exhibit Ka 2**.

19. Mr. Kesari Prasad was produced as **P.W.-8** by the prosecution. He testified that police came and took possession of the dead body of deceased and thereafter prepared a *Panchayatnama* in his presence. P.W.-8 identified his signature appended on the *Panchayatnama* (Inquest Report) which was exhibited as **Exhibit Ka 3**. He further testified that Appellant was present when the dead body was sealed and *Panchayatnama* was prepared by the police.
20. The prosecution examined Dr. R.C. Verma, Senior Consultant, District Hospital, Gonda, as **P.W.-9** in order to prove the post-mortem report. P.W.-9, in his testimony, stated that on 30.04.2009, Constable Sevalal and Home guard Gangesh Pandey brought the dead body of deceased Haseena Bano, for post-mortem. The dead body was duly sealed and that the seal was opened in his presence. The dead body was identified by the aforesaid police personnel. PW-9 further stated that the deceased was of normal physique and deposed that following ante-mortem injuries were found on her body:

- i. *Firearm wound measuring 3 x 2.5 cm deep, on the right side of the chest, 5 cm below the right mid-clavicular bone with blackening and tattooing.*
- ii. *Firearm injury measuring 3 x 2.5 cm deep to the flesh on the right side of the upper lip, just below the right nostril. blackening and tattooing was present.*
- iii. *Lacerated wound measuring 4 x 5 cm deep on the flesh was on the right side of the face, just below the angle of the mouth.*

P.W.-9 deposed that so far as internal injury is concerned, the pleura was ruptured. Approximately, two liters of clotted blood was found in the chest cavity. There was 200gm undigested pulp in the stomach. The uterus was empty. The time of death of deceased was within one day.

P.W.-9 opined that the deceased died due to ante-mortem shock and excessive bleeding. As regards the timing of death, the said PW deposed that the deceased might have died during the night of 29th/30th April, 2009. P.W.-9 stated that the post-mortem was conducted and report was prepared at 4:45 PM. A large bullet was recovered from the rear side of the deceased's chest. P.W.-9 identified the autopsy report and his signature appended thereon, which is exhibited as ***Exhibit Ka- 4***.

During his cross examination conducted by advocate appearing for the Accused Babu, Munawaar and Shakir Ali, P.W.-9 testified that injury No.1 and 2 might occur if the firearm is fired from within three feet, *i.e.* from very close range. He further testified that both the said injuries might be caused by the same firearm. The said witness also deposed that the injury no.3 may occur due to falling on a hard object. Interestingly, no cross examination was done by the Appellant, although opportunity was given to him.

21. Constable Danbahadur Singh, a Moharir posted in Katra Bazar Police Station, was examined as ***P.W.-10*** by the prosecution. P.W.-10, in his testimony, deposed that Crime Case No.154/09 under Section 302 I.P.C. was registered by him on 01.05.2009 pursuant to receipt of post-mortem report and that in accordance with the directions of S.H.O. He proved the original G.D. Entry and identified his signature appended thereon, which is exhibited as ***Exhibit Ka 5***.
22. S.I. Shabsikant Sharma, the Investigating Officer of the case, appeared as ***P.W.-11***. He deposed that he had investigated the matter. He identified his signatures appended on the various recovery memos and proved the same. He further testified that the site-map of the crime scene was prepared by him and identified his signature appended thereon. P.W.-11 exhibited and proved various documents running from ***Exhibit Ka 6 to Exhibit Ka 15*** and ***Article Exhibit 1 to Article Exhibit 3***. S.I. Shabsikant Sharma deposed that appellant or

any of his family member did not report the incident to the police and that the incident was reported by Village Chowkidar - Mr. Ramzan (P.W.-3). He further deposed that when he reached at the spot, he found that the appellant had dug a grave for burying the deceased. He stated that the police took control of the dead body of deceased and prepared a *Panchayatnama*. Thereafter, the dead body of the deceased was sent to District Hospital, Gonda, for post mortem. Subsequently, statement of witnesses was recorded and that during the course of investigation, the appellant was arrested on 07.06.2009. Thereafter, pursuant to a disclosure statement made by the appellant and on his pointing a firearm (Country made pistol/Katta), used in commission of the crime, was recovered. Upon completion of investigation sufficient incriminating material was found against the appellant and therefore, charge sheet was filed against him.

During the cross examination, P.W.-11 testified that all the family members of appellant were present at the time of preparation of site-map of crime scene. He further testified that he had recorded the statement of Ms. Heena (P.W.-1) and Ms. Ahmada (P.W.-2), both the daughters of appellant, during the course of investigation, however, in their statement they had not named Babu, Munnawar and Shakir Ali for committing the murder of deceased Haseena Bano.

23. After conclusion of the prosecution witness, the statement of Appellant and the other accused persons were recorded under Section 313 of the Cr.P.C. on 17.01.2011, wherein they denied the various circumstances put to them of being involved in the present incident and claimed that the allegation against them are false and motivated.
24. None of the accused persons, including the Appellant produced any defence witness in their favour.
25. Learned Trial Court after hearing the arguments of both sides and perusal of evidence adduced, returned a finding that the

appellant/accused have committed the offence of murder under Section 302 I.P.C. and accordingly, convicted the appellant and directed him to undergo a sentenced of life imprisonment and a fine of Rs.10,000/- In case of default in payment of fine, the appellant have been directed to further undergo a simple imprisonment of one year. However, the Learned Trial Court acquitted the newly added accused persons Babu, Munnawar and Shakir Ali giving them benefit of doubt.

26. Being aggrieved, the appellant has preferred the present Appeal under Section 374(2) Cr.P.C. before this Court.

PROCEEDINGS BEFORE THIS COURT

27. During the pendency of the present Appeal, the Appellant is in jail since 22.09.2011 *i.e* for more than 14 years and four months without remission.
28. The first Bail Application of the Appellant was *rejected* for want of prosecution by a coordinate Bench of this Court vide order dated 26.11.2018 passed in *C.M. Application No. 103783 of 2011*.
29. The second Bail Application (*C.M. Application No. 174728 of 2021*) was *dismissed on merits* vide an order dated 03.03.2022. The third Bail Application also came to be *rejected* by a coordinate Bench of this Court vide an order dated 24.05.2022 passed in *C.M. Application No. 08 of 2022*. However, when the fourth Bail Application (*C.M. Application No. 09 of 2023*) came up for hearing on 31.10.2025, the learned Counsel for the Appellant elected to address his final arguments on merits, rather than for pressing his Bail Application and as such this Court heard both the counsel for the Appellant and the Counsel for the State and vide an order dated 31.10.2025 reserved the present Appeal for judgment, while *dismissing* the fourth Bail Application of the Appellant, being not pressed.

SUBMISSION ON BEHALF OF THE PARTIES

30. Heard rival submissions of Ms. Meera Tripathi, Ld. A.G.A. for State as well as Mr. Kailash Nath Mishra, Learned Counsel for the Appellant.
31. Mr. Kailash Nath Mishra, learned Counsel for the appellant submits that the impugned judgment dated 22.09.2011 is illegal, perverse and have been passed only on surmises and conjectures. He submits that there are major contradictions in the statement of prosecution witnesses. That neither anyone has seen the appellant committing the alleged offence nor there is any reason or motive for committing such crime by the appellant. Mr. Mishra has further submitted that learned Trial Court has erroneously held that the deceased was willing to marry her daughter, Ms. Nanka @ Heena (P.W.-1), to Mr. Salim, son of Mr. Subarati, whereas the appellant was opposed to such marriage, although the fact remains that P.W.-1 had already solemnized a Court marriage, much earlier to the incident. Thus according to him, the opposition of the appellant which has been viewed as a strong motive by Trial Court behind committing murder of the deceased factually did not exist. The learned Counsel further submitted that the said finding of the Trial Court is belied by the testimony of Ms. Nanka @ Heena (P.W.-1) wherein she has categorically stated in her evidence that both of her parents were in favour of her marriage with Salim. Hence, learned Counsel for the appellant submitted that there existed no motive whatsoever on the part of appellant-Yasin to commit murder of his wife Haseena Bano.
32. Learned Counsel for the appellant submitted that in so far as extra judicial confession is concerned, the same is stated to have been made before Mr. Shyamdhara Pandey (P.W.-6). However, the said witness, in his evidence before the learned Trial Court, has failed to disclose either the date or the day on which such alleged extra judicial confession was made. Furthermore, Mr. Mishra, learned Counsel for the Appellant has tried to weave a story around the

statement of P.W.-6, wherein he has stated that his mother is the Village Pradhan and that the family of accused Babu and Munnawar comprises about twenty members, whereas the appellant is alone. Thus, according to Mr. Mishra the testimony relating to alleged extra judicial confession made by the Appellant appears to have been motivated by vote bank politics. In these circumstances, it was argued by him that P.W.-6 cannot be regarded as an independent or neutral witness. It has been argued that, in any case, extra judicial confession is a very weak piece of evidence. He has submitted that wherever the Court intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence and has placed reliance in this regard on the judgment of ***Ramu Appa Mahapatra Vs. The State of Maharashtra***, in *Criminal Appeal No.608 of 2013* reported as **2025 INSC 147**; passed by the Hon'ble Supreme Court. The learned Counsel for appellant has further urged that there is nothing to show that Shyamdhara Pandey (P.W.-6) had any influence with police or had some status to protect the appellant from harassment of police as such there was no reason for appellant to confess his guilt before him and to request him to save him. The reliance in this regard has been placed on judgment passed by the Hon'ble Supreme Court in ***Makhan Singh Vs. State of Punjab***, reported in ***AIR 1998 SC 1705***.

33. Learned Counsel for appellant, while addressing the issue of recovery of weapon of assault, submitted that the said weapon was recovered from the agricultural field of accused Babu allegedly on the pointing out of appellant. Mr. Vikram (P.W.-7) was produced by prosecution as a witness to the said recovery. Mr. Vikram (P.W.-7) in his examination-in-chief stated that the appellant himself dug the ground and handed over the weapon of assault to police, whereas in his cross examination, he contradicted the said version by stating that the weapon was dug out by two police personnel and they handed over the weapon to the Investigating Officer. Further,

P.W.-7 deposed that the weapon was recovered after a period of three to four months from the date of incident, whereas as per the prosecution case, the recovery is stated have to been made on 07.06.2009 *i.e.* after one month and seven days from the date of incident. The witness has also stated that appellant Yasin, another witness Siddique and the Investigating Officer did not append their signature on the recovery memo of the alleged weapon in his presence. In view of the aforesaid infirmities, learned Counsel for the appellant submitted that the prosecution has failed to establish that the alleged recovery of the weapon of assault was affected on the pointing of appellant. Learned Counsel for appellant has further submitted that as per post mortem report a big bullet was found in the body of the deceased but no pellet is said to be recovered from the dead body of deceased. Further, according to the learned Counsel, the alleged recovered weapon is a 12 bore country made pistol as such the injury in the post mortem report is not corresponding to weapon allegedly recovered on the pointing out of appellant. Moreover, even in the ballistic report, the expert has opined that it is impossible to conclude that the recovered weapon (Katta) only, was used in the commission of offence.

34. Finally, learned Counsel for the appellant submitted that burden under Section 106 of the Indian Evidence Act cannot be shifted upon the appellant, particularly when there is evidence to the effect that several other family members and relatives were present at the time of occurrence and the appellant Yasin was sleeping with them on the roof while the deceased was sleeping inside the room. Learned Counsel for the appellant has further submitted that P.W.-1 and P.W.-2 in their testimony have stated that the appellant had gone to the police station to lodge a F.I.R. against the said Babu, Munnawar and Shakir Ali, however, the police did not lodge the F.I.R. Thus, it has been vehemently submitted by the learned Counsel for the Appellant that the learned Trial Court has wrongly come to the conclusion that appellant has not discharged his burden

cast under Section 106 of the Indian Evidence Act. The learned Counsel for the appellant also submitted that the entire case of the prosecution against appellant is based on circumstantial evidence which is not so complete that on the basis of which it can be said that it is the appellant only and no one else would have committed the murder of deceased. The appellant has placed reliance on the principle of law laid down by the Hon'ble Supreme Court in *Dinesh Kumar Yadav Vs. State of Haryana*, reported in *AIR 2023 SC 2795*; *Jose @ Pappachan Vs. The Sub-Inspector of Police & Another*, reported in *2016 (3) JIC 636 (SC)*; and *Nagendra Sah Vs. The State of Bihar*, reported in *(2021) 10 SCC 725*.

35. *Per contra*, Ms. Meera Tripathi, learned A.G.A. appearing for the State, has submitted that the deceased Haseena Bano, wife of appellant Yasin, died in suspicious circumstances during the intervening night of 29/30.04.2009. The deceased had bodily injury. However, despite that the appellant and his family members attempted to bury the deceased without there being given any such information to the Police or taking the deceased to a Doctor. The incident was reported to the police station Katra Bazar, District Gonda, by Mr. Ramzan (P.W.-3), the village chowkidar. Learned A.G.A. has further submitted that the appellant did not participate in the inquest proceedings and also did not engage in any act indicating that, subsequent to the incident, the accused had taken the deceased to a hospital or had consulted any doctor with regard to her treatment.
36. Learned A.G.A. submitted that it is clear from the testimony of P.W.-3 (Informant- Mr. Ramzan) that firstly, the appellant attempted to project a false narrative by claiming that the deceased was suffering from cholera due to which she was vomiting continuously and that on account thereof, she fell down from the roof, resulting in her death. Secondly, when this version was disclosed in public, both the relatives of deceased as well as those of accused/appellant

refused to dig the grave for deceased, which clearly demonstrates that the version narrated by appellant had not been accepted by the gathering present at the spot. Thirdly, it came to the knowledge of the informant that on the date of incident, an altercation had taken place between the deceased and the appellant/ accused with regard to the marriage of the daughter, namely Heena, which clearly establishes the motive attributable to the deceased. Lastly, P.W.-3 has also duly affirmed the recovery of the country made pistol, thereby corroborating the recovery memo.

37. Learned A.G.A stressing on the point of motive submitted that Mr. Krishna Dev Shukla (P.W.-4) in his testimony has clearly stated that there was some altercation going on between the deceased and the appellant/accused, which was told to P.W.-4 by none other than deceased herself, when she had visited the house of said P.W.-4 on 29.04.2009 in the morning. She submitted that the testimony of P.W.-4 corroborates the motive of the appellant.
38. The learned A.G.A., in her concluding submissions, contended that the chain of circumstantial evidence stands fully complete in the present case. It was submitted that the deceased was shot dead inside the house when Appellant was present in the house; the deceased was never taken to any hospital for medical treatment; the accused created a false narrative by claiming that the deceased was suffering from cholera and had sustained injuries after falling from roof; the concerned authorities were never informed about her death. It was further submitted that the accused had clear motive for commission of offence inasmuch as an altercation had taken place between the deceased and the accused a day prior to the incident with regard to the marriage of their daughter. The recovery of the firearm at the instance of the accused was also duly proved, and the firearm injury sustained by the deceased clearly indicated that the shot was fired from a close range thereby corroborating the prosecution version. Moreover, when examined under Section 313 of Cr.P.C., the appellant/accused failed to furnish any reasonable or

plausible explanation with regard to the incriminating circumstances appearing against him.

39. Ms. Meera Tripathi has further vehemently argued that in the aforesaid circumstances, the burden stood rightly shifted upon the accused under Section 106 of the Indian Evidence Act, 1872, which was never discharged. It was urged that the accused was present at the same place where the deceased died and therefore was obliged to explain the facts specially within his knowledge; however, no such explanation was spelt out by the accused. She further submitted that the prosecution has successfully proved its case beyond reasonable doubt and the accused has failed to discharge his burden casted upon him under Section 106 of the Indian Evidence Act. The counsel for the State has also relied on principles of law laid down by Hon'ble Supreme Court in the case of ***Balvir Singh Vs. State of Uttarakhand***, reported in (2023) 16 SCC 575; and ***Ram Gopal VS. State of M.P.***, reported in (2023) 5 SCC Online 158.

ANALYSIS AND FINDINGS

40. We have given our thoughtful consideration to the rival submissions advanced by the learned Counsel for the parties and have carefully perused the entire evidence on record. It is an admitted position that there is no direct eyewitness to the occurrence and the case of the prosecution rests on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the prosecution must establish a complete chain of circumstances which unerringly points towards the guilt of the accused and excludes every possible hypothesis consistent with his innocence. The law on the standard of proof required to prove a case by circumstantial evidence is no longer *res integra*.
41. The law remains that in a case of circumstantial evidence, the burden of proving lies on the prosecution and the prosecution has to discharge its duty by bringing on the record sufficient materials

to show that the circumstances are incompatible with the innocence of the accused and lead to the irresistible conclusion regarding the guilt of the accused. The principles have been enumerated in the case of ***S.D. Soni v. State of Gujarat***, reported in 1992 ***Supp (1) SCC 567*** and ***Union of India v. J.S. Brar***, reported in (1993) ***1 SCC 176***. Further, in the case of ***Tarseem Kumar v. Delhi Administration***, reported in 1994 ***Supp. (3) SCC 367***; it has been held by their Lordships that when the prosecution case is based solely on the circumstantial evidence, the Court must be satisfied:

- “(i) *That the circumstance from which such conclusion of guilt is to be drawn has been fully established; and*
- (ii) *All the facts so established are consistent only with the hypothesis of guilt of the accused and they do not exclude any other hypothesis, except the one sought to be proved; and*
- (iii) *The circumstances on which reliance has been placed are conclusive in nature; and*
- (iv) *The chain of evidence is such that there is no scope for any reasonable ground for a conclusion consistent with the innocence of the accused.”*

It has also further been observed by their Lordships in this very Judgment that:

- “7. *Where the prosecution purports to prove the charge against the accused on the basis of direct evidence, oral or documentary then the evidence so produced, can be considered by the Court on the well-recognized principles including as to when the FIR of the occurrence was lodged, whether the accused was named therein and the version of the occurrence which is being disclosed in the case was disclosed in the FIR or not, the witnesses who have supported the case of prosecution are trustworthy or not. But in a case based on circumstantial evidence, when neither the accused is known nor the manner of occurrence is known to the persons connected with the victim, even the FIR in respect of such cases is lodged after a considerable delay in many cases, because an offence has been committed itself, is not known to anyone. The circumstances discovered by the I.O. during the course of investigation and proved by the prosecution during trial have to be cautiously examined for the purpose of recording a verdict of guilt or giving benefit of doubt to accused.*

8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question.”
(emphasis supplied)

42. In the present case, it stands proved that the deceased Haseena Bano died a homicidal death as a result of ante-mortem firearm injuries. The medical evidence adduced through P.W.-9 (Dr. R.C. Sharma) fully corroborates the prosecution version and rules out any possibility of accidental or natural death. The injuries were caused from a close range and were sufficient in the ordinary course of nature to cause death.
43. It is also undisputed that the deceased died inside the matrimonial home during the intervening night of 29/30.04.2009, when the appellant-husband was present in the house. The conduct of the appellant, both prior to and after the incident, assumes significance in view of Section 8 of the Indian Evidence Act, 1872, which *inter-alia* states as herein under:

8. Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is

influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements; unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Apparently, the appellant neither informed the police about the death of his wife, nor took her to any hospital for medical treatment, and instead attempted to hurriedly bury the dead body as deposed by P.W.-3 (Informant) and P.W.-11 (Investigating Officer). Further, although P.W.-1 (Ms. Heena @ Nanka) and P.W.-2 (Ms. Ahmada), who are the daughters of the appellant, in their testimony have stated that the appellant had visited the Katra Bazar Police Station, Gonda, to lodge a report about the incident, however, the said testimony does not inspire any confidence for the reasons that P.W.-2 in her cross examination has candidly admitted that appellant had not any acrimonious relation with the police nor does it appear from the record and the statement of the witnesses that the police was working under any extraneous pressure for not registering the report of the incident allegedly given by the appellant. Furthermore, from a close scrutiny of the testimonies of P.W.-3 (Mr. Ramzan), P.W.-4 (Krishna Dev Shukla), P.W.-5 (Lakshmi Narayan Shukla) and P.W.-6 (Shyamdhar Pandey) it is apparent that appellant spread a false narrative of death of deceased that the deceased died due to falling from the rooftop, whereas the post-mortem report conclusively states that the deceased had died because of anti-mortem fire arm injuries received by her. The appellant did not provide any explanation whatsoever as to why he made such false statement regarding the death of deceased and tried to cover up the fire arm injuries received by the deceased. These conducts of the appellant strongly go against him. Moreover, it has

come in the deposition of P.W.-11(Investigating Officer) that when he visited the house of the Appellant where the deceased was lying dead, the said P.W. found that the appellant had already dug a grave for burying the deceased.

44. Hence, it is safe to conclude that the appellant never intended nor actually reported the incident to the police and the same was reported only by P.W.-3 (Mr. Ramzan- Village Chowkidar) and apparently the story put forth by P.W.-1 and P.W.-2 seems to be a gimmick. Further, this Court finds rather strange that although P.W.-1 and P.W.-2 tried to mislead and named three other co-accused *i.e.* Babu, Munnawar and Shakir Ali, to be involved in the killing of the deceased, however, neither there is any corroborative evidence on record nor any circumstances, which would show that the said P.W.'s or the Appellant, who were all present at the time of incident tried to catch hold these three persons or raised any alarm or that a scuffle broke between these people or that as to who was carrying the Gun amongst these three *i.e.* Babu, Munnawar and Shakir Ali and who shot the gun. There are myriad questions, which remains unanswered and points towards the cooked-up story of the daughters. Further, as goes an old adage, 'Men may lie, but circumstances do not' appears to be squarely applicable to the present facts, wherein there is no explanation coming forth from the Appellant as to when the Appellant did not commit any crime and it was some-one else according to him and his daughter, then as to why the appellant did not inform the police in the first place and secondly, as to why the appellant had dug a grave for burial of the deceased as has been deposed by P.W.-3 and P.W.-11. All these facts not only cast a shadow on the made-up story of the P.W.-1 and P.W.-2, but are also relevant factors under Section 8 of the Indian Evidence Act, pointing towards the guilty mind of the Appellant.

45. Further, the extra-judicial confession made by the appellant before P.W.-6 finds corroboration from the surrounding circumstances, including the conduct of the appellant and the medical evidence. While it is true that extra-judicial confession is a weak piece of evidence, however time and again the Supreme Court has held that it can form the basis of conviction when it inspires confidence and is corroborated by other material on record. The Hon'ble Supreme Court had an occasion to examine a similar contention raised by the Appellant in the case of ***Shiva Karam Payaswami Tewari v. State of Maharashtra***, reported in ***(2009) 11 SCC 262***. The Court repelling the contention of the Appellant in that case held as under:

“8. We shall first deal with the question regarding claim of extra-judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra-judicial confession, court has to satisfy [itself] that the same was voluntary and without any coercion and undue influence. Extra-judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra-judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the court to judge credibility of the

witness' capacity and thereafter to decide whether his or her evidence has to be accepted or not. If court believes witnesses before whom confession is made and is satisfied that confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous....”

(emphasis supplied)

46. In the present case, the testimony of P.W.-6 cannot be brushed aside merely on conjectures, as nothing substantial has been elicited to discredit his evidence. The learned Counsel for the appellant has taken a lame ground that the P.W.-6, in his cross examination, could not tell the day or the date of the extra judicial confession made by appellant and, hence, the testimony of the P.W.-6 regarding extra judicial confession of the appellant should not be relied upon. It is trite law that the primary purpose of cross examination is to test the witness's veracity and credibility, and not their ability to recall minor details or act as a tape-recorder by version of the events relating to the date, time or place. We cannot lose sight of the fact that P.W.-6 was examined on 14.07.2010 *i.e.* after more than a year and therefore, the witness cannot be expected to recall every minute details such as day, date, or time of extra judicial confession. Moreover, this Court finds that the Learned Trial Court has not convicted the Appellant solely based on extra-judicial confession but also on other compelling evidence found against the Appellant like the disclosure, recovery, conduct, invocation of Section 106 Indian evidence Act etc. Thus, we do not find any force in the submission of learned Counsel of the appellant. We also do not find any force in the submission of the learned Counsel of the appellant that the said extra judicial confession has been made to save accused Babu and Munnawar.
47. The learned Counsel for appellant has submitted that there is nothing to show that P.W.-6 (Shyamdhar Pandey) had influence with police or had some status to protect the appellant from harassment of police as such there was no reason for appellant to confess his guilt before him and to request him to save him.

Admittedly, mother of P.W.-6 was the incumbent village Pradhan, to which the appellant belonged. It has come in the testimony of P.W.-6 that he used to assist her mother in discharging her duties as village Pradhan and usually represented her before the people and the authorities. It cannot be lost sight that village Pradhan in rural area exercises some kind of influence and control over village chowkidar. It has come in evidence of P.W.-6 that he had visited the appellant's place, before the police and having noticed the gunshot injury on the deceased had advised the Appellant to not hurriedly bury the deceased and instead inform the police, which he failed to oblige, as it was eventually P.W.-3 (Village Chowkidar) and not the appellant, who had lodged the present complaint with the police. Hence, it cannot be said that the P.W.-6 was not in position to afford protection to the appellant from possible police harassment and therefore, there was no occasion for appellant to confess his guilt before the P.W.-6. Most importantly, there is no evidence on record to show that the said P.W.-6 was in any manner inimical to the Appellant or that the statement made to him was manipulated or was under some coercion or force. There is also no argument nor there is any evidence to show on record that the extra-judicial confession was not voluntary and as such the submission advanced by learned Counsel for the appellant to the effect that P.W.-6 was not in a position to save the appellant and as such there was no occasion for him to make any extra-judicial confession before the P.W.-6 is found to be without merit.

- 48.** The next issue raised by the learned Counsel for the Appellant is relating to the recovery of the firearm at the instance of the appellant. No doubt, certain discrepancies have been pointed out by the defence regarding the manner of recovery from the field of one of the co-accused, who has been acquitted, however, a plain reading of the testimony of the recovery witness P.W.-7 (Vikram) together with the testimony of the Investigating Officer- P.W.-11 proves that the crime weapon was recovered on the disclosure statement and

pointing of the Appellant as has also been deposed by the P.W.-3 (Informant). The minor discrepancy relating to as to who dug the field for recovery of the weapon does not create any doubt on the testimony of P.W.-7, who has deposed that he was present on the place of recovery as a chance and not was called by the police to become a witness to the said recovery. In the totality of the deposition recorded of the said witness, this Court does not find any infirmity, which would go to the root of the matter or in any manner wreck the prosecution story. Further, this Court notices that recovery of weapon was not immediately after the incident but after more than one month and simultaneous to the arrest of the Appellant. The timing of the recovery of firearms, the date of arrest and the place (*i.e.* Babu's field, who is a co-accused and entangled in the present case by the statement of daughters of the Appellant), gives wings to the story put forth by the investigation to achieve the culpability of the Appellant. The ballistic report pertaining to the firearm, recovered pursuant to the statement made by the appellant, confirms that it had been used for firing. Therefore, the recovery, read in conjunction with ballistic report and the medical evidence indicating a close-range firearm injury and the conduct of appellant subsequent to the incident, clearly forms a coherent chain of circumstances, leading to the sole conclusion that the appellant and no one else has committed murder of his wife.

49. The learned Counsel for the Appellant has submitted that there is no motive for the Appellant to commit the murder of his wife as has been also deposed by P.W.-1 and P.W.-2 and as such the conviction cannot be upheld in a case based on circumstantial evidence. First and foremost, it must be understood that no doubt Motive is a very important link in the circumstances which could prove the guilt of the accused, however, it must also be understood in the same vein that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances

is not complete. The law holding the ground is that if the case is built solely upon circumstantial evidence, absence of motive would be a factor that weighs in favour of the accused and just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. The Hon'ble Supreme Court in ***Suresh Chandra Bahri v. State of Bihar***, reported in ***1995 Supp (1) SCC 80***; has held that in a case based on circumstantial evidence, proof of motive would merely “supply a link in the chain of circumstances, but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 of the said judgment reads as under:

“21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. In the present case before us the prosecution has adduced evidence that the appellant Suresh Bahri had strong motive to eliminate his wife and two children from his way which evidence has been accepted by both the courts below. We shall, therefore, have a look at the said evidence to see whether the two courts are justified or not in taking the view that the appellant Suresh Bahri had a strong motive to hatch a conspiracy with the assistance of the other two appellants, namely, Raj Pal Sharma and Gurbachan Singh to commit the murder of his wife and the two children.”

(emphasis supplied)

50. Recently, the Hon'ble Supreme Court in the case of ***Subhash Aggarwal v. State of NCT of Delhi***, reported as ***2025 INSC 499***; after tracing the various judgment on the said aspect, concluded the concept of significance of motive in a case based on circumstantial evidence in the following words:

“24. Motive remains hidden in the inner recesses of the mind of the perpetrator; which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted.”

(emphasis supplied)

51. As far as the present case is concerned, the Appellant has heavily relied on the deposition of his daughter's examined as P.W.-1 and P.W.-2 to submit that there is no motive on his part to kill his wife. Besides the fact that the deposition of the daughters appears to be not trust worthy, as has been observed herein above, this Court finds that their statement to be effectuated by basic children syndrome to save their father facing trial of murdering their mother and the children having already come to terms of having lost their mother and not lose their father. The daughters (P.W.-1 and P.W.-2) have made a deliberate attempt to save their father, as is apparent from their testimony, wherein they have named their neighbours as accused of killing their mother, however, the same was disbelieved by the Learned Trial Court leading to their acquittal.
52. Admittedly, it has come in the evidence of the Investigating Officer (P.W.-11) that both the daughters have named the neighbors as an afterthought as no such allegations were made by them during the investigation and resultantly no charge-sheet had been filed against them and these people *i.e.* Babu, Munnawar and Shakir Ali came to be added as an accused by the Learned Trial Court under Section 319 Cr.P.C. Apparently, both P.W.-1 and P.W.-2 appears to be an interested witnesses and on the other hand the evidence of P.W.-4 and P.W.-6 clearly establishes that there was a strained relationship between the appellant and the deceased on account of the proposed marriage of their daughter Heena, and that an altercation had taken place shortly prior to the incident. The *factum* of said altercation is also envisaged from the statements of fact that it has come in

evidence that except for the deceased, all the family members, including the daughters and the Appellant-father were sleeping on the terrace at the time of incident. Thus, it is concluded that there was a motive for the Appellant to do the heinous crime, but as aforesaid though motive by itself may not be decisive, its existence lends assurance to the prosecution case, particularly in a case founded on circumstantial evidence. Hence, it is proved in the present case that the link and the circumstances are so interconnected that they lead to the only hypothesis of culpability of the Appellant.

- 53.** Further, it is established from the testimony of the witnesses that the deceased met with a homicidal death inside the house where the appellant was specifically present during the time immediately preceding the occurrence of incident. The basic foundational fact of guilt as discussed herein above, having been proved against the Appellant, it was legal, proper and reasonable to draw an inference regarding the existence of certain other facts which are within the special knowledge of the accused. Therefore, the learned Trial Court was right in shifting the burden under Section 106 of the Indian Evidence Act, on the appellant to explain the circumstances in which his wife sustained fatal injuries. This court finds that the appellant has failed to offer any plausible or satisfactory explanation, either during investigation or in his statement under Section 313 Cr.P.C. Mere denial is not sufficient to discharge the burden cast upon him by law and especially when he has been charged with the murder of his own wife. Apparently, the presence of the Appellant at the crime spot has been proved and there are adverse circumstances of creating a false narrative relating to the cause of death of the deceased-wife and his conduct of hurriedly trying to bury the dead body. The Appellant owes an explanation under law in the said compelling circumstances, which he has failed to offer.
- 54.** Further, the theory sought to be projected by P.W.-1 and P.W.-2 implicating Babu, Munawar and Shakir Ali, which has been rightly

disbelieved by the learned Trial Court, also is an added link in the chain of circumstantial evidence, which points towards the hypothesis of culpability of the Appellant. Thus, this Court has not a shred of doubt to hold that the evidence on record, clearly points towards an unbreakable connection between the appellant as perpetrator of crime and the offence of murder charged against him.

55. In view of the foregoing discussion, we are of the considered view that the prosecution has succeeded in establishing a complete and unbroken chain of circumstances which conclusively proves the guilt of the appellant beyond reasonable doubt. The findings recorded by the learned Trial Court do not suffer from any perversity or illegality warranting interference by this Court.
56. Accordingly, the conviction of the appellant under Section 302 I.P.C. is *upheld* and the appeal lacking any merits is liable to be dismissed, as far as it relates to Conviction. However, the learned Counsel has submitted that the Appellant is more than 75 years and has remained in jail for more than 14 years and 3 months and as such this court being a constitutional court may exercise some leniency in the sentence of life imprisonment awarded by the learned Trial Court. It has been also submitted that there is no criminal history of the Appellant.
57. This Court in the aforesaid aspect, recently had an opportunity to deal with such a situation, wherein the appellant in that case was convicted for the death of his wife, although for an offence under Section 304-B of the Indian Penal Code, in the case of *Paras Nath Sahu and Another Vs. State of U.P.* reported as **2025:AHC-LKO:83391-DB**; The appellant in that case was awarded with life imprisonment by the learned Trial Court. This Court, while discussing the law on the scope and extent of Jurisdiction in granting a fixed term sentence instead of life imprisonment has been held as herein under:

“42. The Constitutional Bench of the Hon’ble Supreme Court, in the case of **Union of India v. V. Sriharan**, reported in (2016) 7 SCC 1; was dealing with on the issue, as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict. The Constitutional Bench after referring to the various precedents, including **Swamy Shraddananda (2) v. State of Karnataka**, reported in (2008) 13 SCC 767; has answered the same in paragraph nos. 104 and 105 of the **V. Sriharan (Supra)**, judgment which is quoted in verbatim herein below:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

(emphasis added)

43. Furthermore, the Hon’ble Supreme Court in the case of **Shiva Kumar v. State of Karnataka**, reported in (2023) 9 SCC 817; after considering both of the aforementioned judgments of **V. Sriharan (Supra)** and **Swamy Shraddananda (2) (Supra)**; in paragraph no. 14, has held that:

“14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by “secondly” in Section 53IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed

punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.P.C.”

(emphasis supplied)

58. As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellant was convicted, we in our considered view need to weigh a balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the quantum of punishment being inflicted due to the said culpability. No doubt, the crime committed is one of the most heinous crimes and against the society at large, as such does not call for any interference, keeping in view that the said act of murder of one's own wife by the husband, not only is a murder of body of the wife but also amounts to murder of her trust, faith, soul and physiological mind. However, this Court needs to strike a chord of justice to not only subserve the society at large but also keep the various attending mitigating factors brought on record.
59. This Court finds that, it has come on record that the appellant is more than 75 years and has been in Jail for the past more than 14 years and 4 months. Further, the Appellant is not a habitual offender as there is no criminal history of the Appellant. Keeping in view the overall facts and circumstances of the present case, this Court balancing the need of the society to live in a peaceful, safe and congenial environment with chance of reformation and integrating the appellant back into the society is of the view that justice would be met, if the appellant is awarded a fixed term of imprisonment in the present facts and circumstances of the case. Thus, the maximum sentence of life awarded to the appellant- **Yasin** under Section 302 I.P.C. is reduced to a fixed period of 15 (Fifteen years) Rigorous Imprisonment, without any remission. However, the fine under Section 302 I.P.C is not being disturbed and the appeal is being *dismissed*, to that extent.

60. Consequently, the present Appeal of **Yasin** is *partly allowed* to the extent of sentence of imprisonment for life is being converted to a fixed period of 15 (fifteen) years Rigorous Imprisonment, without any remission, but along with the fine as stipulated in the impugned judgment of conviction and sentence dated 22.09.2011 of the learned Trial Court.
61. Having said so, it is directed that the appellant- **Yasin** shall be released only after undergoing the sentence of punishment of 15 years, rigorous imprisonment, without any remission, as aforesaid, under the Sessions Trial No. 371 of 2009 (*State Vs. Yasin and others*) arising out of Crime Case No. 154 of 2009. The Jail Authorities are accordingly directed to calculate the period of custody and in calculating the said period the benefit of Section 427 and 428 Cr.P.C. shall be granted to the Appellant.
62. There shall be no order as to cost(s).

(Abdhesh Kumar Chaudhary,J.) (Rajesh Singh Chauhan,J.)

January 30, 2026

Anuj Singh