

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.1 of 2025

Arising Out of PS. Case No.-51 Year-2021 Thana- PRANPUR District- Katihar

The State of Bihar
... .. Petitioner
Versus
Md. Tahir S/o- Late Md. Alim Village- Makhdumpur PS Muffasil Dist-
Katihar
... .. Respondent

with
CRIMINAL APPEAL (DB) No. 627 of 2025

Arising Out of PS. Case No.-51 Year-2021 Thana- PRANPUR District- Katihar

Md. Tahir S/o Late Md. Alim R/o Village- Labha, P.S.- Prampur, District-
Katihar
... .. Appellant
Versus
The State of Bihar
... .. Respondent

with
CRIMINAL APPEAL (DB) No. 639 of 2025

Arising Out of PS. Case No.-51 Year-2021 Thana- PRANPUR District- Katihar

Hadizan Khatoon @ Hadisan Khatoon W/O Late Md. Alim R/O Village-
Labha, P.S.- Prampur, District- Katihar
... .. Appellant
Versus
The State of Bihar
... .. Respondent

Appearance :
(In DEATH REFERENCE No. 1 of 2025)
For the Petitioner : Mr. Xxxxx
For the Respondent : Ms. Surya Nilambari, Amicus Curiae
Mr. Pratik Mishra, Advocate
(In CRIMINAL APPEAL (DB) No. 627 of 2025)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Sunil Prasad Singh, Advocate
For the State : Mr. Parmeshwar Mehta, Addl.PP
(In CRIMINAL APPEAL (DB) No. 639 of 2025)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Makardhwaj Upadhyay, Advocate
Mrs. Vaishnavi Singh, Advocate
Ms. Sushmita Mishra, Advocate
For the State : Mr. Parmeshwar Mehta, Addl.PP



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 07-01-2026

The Death Reference 1 of 2025 has been registered under Section 366 (1) of the Code of Criminal Procedure (in short 'CrPC') and the Criminal Appeal (DB) No. 627 of 2025 and Criminal Appeal (DB) No. 639 of 2025 have been preferred for setting aside of the judgment of conviction dated 15.04.2025 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 19.04.2025 (hereinafter referred to as the 'impugned order') passed by learned Sessions Judge, Katihar (hereinafter called as 'the learned trial court') in Sessions Trial No. 132 of 2022, G.R. No. 1143 of 2021 arising out of Pranpur (Roshna) P.S. Case No. 51 of 2021.

2. By the impugned judgment and order, the appellants have been convicted for the offences punishable under Sections 302/34 and 201/34 of the Indian Penal Code (in short 'IPC'). Md. Tahir (Appellant in Cr. Appeal (DB) No. 627 of 2025) has been sentenced to death and fine to the tune of Rs.50,000/- under Section 302 IPC. In default of payment of fine, he shall further undergo simple imprisonment for six months. He has further been ordered to undergo rigorous imprisonment for seven years under



Section 201 IPC and fine to the tune of Rs.50,000/-. In default of payment of fine, he shall further undergo simple imprisonment for six months.

Appellant in Cr. Appeal (DB) No. 639 of 2025, namely, Hadizan Khatoon @ Hadisan Khatoon has been ordered to undergo rigorous imprisonment for life with a fine of Rs.25,000/- under Section 302 IPC. In default of payment of fine, she shall further undergo simple imprisonment for six months. She has also been ordered to undergo three years rigorous imprisonment with a fine of Rs.25,000/- under Section 201 IPC. In default of payment of fine, she shall further undergo simple imprisonment for six months. Both the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the written application of the informant (PW-9). The informant alleged in his written application (Exhibit 'P7/PW-9) that his sister Rina Khatoon was married to Md. Taheer about ten years before the occurrence. After marriage, the victim's husband Md. Taheer, brother-in-law Md. Jumrati, mother-in-law Hadizan Khatoon, sister-in-law Mairun Khatoon were torturing her to fulfill the demand of Rs.2 lakhs as dowry from her father. Several times, the matter was resolved by *panchayati* where the accused persons



ascertained that no further occurrence would happen. On 25.03.2021 at about 08:00 AM in the morning, the named accused persons along with Nazbin Khatoon, Md. Kunia, Md. Azmer under a conspiracy burnt the informant's sister and her two daughters alive in the house.

4. On the basis of the written application of the informant, the FIR being Pranpur P.S. Case No. 51 of 2021 dated 25.03.2021 was registered under Sections 302, 201, 120B, 498A/34 of the IPC and Section 3/4 of the Dowry Prohibition Act against accused persons, namely, (1) Md. Tahir, (2) Md. Jumrati, (3) Hadisan Khatoon, (4) Mairun Khatoon, (5) Najbin Khatoon, (6) Md. Kuniya and (7) Md. Azmer.

5. After investigation, police submitted first chargesheet bearing Chargesheet No. 28 of 2021 dated 15.06.2021 against the accused persons, namely, (1) Md. Tahir, (2) Hadisan Khatoon, (3) Md. Azmer showing two accused persons, namely, (1) Md. Kuniya and (2) Najbin Khatoon innocent and keeping further investigation pending against (1) Md. Jumrati, (2) Mairun Khatoon and Md. Bakrid and his wife. Learned trial court vide order dated 26.07.2021 took cognizance under Section 302, 201, 120B, 498A/34 of the IPC and Section 3/4 of the Dowry Prohibition Act.



6. In the meantime, supplementary chargesheet being Chargesheet No. 58 of 2021 dated 05.09.2021 was submitted against Md. Jumrati keeping investigation pending against Mairun Khatoon, Md. Bakrid and his wife. Accordingly, vide order dated 24.02.2022, records of Md. Jumrati has been merged with the original record and the records of other accused were split off.

7. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, on 09.03.2022, charges were framed for the offences punishable under Sections 302/34, 201/34, 302/120B, 498A/34 of the IPC and 3/4 of the Dowry Prohibition Act.

8. On behalf of the prosecution, altogether Eleven witnesses were examined. The list of witnesses and the documents exhibited in course of trial are as under:-

List of Prosecution Witnesses

P.W. 1	Md. Inteyaz @ Patto
P.W. 2	Md. Quddus @ Md. Quddus Alam
P.W. 3	Maitun Nisa
P.W. 4	Dr. Shailendra Mohan Thakur
P.W. 5	Dr. Amarendra Kumar
P.W. 6	Dr. Dayanand Rai
P.W. 7	Ekhlaqur Rahman
P.W. 8	Md. Afsar
P.W. 9	Abdul Matin
P.W. 10	Prem Kumar Bharti
P.W. 11	Md. Taiyab



List of Exhibits on behalf of Prosecution

Exhibit-P1/PW4	Postmortem report of Rina Khatoon
Exhibit-P1(1)/PW4	Signature of Dr. Shailendra Mohan Thakur on Postmortem report of Rina Khatoon
Exhibit-P1(2)/PW5	Signature of Dr. Amarendra Kumar on postmortem report of Rina Khatoon
Exhibit-P2/PW4	Postmortem report of Ayarat
Exhibit-P2(1)/PW4	Signature of Dr. Shailendra Mohan Thakur on postmortem report of Ayarat
Exhibit-P2(2)/PW4	Signature of Dr. Amarendra Kumar on postmortem report of Ayarat
Exhibit-P3/PW4	Postmortem report of Bilkis Khatoon
Exhibit-P3(1)/PW4	Signature of Dr. Shailendra Mohan Thakur on postmortem report of Bilkis Khatoon
Exhibit-P3(2)/PW4	Signature of Dr. Amarendra Kumar on postmortem report of Bilkis Khatoon
Exhibit-P4/PW10	Carbon copy of Inquest Report of Ayarat
Exhibit-P4(1)/PW7	Signature of Ekhlaqur Rahman on Inquest Report
Exhibit-P4(2)/PW8	Signature of Md. Afsar on Inquest Report
Exhibit-P5/PW10	Carbon copy of Inquest Report of Bilkis Khatoon
Exhibit-P5(1)/PW7	Signature of Ekhlaqur Rahman on Inquest Report
Exhibit-P5(2)/PW8	Signature of Md. Afsar on Inquest Report
Exhibit-P6/PW10	Carbon copy of Inquest Report of Rina Khatoon
Exhibit-P6(1)/PW7	Signature of Ekhlaqur Rahman on Inquest Report
Exhibit-P6(2)/PW8	Signature of Md. Afsar on Inquest Report
Exhibit-P7/PW9	Written application
Exhibit-P8/PW10	Forwarding on written application
Exhibit-P9/PW10	Endorsement on written application
Exhibit-P10/PW10	Formal FIR
Exhibit-P11	Certified copy of order dated 21.07.2022 passed in Matrimonial Case No, 43 of 2020
Exhibit-P12	Certified copy of original application filed in Matrimonial Case No. 43 of 2020
Exhibit-P13	Certified copy of compromise petition filed in



	Matrimonial Case No. 43 of 2020
Exhibit-P14	Certified copy of order dated 15.03.2022 passed in Complaint Case No. 505 of 2020
Exhibit-P15	Certified copy of complaint petition of Case No. 505 of 2020

9. The statement of the accused were recorded under Section 313 CrPC. In the 313 CrPC statement, Md. Tahir took plea of his innocence and stated that he had not committed any offence and has been falsely implicated. Appellant Hadisan Khatoon took plea of her innocence and stated that she was at her *Naihar* at the time of occurrence.

10. The defence has adduced four witnesses which are in tabular form hereinbelow:-

DW-1	Mohsin
DW-2	Md. Anwar
DW-3	Md. Mustafa
DW-4	Md. Ashique

Findings of the Learned Trial Court

11. Learned trial court after examining the evidences available on the record found that the case against the appellants is distinguishable from the other accused facing trial in view of the direct testimony, strong circumstantial evidence and absence of any plausible explanation for the deaths occurred within their residence. Learned trial court found that the presence of Md. Tahir



and Hadisan Khatoon (the appellants) inside the house at the time of the incident, the medical evidence of deliberated burning, the lack of a plausible alternative explanation and the background of harassment collectively lead to the irresistible conclusion that both accused acted in furtherance of a common intention to commit the murder of Rina Khatoon and her daughters.

The learned trial court found from the evidences available on the record that Md. Tahir (appellant in Cr. Appeal (DB) No. 627 of 2025) attempted to flee from the scene but was restrained by the villagers, renders the probability of his involvement in the alleged crime. His presence inside the locked house during the fire, coupled with his attempt to escape, forms a vital link in the chain of circumstantial evidence. Further, from the evidence, learned trial court found that the appellant Hadisan Khatoon had assisted her son (Md. Tahir) in the commission of the crime and was present in the house at that time. Their action also resulted in destruction of evidence by setting the bodies of the victims on fire.

12. Accordingly, the learned trial court held them guilty for the charges under Sections 302/34 and 201/34 IPC.

13. The learned trial court has, however, acquitted the appellants of the charges under Sections 302/120B, 498A/34 IPC and Sections 3/4 of the Dowry Prohibition Act. The co-accused



Md. Ajmer and Md. Jumrati, who were facing trial, have been acquitted of all the charges levelled against them.

14. Learned trial court after having considered the facts and circumstances of the case, the manner in which the offence was committed and the extreme brutal grotesque diabolical nature of the crime found the case of the appellant Md. Tahir within the category of "rarest of the rare case" and accordingly, sentenced him to death.

15. Learned trial court found that the appellant Hadisan Khatoon has only assisted her son Md. Tahir in commission of the crime and has sentenced her to undergo rigorous imprisonment for life with fine.

Submissions by the Amicus Curiae

16. Ms. Surya Nilamabari, learned Amicus Curiae has submitted that this case exemplifies the extreme cruelty women endure in society, where a woman was brutally burned alive along with her two young daughters in the morning hours. Learned Amicus Curiae contended that the written application, witness depositions, and documentary evidences conclusively prove the prosecution case, warranting the trial court's righteous conviction of the accused Md. Tahir for the murder of his wife and two girl children before they could even comprehend the world. The case



stems from dowry demands, evidenced by multiple mediation rounds and family interventions due to the acrimonious marital relationship, with the appellant previously engaged in matrimonial litigation against his wife.

17. Learned Amicus Curiae further submits that the prosecution witnesses (PWs) have fully supported the case of the State, with reliable ocular evidence duly corroborated by unimpeachable medical evidence; the medical examiners deposed that burn injuries exceeding 90% constituted the cause of death in all three victims.

18. Learned Amicus Curiae placed reliance on the informant's deposition, wherein PW stated about receiving a rescue call from his sister the night before the occurrence, which completes the chain of circumstances, defence was not able to contradict on this point.

19. Learned Amicus Curiae referring to the deposition of the Investigating Officer has submitted that the IO's statement confirm no smell of kerosene at the place of occurrence nor seizure of any burnt objects or article used for burning, demonstrating meticulous planning and preparation by the accused, who with planned preparation executed this brutal incident with the aid of other accused persons.



20. Learned Amicus Curiae submitted that the appellant's unexplained silence on crucial facts within his exclusive knowledge viz., time of house departure, DW's sighting of bodies inside, bodies' relocation to terrace, fire causation, and whereabouts before 7:00 a.m.—severely narrows scope for his innocence, attracting adverse inference under Section 106 Evidence Act.

21. Learned Amicus Curiae have submitted that in this case no fault may be found with the judgment of conviction, however, on the point of sentence their submission is that keeping in view some of the mitigating circumstances, this Court may consider modifying the death sentence of the appellant Md. Tahir and in place special sentence may be awarded. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Navas @ Mulanavas vs. State of Kerala** reported in **(2024) 14 SCC 82** (paragraph '77' to '82'). According to learned Amicus some of the mitigating circumstances pointed out by the Hon'ble Supreme Court in the case of **Navas** (supra) is provided in paragraph '79' are present here such as the age of the convict and that he is not a professional killer and there is no material on the record of the trial court to show that there is no probability of his reformation.



22. Learned Amicus Curiae has confined her submissions to the death reference awarded to Md. Tahir.

Submissions on behalf of the Appellants

23. Mr. Ajay Kumar Thakur, learned counsel for the appellants has submitted that the prosecution has failed to prove the case beyond all reasonable doubts, the whole case of prosecution is based on mere presumption that the incident to be a case of murder without any direct evidence, relying exclusively on circumstantial evidence, which fails to form a complete unbroken chain irresistibly pointing to the appellants' guilt, thereby entitling them to acquittal under the golden principle that circumstantial evidence must exclude every hypothesis except the guilt of the accused.

24. Learned counsel for the appellants, submits that the learned trial court has failed to appreciate the evidences brought by the prosecution. The prosecution failed to prove as to whether the deaths in this case are homicidal, suicidal or accidental. The postmortem reports (Exhibits 'P1/PW-4', P2/PW-4 and P3/PW-4) show no violence on the bodies.

25. It is further submitted that the postmortem reports categorically state that there were no signs or marks of violence whatsoever such as struggle marks, or ante-mortem injuries, apart



from the burn injuries, which strongly suggests accidental burns or suicide rather than a homicidal assault followed by burning, as absence of such forcible indicators vitiates the prosecution theory. Moreover, the house was found locked from the inside at the time of occurrence with no outsider or third-party presence, making external intervention impossible and reinforcing the plea of accidental fire during *Shab-e-Barat* celebrations or self-inflicted act, with the appellant's mere custodianship insufficient to bridge the evidentiary gap in a purely circumstantial case warranting his discharge.

26. Learned counsel for the appellants has submitted that there is absolutely no direct evidence against the appellant Md. Tahir or Hadizan Khatoon @ Hadisan Khatoon with the prosecution case resting entirely on circumstantial evidence which fails to constitute a complete and unbroken chain unerringly pointing to his guilt to the exclusion of all other hypotheses, thereby warranting acquittal.

27. It is further submitted that there exist major contradictions amongst prosecution witnesses regarding the place of occurrence, some claiming the incident occurred in the kitchen while others state inside the house and the manner of occurrence remains wholly unproved, with no reliable depiction of sequence



or mechanism, rendering the evidence unreliable, with such material contradictions vitiate the prosecution version beyond salvage. Moreover, the prosecution has failed to adduce any evidence on how the burns were caused, as there was no kerosene oil recovered or smell thereof detected, nothing was seized from place of occurrence, negating any homicidal burning theory, additionally, conflicting witness versions one claiming appellant's arrest from elsewhere post-incident while others assert his presence at place of occurrence when the gate was broken, expose fatal inconsistencies demolishing credibility and entitling appellant to benefit of doubt in this case.

28. Learned counsel for the appellant has submitted that the appellant Md. Tahir had instituted proceedings for restitution of conjugal rights, and crucially, a day prior to the alleged incident, the parties had jointly filed a compromise petition before the Family Court to amicably close the said proceedings, thereby demonstrating the appellant's genuine presence, commitment, and reconciliation efforts towards preserving his marriage and family life, which completely negates any motive for him to commit the extreme act of murdering his own family members. It is further submitted that the night preceding the incident was *Shab-e-Barat*, during which the widespread use of candles and diyas creates a



strong possibility of accidental fire outbreak, raising a reasonable doubt whether the incident was a tragic accident rather than a deliberate murder. Moreover, the prosecution's own medical evidence establishes burn injuries as the sole/antecedent cause of death without any ante-mortem injuries, or other homicidal indicators, which, coupled with the above circumstances, entitles the appellant to acquittal or at worst a benefit of doubt under the principle that where two views are possible, the one favouring the accused must prevail.

29. Learned counsel further submits that in this case, the provision of Section 106 of the Evidence Act would not be attracted. As regards PW-2, on which the learned trial court has placed reliance, learned counsel submits that he is a co-villager and has been examined by the Investigating Officer (I.O.) after six months of the occurrence. He is a wholly unreliable witness. It is submitted that the I.O. of this case has tried to help the accused and it would appear from the testimony of the I.O. that he has not given complete description of the place of occurrence, his evidence is not even throwing much light on the immediate circumstances present at the place of occurrence when he reached there. It is submitted that in this case, the wife (since deceased) of the appellant Md. Tahir had filed a complaint case in the court of



learned jurisdiction Magistrate alleging that she was being subjected to cruelty for the alleged demand of dowry but later on, the said complaint was abandoned and when no one was appearing in the complaint case to adduce evidence before cognizance, the complaint case was disposed of in want of prosecution.

30. It is further submitted that there is suppression of the earlier version of the prosecution case. The prosecution case must stand on its own leg and it cannot take benefit of the weaknesses of the defence.

31. It is lastly submitted that the appellant is a young man who comes from an economically weaker section and there are chances of his reformation, therefore, the death sentence awarded by the learned trial court is not satisfying the principle of proportionality in sentencing. The learned trial court has not taken into consideration the mitigating circumstances. His submission is that in any case, the death sentence awarded to the appellant Md. Tahir in Cr. Appeal (DB) No. 627 of 2025 is not fit to be confirmed. Reliance has been placed in this regard upon the judgment of the Hon'ble Supreme Court in the case of **Bachan Singh versus State of Punjab** reported in (1980) 2 SCC 684.

32. As regards the consequences of the delay in recording of the statement of witnesses under Section 161 CrPC,



learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of **Jagjit Singh @ Jagga vs. State of Punjab** reported in **(2005) 3 SCC 689** and **Ganesh Bhavan Patel vs. State of Maharashtra** reported in **(1978) 4 SCC 371**. To strengthen his submission that Section 106 of the Evidence Act would not be attracted in this case, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Dhal Singh Dewangan v. State of Chhattisgarh** reported in **(2016) 16 SCC 701**. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116** (paragraph '159') and **Ramanand vs. State of U.P.** reported in **AIR 2022 SC 5273**.

Submissions on behalf of the State

33. The learned Additional Public Prosecutor for the State has submitted that the deceased were in the custody of the appellant at the time when the incident occurred and in the said incident, three members of the family were burnt alive and lost their lives, therefore, the accused Md. Tahir has been rightly awarded the sentence of hanging till death.

34. It is further submitted that the appellants have not furnished any satisfactory explanation as to the incriminating



evidence that they were not present at the place of occurrence at the crucial time and, significantly, they did not inform any person, neighbour, or the police about the said incident, which is wholly unnatural conduct and inconsistent with normal human behaviour in such a grave situation. From this abnormal and incriminating post-occurrence conduct of the appellants, an adverse inference can legitimately be drawn under Section 8 of the Indian Evidence Act, as their subsequent conduct, influenced by the fact in issue, is a relevant circumstance pointing towards their guilt and consciousness thereof.

Consideration

35. Having heard learned counsel for the appellants, learned Additional Public Prosecutor for the State and learned Amicus Curiae Ms. Surya Nilambri and Mr. Pratik Mishra who have assisted this Court, this Court has perused the trial court records.

36. The prosecution case is based on a written information submitted by Md. Abdul Matim (PW-9) who is the brother-in-law of the appellant Md. Tahir. According to the written information (Exhibit 'P7/PW-9'), his sister Rina Khatoon aged about 30 years was married to Md. Tahir aged 35 years about 10 years ago. It is alleged that after the marriage, the husband,



bhaisur, mother-in-law and *gotni* were asking the victim Rina Khatoon to bring a sum of Rs. 2 Lakhs as dowry. They were beating her and she was being subjected to torture, for this several times *panchayati* had taken place. The informant has stated that the *sasural* people of his sister assured that now no occurrence shall take place and they requested the family members of the informant to do the *bidai* of the victim Rina Khatoon. It is stated that on 25.03.2021 at about 8:00 AM, all the aforesaid four persons together with their other relatives namely Nazbin Khatoon, Md. Kunia and Md. Ajmer conspired and in furtherance of the said conspiracy, they locked Rina Khatoon and her two minor daughters namely Arsi Khatoon aged 7 years and Taniya Khatoon aged 5 years inside the house and killed all of them.

37. The informant (PW-9) has supported the prosecution case in course of trial. In paragraph '3' he has stated that his sister Rina Khatoon had two daughters and at the time of occurrence, she was carrying a five months pregnancy. The two daughters were Aayat Praveen @ Arsi aged 8 years and Taniya @ Bilkish aged 5 years.

38. On 25.03.2021, PW-9 got information over mobile phone that his sister Rina Khatoon and her two children have been burnt to death by their sasural people and the occurrence has been



committed by Md. Tahir, Md. Jumrati, Md. Kunia, Hadizan Khatoon, Mairun Khatoon, Naznin Khatoon and Md. Ajmer. PW-9 has stated that the accused were demanding a sum of Rs. 2 lakhs as dowry but his family could not provide the said dowry as a result whereof this occurrence has been committed. This witness has further informed that prior to the occurrence on 2-3 occasions panchayati had taken place at the society level and one month prior to the occurrence, the accused persons had taken away his sister and her two minor daughters on *bidai* with an assurance that henceforth they would not indulge in any beating or quarrel. PW-9 has stated that even after taking away his daughter in *bidai*, the accused persons continued to indulge in beating her. In paragraph '5' of his examination-in-chief, he has stated that police had arrived and had taken his statement and after preparing the inquest report of his sister and her children, police had taken them for postmortem.

39. In paragraph '6' of his examination-in-chief, PW-9 has stated that on telephonic information when he reached at the sasural of his sister, he found that the three dead bodies were lying on the roof of the house of her sasural and the accused persons were fleeing away from there but the co-villagers had caught hold of them and on arrival of police, they were handed over to police.



One day prior to the occurrence, his sister deceased Rina Khatoon had given him a phone call and she had disclosed him that all the seven named accused persons were hatching conspiracy to kill her and they are questioning as to what her *mai*ke people will do. This witness states that only on the next day in the morning, he got the information of the occurrence. In his cross-examination, PW-9 has stated that Hadizan Khatoon, who is mother of Md. Tahir, is aged about 65 years and in paragraph '14' he has stated that Md. Tahir and Md. Jumrati were separate in mess and business. Md. Jumrati, who is another accused in this case, is the brother of Md. Tahir. In paragraph '16' of his cross-examination, PW-9 has stated that a demand of Rs. 2 Lakhs was made in dowry but he did not remember the day and date of the demand, further, he did not remember that in whose presence and when the demand was made. His house is at Makhdumpur from where the distance of Labha is 30 kilometres. In paragraph '20' of his deposition, he has stated that his statement was taken by police on the date of occurrence itself. He did not remember whether he had stated before police that one day prior to the occurrence, his sister deceased Rina Khatoon had told her over telephone that all the seven named accused persons were conspiring to kill her. He has stated that he had got written in the application that one day prior to the



occurrence, his sister deceased Rina Khatoon had told over telephone that the seven named accused persons were conspiring to kill her. Md. Israil had read it and he heard the same. He did not remember the telephone number of his sister from which he had received the phone call. In paragraph '24', he has stated that he was knowing all the accused persons from before the occurrence and save and except the case lodged by his sister against the accused, there was no other case against them. In paragraph '26', he has stated that his sister was more beautiful than Md. Tahir but he denied the suggestion of the defence that because she was more beautiful, she did not want to live with Md. Tahir and for that reason, Tahir had to file a case for *bidai*. In paragraph '27' of his deposition, this witness has stated that one day prior to the occurrence, Md. Tahir and Rina had come in the court and Rina had gone to her *sasural* by order of the Family Court. The defence suggested this witness that Rina had committed suicide with her children and taking advantage of her suicide, the informant had lodged a false case against the accused persons. This suggestion of the defence has been denied by the informant (PW-9).

40. In support of the prosecution case, although the prosecution brought 11 witnesses but Md. Inteyaz @ Patto (PW-1) was declared hostile after he made a statement that he had no



information about the occurrence and he had not given any statement before police. He was suggested by the prosecution that he had been concealing the truth in collusion with the accused persons, the witness denied this suggestion.

41. Md. Quddus @ Md.Quddus Alam (PW-2) is an independent witness of this case. He is a co-villager and works as a labourer. PW-2 has stated that he was in his house and on hearing the *hulla*, he reached the house of Tahir where smokes were coming out from the roof area. On *hulla*, the other villagers had also assembled. This witness has stated that they had asked Tahir to open the door but he did not open the door. PW-2 has categorically stated that Tahir was inside his house and he tried to flee away but they had caught hold of him. They went to the roof of the house where they saw that the dead body of Rina Khatoon and her two daughters Ayat and Taniya were burning. All the three had died. He has stated that the mother of Tahir namely Hadizan Khatoon had rendered assistance to Tahir in commission of the alleged crime. At the place of occurrence, except Tahir and his mother, no one from the family was present. Tahir was on the roof and his mother was in the house. PW-2 has stated that Tahir had committed the crime due to non-fulfillment of the demand of dowry of Rs. 2 Lakhs. This witness has affirmed that for the



panchayati in the matter, twice panchayat was held but they did not agree and they were regularly indulging in beating Rina. One day prior to the occurrence also, a quarrel had taken place. Rina Khatoon had lodged a case against the demand of dowry.

42. PW-2 identified Tahir and Hadizan Khatoon, who were present in the court, but he did not identify the other two accused, namely Md. Jumrati and Md. Ajmer. It is for this reason he was declared hostile on the point of non-identification of the two accused persons.

43. In his cross-examination, PW-2 has stated in paragraph '8' that he was deposing the same facts in the court which he had stated before Darogaji. The house of Tahir is situated at a distance of 20–25 feet from his house and there is a road in between. This witness has given the description of the place of occurrence in paragraph '11' and has further stated in paragraph '12' that he had gone there after hearing the *hulla* of the co-villagers. 30–35 villagers had assembled and were raising *hulla* as to why smokes were coming out. He did not know the name of the co-villagers. This witness has affirmed in paragraph '13' of his cross-examination that all the persons had reached at the house of Tahir and he was asked to open the door but he did not open it whereafter people assembled outside his house and when Tahir



tried to flee away, he was caught hold of. This witness stated that Tahir had not demanded any dowry in his presence and he cannot say that when the dowry case was lodged and who had lodged the case. He had not gone in the panchayati but had heard about it. As regards the evidence of PW-2, the learned trial court has while placing reliance held that this witness has stated about the presence of Md. Tahir inside the locked house during the fire. He was trying to flee away from the scene and was restrained by the villagers so, according to the learned trial court, these facts form a vital link in the chain of circumstantial evidence.

44. As regards the appellant Hadizan Khatoon, the trial court disbelieved the defence claim that she was at her maternal home at the time of occurrence. The learned trial court took a view that there is no substantial and credible evidence regarding her absence from the place of occurrence and her arrest from the place of occurrence also renders her participation in the alleged occurrence probable. We have noticed that so far as the participation of Hadizan Khatoon in the alleged killing of her daughter-in-law and two minor granddaughters are concerned, the same has been inferred by the learned trial court on the ground that she was present in the house and was arrested by police from there. The trial court has in fact said that her arrest from the place



of occurrence renders her participation in the alleged occurrence probable. We are of the opinion that the inference drawn by the learned trial court as regards Hadizan Khatoon may not be taken as a correct appreciation of the evidence on the record. A probable participation of Hadizan has to be taken as a proof of guilt against her in the impugned judgment. So far as the presence of Md. Tahir inside the house is concerned, it is proved by PW-2, who is an independent witness, having no enmity or any other reason to depose against Md. Tahir. The fact that he was examined by the I.O. at a belated stage would not take away his credibility as the defence did not question the I.O. on this point at the time of his deposition.

45. Maitun Nisa (PW-3) is the mother of the deceased Rina Khatoon who has stated that her daughter went to sasural where her sasural people were torturing her and they were asking her to bring a sum of Rs.2 lakhs in dowry. PW-3 has stated that on three occasions, Panchayat had taken place because of demand of dowry and panchayat people had convinced the accused persons to keep her daughter and not to commit torture upon her. She has stated that when after Panchayat, the accused persons did not agree then her daughter Rina Khatoon had lodged a case against the accused persons for the alleged demand of dowry in which the



accused persons tried to enter into a compromise and then they took away her daughter after convincing her that now this kind of occurrence will not take place again. They made PW-3 to believe and do the *bidai* of her daughter whereafter PW-3 became assured and did the *bidai* of her daughter with sasural people. In paragraph '7' of her examination-in-chief, PW-3 has stated that the sasural people of her daughter asked her daughter to take back the case which could not be taken back during lockdown period. She has stated that the accused persons were torturing her daughter and her daughter had given a phone call to the son of PW-3 and had told him that accused persons were brutally beating her. In her cross-examination, she has stated in paragraph '11' that her *samdhan* Hadizan Khatoon is old aged and she must be more than 80 years old. Her daughter stayed well in her sasural for about two years after her marriage but thereafter she never stayed well. During this period, she had given birth to two daughters. This witness has stated that the accused persons were demanding dowry for two years before the occurrence, they had not demanded dowry for eight years. She has stated that the accused persons were asking for dowry from her daughter.

46. The learned trial court has dealt with the evidence of PW-3 and has taken a view that a potential motive for the crime is



reflecting in the testimony of PW-3. The learned trial court has found that PW-3 has described prolonged history of dowry related harassment by both Md. Tahir and Hadizan Khatoon. The learned trial court, however, found that this evidence was insufficient to sustain a conviction under Section 498A of the IPC or Section 3/4 of the Dowry Prohibition Act due to lack of direct proof of a recent demand but the learned trial court took a view that it provides relevant context for the strained and bad relation between the deceased and her marital family. The learned trial court held that this history cannot be ignored while assessing motive for commission of crime. We agree with the views expressed by the learned trial court that even as the evidence of PW-3 alone may not be proving a recent demand of dowry which is an essential condition to prove the charge under Section 498A or Section 3/4 of the Dowry Prohibition Act, the bad matrimonial relationship between the deceased and her husband is evident from the undisputed materials on the record in form of the certified copies of the orders passed in Matrimonial Case No. 43 of 2020 (Exhibit 'P/11', Exhibit 'P/12' and Exhibit 'P/13') as also from the certified copy of the order dated 15.03.2022 passed in Complaint Case No. 505 of 2020 (Exhibit 'P/14') and certified copy of complaint petition of Case No. 505 of 2020 (Exhibit 'P/15'). The



matrimonial discord between the appellant Md. Tahir and Rina Khatoon is evident from the materials available on the record.

47. Dr. Shailendra Mohan Thakur (PW-4), Dr. Amrendra Kumar (PW-5) and Dr. Dayanand Rai (PW-6) are the Medical Officers of the Sadar Hospital, Katihar. PW-4 and PW-5 were the observers of the post-mortem report which was prepared by Dr. Dayanand Rai (PW-6) who had conducted the post-mortem on the dead bodies of Rina Khatoon and the two minor daughters. The post-mortem report of the deceased Rina Khatoon and her two minor daughters have been marked Exhibit 'P1/PW-4' and 'P1(1)/PW-4', P2/PW-4 and P2(1)/PW-4 and P3/PW-4 and P3(1)/PW-4 respectively. All the three post-mortem reports have been duly proved by PW-4. PW-5 and PW-6 have admitted their signature on these exhibits as members of the Medical Board.

48. PW-6 has deposed that in course of postmortem, he noticed the following external postmortem appearances:-

PM report of Deceased Reena Khatoon

“Rigor mortis was present in all four limbs. Tongue was protruded. Burn ulcers spread over about 96% of the body surface area with singeing of hairs and peeling of skin was found.

Dissection of head – Meninges and brain was congested

Dissection of neck – Wind pipe was normally placed and intact. Thyroid, hyoid and cricoid bones were intact.

Dissection of Thorax – Both lungs were congested and intact. Heart-intact and right side full and left side empty.



Dissection of abdomen – Stomach contains about 150 ml of mucoid fluid with nonspecific smell. Other abdominal viscerae intact and congested. Uterus – small and empty. External genitalia – Within normal limits.”

P.M. report of Deceased Ayarat

“Rigor mortis was present in all four limbs. Tongue was protruded. Burn ulcers were found spread over about 92% of the body surface area with singeing of hairs and peeling of skin.

Dissection of head – Meninges and brain were congested

Dissection of neck – Wind pipe was normally placed and intact. Thyroid, hyoid and cricoid bones were intact.

Dissection of Thorax – Both lungs were congested and intact. Heart-intact and right side full and left side empty.

Dissection of abdomen – Stomach contains about 100 ml of mucoid fluid with nonspecific smell. Other abdominal viscerae intact and congested. Uterus – small and empty. External genitalia – Within normal limits.”

P.M. report of Deceased Bilkis khatoon

“Rigor mortis was present in all four limbs. Tongue was protruded. Burn ulcers were found spread over about 94% of the body surface area with singeing of hairs and peeling of skin.

Dissection of head – Meninges and brain were congested.

Dissection of neck – Wind pipe was normally placed and intact. Thyroid, hyoid and cricoid bones were intact.

Dissection of Thorax – Both lungs were congested and intact. Heart-intact and right side full and left side empty.

Dissection of abdomen – Stomach contains about 50 ml of mucoid fluid with nonspecific smell. Other abdominal viscerae intact and congested. Uterus – small and empty. External genitalia – Within normal limits.”



49. In his cross-examination, PW-6 has stated that he found the wind pipe normally placed and intact. The thyroid, hyoid and cricoid bones were intact. Both lungs were congested and intact. Other abdominal viscera were intact and congested. The external genitalia were within normal limits. All the organs were affected by the heat of the fire but these internal organs were not burnt. He denied the defence suggestion that the postmortem reports are defective and not in accordance with the ethics of medical jurisprudence.

50. Ekhlaqur Rahman (PW-7) is one of the witnesses to the inquest report. He has stated to have signed on the inquest report. He knew Rina Khatoon, who along with her two children were burnt to death. He is resident of a place situated at a distance of 30 kilometers from the place where the inquest report was prepared.

51. The other witness of the inquest report is Md. Afsar (PW-8), who also knew Rina Khatoon and her daughters. He had also put his signature on the inquest report as a witness. He happened to be a resident of a place situated at a distance of 15 kilometers from the place where the inquest report was prepared. He has stated that the place where he had put his signature, there are houses of 100-50 people.



52. The evidence of the I.O. Prem Kumar Bharti (PW-10) would show that he had received information from the villagers on 25.03.2021, at 8:40 AM, that Md. Tahir had burnt his wife and two children. On that information, he had recorded a sanha being Diary No. 515/2021 dated 25.03.2021 and reached the residential house of Md. Tahir, where hundreds of people had assembled. PW-10 has stated that when he reached on the roof of the house, then just in front of the stairs on the roof as per the map which he had prepared, he found the dead bodies in burnt condition. There was a room made of asbestos on the roof adjacent to the stairs and the local people had poured water to put out the fire. He had not found any sign of running of the deceased on the roof. At the same and one place, the dead bodies seemed to have burnt. He has proved the original photo of the deceased, taken at the place of occurrence, which were present in the case diary, with the objection of the defence, those have been marked 'X', 'X/1', and 'X/2', respectively.

53. PW-10 had also proved the three inquest reports which were prepared in presence of the relatives of Rina Khatoon. At the instance of PW-10, the inquest reports have been marked Exhibit 'P/4', Exhibit 'P/5' and Exhibit 'P/6', respectively. He had sent the dead bodies for postmortem through the Chowkidar. He



has given the description of the place of occurrence in paragraph '4' of his deposition. On that day, he had recorded the statement of Maitun Khatoon, who had supported the prosecution case. On the same day, he arrested Md. Tahir, Hadizan Khatoon and Md. Ajmer and they were brought to the outpost. On 26.03.2021, he had recorded the confessional statement of Md. Tahir and the defence version of Hadizan Khatoon and Md. Ajmer. On 27.03.2021, he had recorded the statement of the witnesses, namely Saddam Hussain, Md. Mahbub and Md. Paddo, who had supported the prosecution case in its entirety. On 06.04.2021, he recorded the statement of the witness, Md. Quddus (PW-2) who had supported the prosecution case.

54. In his cross-examination, the I.O. (PW-10) has stated in paragraph '22' that near the dead bodies, he did not notice any smell of kerosene oil or petrol. Water had fallen there, which is mentioned in the case diary. He had not seized any burnt article from the place of occurrence. In paragraph '24', he has stated that the witnesses have made statements regarding *panchayati* between Md. Tahir and his wife, however, he had not done any investigation with respect to the day, date and place of *panchayati* and had not recorded statement of any witness as a *panch*. He had not gathered any information from the Family Court with respect



to the matrimonial dispute going on between Md. Tahir and his wife. In paragraph '26', he has stated that wife of Md. Tahir was staying in her *sasural* and one day before the occurrence, she had come from the Family Court, Katihar. In paragraph '27', he has stated that he had arrested Md. Tahir and Hadizan Khatoon from a school situated in the village and not from their house. No article used in the occurrence was recovered from the possession of the accused. PW-10 was suggested by the defence that his investigation was defective and he had wrongly submitted the charge-sheet against the accused persons.

55. Md. Tayab (PW-11) took a stand that he did not know anything about the occurrence, therefore he has been declared hostile by the prosecution and has been cross-examined. His attention was drawn towards his previous statements made before police and he was suggested that he was deposing in collusion with the accused persons.

The Defence Witnesses

56. Mohsin (DW-1) has stated that the occurrence is of 7:30-8:00 AM. He was going from his house to the shop when he heard *hulla* that fire had broken out in the house of Md. Tahir. He along with other persons ran and went there to the house of Md. Tahir, they found smokes were coming out of the house and when



they tried to enter inside the house, then they found that the door was locked with *kundi* from inside then some persons entered into the house with the help of stairs from the backside. This witness has stated that he and some other persons broke open the door and entered to find that wife and two daughters of Md. Tahir were in burnt condition. The family members such as mother, brother and others of Md. Tahir were not there. This witness has stated that Md. Tahir had gone to his fruit shop in the morning at 5:00 AM at Labha Chowk and Hadizan Khatoon, aged about 70 years, was in her *maike* at the time of occurrence. DW-1 has stated that the day of occurrence was the day of *Shab-e-Barat*, which they celebrate as a festival by burning candles and crackers. In paragraph '7', he has stated that villagers informed Md. Tahir and Md. Jumrati then they came after one and half hour of the occurrence.

57. In his cross-examination, DW-1 has stated that he had no relationship with Md. Tahir. He is neighbour of Md. Tahir and a villager. He did not know that litigations were going on between Md. Tahir and his wife prior to occurrence. In paragraph '14' of his deposition, this witness has stated that the place of occurrence is the kitchen room where *jalawans* were kept. All the *jalawans* were burnt and the house was also burnt. He did not know how the fire caught. In paragraph '16' of his deposition, this



witness has stated that police had arrived but he had not informed police regarding the occurrence of fire and death of the deceased. He could not say that whose statements were recorded by the police at the place of occurrence. He could not say that what were seized by police from the place of occurrence. When he reached the place of occurrence, he found that all the three deceased were lying dead by burning. In paragraph '23', he has stated that he was brought for deposition by Md. Jumrati, who is an accused in this case. This witness was suggested that he is friend of Md. Tahir and related to his family, therefore to save the accused persons, he had come to the court and falsely deposed. This witness denied the suggestion.

58. Md. Anwar (DW-2) is another co-villager who has stated that Md. Tahir used to leave his house in the morning at 5:00–6:00 AM for his fruit shop at Labha Chowk. His shop is also there. The *maika* of Hadizan Khatoon is in the village itself. Tahir had raised *hulla* at the shop that fire has broken out in his house and on that information, this witness had reached the house of Tahir within 5–10 minutes. On reaching there, he came to know that the gate was closed from inside because there was no male member in the house. In paragraph '13' of his cross-examination, this witness has stated that he had not gone to the place of



occurrence, therefore he cannot say that how the occurrence had taken place. In paragraph '14', he has admitted to have knowledge that case was going on between Tahir and his wife but he could not say that for what the case was going on. He did not know that Tahir had brought his wife and children on the basis of a compromise in the Family Court. This witness admitted that he had come to depose in the court on his own and he had not received any summon from the court. In paragraph '17', he has stated that he had never gone to the house of Md. Tahir, Md. Jumrati and Hadizan and he cannot say as to when and which occurrence had taken place in the house of Md. Tahir.

59. On going through the evidence of DW-1 and DW-2, this Court finds that while in his examination-in-chief, DW-1 claimed that he had entered into the house of Md. Tahir after breaking open the door and found the dead bodies of his wife and two daughters in burnt condition and that Md. Tahir had gone to his shop in the morning at 5:00 AM, in his cross-examination, this witness has stated that police had come but he had not informed police regarding the occurrence, regarding the fire and regarding the deceased. He could not say that whose statements were recorded by police and what were seized by police. DW-1 was brought for deposition by one of the accused. He is not a reliable



witness and it is evident that he went to depose for the first time in court at the instance of one of the accused. Similarly, DW-2 is not a reliable witness as he has himself stated in paragraph '13' of his deposition that he had not gone to the place of occurrence. His statement in the examination-in-chief that Tahir had raised *hulla* that fire had broken out whereafter within 5–10 minutes he reached the house of Tahir gets falsified from his own statement in paragraph '13'. This witness had also come for the first time on his own to depose in course of trial. He has reiterated in paragraph '17' of his deposition that he had never gone to the house of the accused and he could not say that when and what had happened in the house of Tahir.

60. Md. Mustafa (DW-3) has stated that on the date of occurrence he was in his house when smokes came out of the house of Tahir then he reached the house of Tahir where a large number of villagers had assembled. He found that the door was closed from inside then the villagers went on the roof and found that the wife and children of Tahir were lying in burnt condition. He has stated that the place where the wife and children of Tahir were lying burnt, there was his kitchen in which *jalawan*, cartons were kept there which had burnt. The bamboos of the house were also burnt. He was not aware as to why the house was closed from



inside. He came to know that Tahir had gone to his shop in the morning and mother of Tahir had gone to her *maika*. He did not know whether family members of Tahir were asking for dowry. This witness has stated that relationship between Md. Tahir and his wife was good.

61. In paragraph '9' of his deposition, DW-3 has stated that when he reached the house of Tahir, his wife and children were lying in dead condition and their dead bodies were covered with cloth. He has stated that he had not seen Tahir or any other member of his family at the place of occurrence and he was not aware that where they had gone. From this part of his deposition that he was not aware that where they had gone, this witness has in fact falsified his own statement in the examination-in-chief that he came to know that Tahir had left in the morning itself for his shop. This witness has mostly shown his unawareness with regard to the occurrence. In paragraph '14' of his deposition, he has stated that when he reached the place of occurrence, police had not arrived but he was present at the place of occurrence till the police arrived. His statement was not recorded by police and he had also not tried to make statement before police. He has stated that he had not received any notice from the court for deposition and he had come on his own to depose. He has admitted that he was selling



vegetable and Jumrati who is one of the accused and brother of Md. Tahir, was also engaged in the business of vegetable. The defence suggested that he was friend of Jumrati, so he had come to save the accused persons.

62. Md. Ashique (DW-4) is a fruit seller near the Labha station. He has only deposed with respect to his presence with one of the accused, Ajmer, for the whole previous night of 25.03.2021. This witness has not stated in his examination-in-chief with regard to Md. Tahir or Hadizan. He is a resident of a village at a distance of 30-32 kilometers and he has stated in paragraph '5' of his deposition that he had come to depose on behalf of Ajmer as he and Ajmer have their shops adjacent to each other. In paragraph '9' of his deposition, this witness has stated that the occurrence had taken place in the house of Tahir but he cannot say the colour and as to how many rooms are there in his house. He has stated that he had reached the place of occurrence after the occurrence but he cannot say that how many persons had died in the said occurrence. He had not seen the dead bodies as he had not entered inside the house.

63. From the deposition of DW-4, it is evident that he has come to depose to save Ajmer, about whom he has stated in paragraph '16' of his deposition that he happened to be his brother-



in-law. This witness has rather stated in paragraph '9' that the occurrence has taken place in the house of Tahir. To this Court, it appears that the evidence of DW-3 and DW-4 are not creating any dent in the prosecution story with regard to the presence of Md. Tahir. The statement of DW-1 that villagers had informed Md. Tahir about the occurrence then he reached after 1 – 1½ hour of the occurrence would go to show that it was not a natural conduct of Md. Tahir. The another defence witness has stated that he reached within 5–10 minutes to the house of Md. Tahir but DW-1 says that Md. Tahir reached after 1 – 1½ hour. This creates doubt over the defence version.

64. The defence witnesses, though claimed that Md. Tahir used to leave his house for his fruit shop in the morning at 5:00-6:00 AM but when Md. Tahir came to record his statement under Section 313 CrPC and his attention was drawn towards the evidence that he had killed his wife and two daughters by burning them in the room on the date, time and place of the occurrence, he did not say that he was not present at the place of occurrence and that he had already left the house and had gone to the fruit shop. No explanation at all has been offered by Md. Tahir in his statement under Section 313 CrPC.



65. We also find from the pattern of cross-examination of the prosecution witnesses that when PW-2 was cross-examined by the defence on behalf of Md. Tahir, he was only suggested by the defence that he had deposed against Md. Tahir because of neighbourhood enmity. The defence did not suggest to either PW-9 or PW-10 that Md. Tahir was at his fruit shop at the time of occurrence.

66. In the case of **Trimukh Maroti Kirkan vs. State of Maharashtra** reported in **(2006) 10 SCC 681**, the Hon'ble Supreme Court while dealing with a case based on circumstantial evidence observed in paragraph '15' as under:

“**15.** Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

67. In the case of **Ganeshlal vs. State of Maharashtra** reported in **(1992) 3 SCC 106**, the appellant was being prosecuted for the murder of his wife which took place inside his house. The



Hon'ble Supreme Court observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.

68. In State of U.P. vs. Dr. Ravindra Prakash Mittal reported in **(1992) 3 SCC 300**, the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly the Hon'ble Supreme Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC.



69. In case of **Babu @ Balasubramaniam and Anr. vs. State of T.N.** reported in **(2013) 8 SCC 60**, their Lordships reiterated that the maxim *falsus in uno, falsus in omnibus* is not applicable in India. Even if evidence of a prosecution witness is disbelieved, entire prosecution case cannot be discarded but can still be proved on basis of other reliable evidence. In paragraph ‘21’ of its judgment, their Lordships held that it is for the husband to explain how the death occurred. In a case where death occurred inside the house where the deceased resides with her husband, presence of the accused at 6:00 AM in the house would be natural. It was not contended by the accused that he was not present in the house when the incident occurred as has been found in the present case. Therefore, the Hon’ble Supreme Court observed as under:

“**21.** To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A-1 Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation



which might drive the court to draw a different inference. ...”

70. In the case of **State of A.P. vs. Gangula Satya Murthy** reported in **(1997) 1 SCC 272**, while dealing with the case of circumstantial evidence, the Hon’ble Supreme Court held in paragraph ‘21’ as under:

“**21.** The fact that the body of Satya Vani was found on the cot inside the house of the respondent is a very telling circumstance against him. The respondent owed a duty to explain as to how a dead body which was resultant of a homicide happened to be in his house. In the absence of any such explanation from him the implication of the said circumstance is definitely adverse to the respondent.”

71. Keeping in view the aforementioned judicial pronouncements on the subject, when we examine the evidences available on the record, it is found that in this case PW-2 is an independent witness who resides at a distance of 20-25 feet from the house of Tahir. His presence at the place of occurrence is therefore natural. He had gone to the place of occurrence after hearing *hulla* from the villagers who were saying as to why the smokes were coming out from the house of Md. Tahir. He has stated that Tahir was asked to open the door but he did not open. There is a specific statement that Tahir was inside the house and had tried to escape but he was caught. This witness has stated that at the place of occurrence Tahir and his mother were present but no one else from his family was there. This witness has also stated



that Tahir had demanded a sum of Rs. 2 Lakhs in dowry and for this twice *panchayati* had taken place but he was not agreeing and was regularly assaulting Rina. Rina had filed a case also. His statement was recorded by police.

72. Learned counsel for the appellant has argued that the police had recorded statement of this witness after ten days, therefore he cannot be taken as a wholly reliable witness. In this regard, learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Jagjit Singh** (*supra*). We have gone through the said judgment and find that the said judgment is not laying down an absolute rule that some delay in recording of statement of a witness in course of investigation would *ipso facto* lead to disbelieve the testimony of that witness. A reading of paragraph '29' and '30' of the judgment would show that in the said case the conviction of the appellant depended solely on the testimony of PW-6 Billo, who was a child aged about only seven years at the time of occurrence. In course of investigation, she had not claimed to have known the appellant since he was the son of Amar Singh at whose tubewell her grandparents were residing. In fact, in her earlier statements, Amar Singh's name had not been mentioned at all. In course of her deposition, after five years of the occurrence, PW-6 had tried to furnish an explanation that the



appellant happened to be the son of Amar Singh, who was the owner of the tubewell where her maternal grandparents were residing, she knew the appellant. The Hon'ble Supreme Court found that her statement was recorded by the I.O. for the first time three days after the occurrence and her statement was recorded by the Judicial Magistrate six days after the occurrence. It was contended by the appellant that this period was utilised by the prosecution for tutoring the witness and therefore the delay of three days in her examination under Section 161 CrPC was significant. The Hon'ble Supreme Court held in the facts of the said case that the delay in examining her in course of occurrence created a serious doubt in the absence of any explanation for her late examination after three days, when admittedly she was the sole eyewitness who was also injured in the course of occurrence.

73. The present case is based on circumstantial evidence. We find that in the present case, when PW-2 came to depose, the defence did not question the delay of ten days in recording of his statement by the I.O. The defence did not bring any material to show that PW-2 was an inimical witness, though a suggestion was made that he was making false statement due to neighbourhood enmity, but no material even by way of *prima facie*



suggestions have been pointed out by the defence to show that there was an enmity between PW-2 and Md. Tahir.

74. This Court further finds that apart from the evidence of PW-2, there are other circumstantial evidences present on the record. The I.O. (PW-10) has given the description of the place of occurrence in his deposition which is the house of the deceased. We find that there are some lapses on the part of the Investigating Officer, which is evident from the fact that he did not seize the burnt articles from the place of occurrence and has stated that he had arrested Md. Tahir and Hadizan Khatoon not from their house but from the school situated in the village but the minor discrepancies in the deposition of the I.O. (PW-10) would not prove fatal to the prosecution case. The inquest reports of all the deceased have been prepared on the roof of the house of Md. Tahir in the presence of the inquest report witnesses who were known to the deceased and had arrived at the place of occurrence. The postmortem report of the deceased would show that they had died due to hypovolemic shock as a result of the burnt injuries.

75. The evidences available on the record would not allow us to take a different view as regards the guilt of the appellant Md. Tahir in Criminal Appeal (DB) No. 627 of 2025.



76. As regards appellant Hadizan Khatoon @ Hadisan Khatoon in Criminal Appeal (DB) No. 639 of 2025, this Court finds that even as PW-2 has stated about her presence inside the house, in her statement under Section 313 CrPC, she has stated that she was not present in the house at the time of occurrence and that she was in her *maike*. One of the defence witnesses (DW-2) has stated that her *maike* is in the same village. We find from the evidence of the mother of the victim Rina, who has deposed as PW-3, that this appellant Hadizan was more than 80 years old as per her estimate. It has also come in evidence that Md. Tahir was separate in mess and business with his brothers, namely Jumrati and Md. Ajmer. Taking together the entire circumstances, we have a doubt that this appellant would have been in a position to render any kind of assistance to Md. Tahir in killing of his wife and two minor daughters. It seems highly improbable that Hadizan Khatoon, being grandmother, would have assisted Md. Tahir in killing of her daughter-in-law as well as two minor grandchildren. Unlike Md. Tahir, she has taken a plea in her statement under Section 313 CrPC that she was not present in the house and the I.O. has also said that he had arrested her from the school. To this Court, therefore, it appears that this appellant has made out a case for interference with respect to her conviction. Accordingly,



Criminal Appeal (DB) No. 639 of 2025 is allowed. The judgment of conviction dated 15.04.2025 and the order of sentence dated 19.04.2025 passed by learned Sessions Judge, Katihar in Sessions Trial No. 132 of 2022, G.R. No. 1143 of 2021 arising out of Pranpur (Roshna) P.S. Case No. 51 of 2021 in respect of appellant Hadizan Khatoon @ Hadisan Khatoon is set aside and she is acquitted of the charges giving her benefit of doubt. She shall be released forthwith if not wanted in any other case.

77. We are aware that in this case charges were framed under Sections 302/34, 201/34, 302/120B, 498A/34 of the IPC and 3/4 of the Dowry Prohibition Act. The appellants have been acquitted of the charges under Sections 302/120B, 498A/34 IPC and Section 3/4 of the Dowry Prohibition Act but have been convicted for the offences punishable under Sections 302/34 and 201/34 IPC. In the light of the discussions hereinabove, we are of the considered opinion that the appellant Md. Tahir is guilty of committing the offences punishable under Sections 302 and 201 IPC. It is well settled that Section 34 IPC does not create a distinct offence at all. In the case of **Begu and Ors. vs. King Emperor** reported in **1925 Privy Council 130**, the Hon'ble Privy Council has dealt with this aspect of the matter. A detail discussion on this may be found in the judgment of the Hon'ble Allahabad High



Court in the case of **Om Prakash vs. State** reported in **AIR 1956**

Allahabad 241. It has been held as under:-

"Strictly speaking when a person is charged with a substantive offence following the provisions of S. 34, I.P.C., the ingredients of the substantive offence remain the same. The only difference is that instead of a single person A having committed an offence, the charge states that a number of other persons say B and C also joined A in the commission of the same offence with a common intention.

In such a situation, S. 34, I.P.C., lays down a special principle of criminal liability and says that where a number of persons join together in committing the same offence with a common intention, each of them becomes liable to an enhanced penalty which is attachable in law to the result of the joint acts of all.

Where the case under S. 34, I.P.C., fails and the prosecution is able to establish its case only against a single offender, the prosecution cannot be said to have failed to prove the ingredients of the offence, but all that it can be said to have failed to prove is the fact that some persons who are also alleged to have joined the accused with a common intention are not proved to have done so.

The effect, therefore, of mentioning S. 34, I.P.C., is that the prosecution takes upon itself the responsibility of proving some additional facts with a view to make the accused liable for an enhanced punishment. If, therefore, the charge in respect of S. 34, I.P.C., fails because the prosecution is unable to prove those additional facts or particulars, there should be no reason why the conviction of the accused for the substantive offence should not be recorded where the prosecution has been able to prove all the facts needed to support the conviction of a single individual for the substantive offence."

On the point of Sentence

78. The learned trial court has held in paragraph '3' of its order of sentence that the manner in which the offence has been



committed with extreme brutality, this case would fall in the category of “rarest of the rare” cases. Having found Md. Tahir guilty of brutally murdering his wife and two minor daughters, the learned trial court held that there is no mitigating circumstance sufficient to outweigh the aggravating factors present in the case. Hence, according to the learned trial court, he deserves nothing less than maximum penalty prescribed by law. Accordingly, Md. Tahir has been ordered to undergo sentence to death and fine to the tune of Rs. 50,000/- for the offence punishable under Section 302 IPC, subject to confirmation by the High Court as per Section 366 CrPC. In default of payment of fine, he shall further undergo simple imprisonment for six months. He has been sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 201 of the IPC and fine to the tune of Rs. 50,000/- and in default of payment of fine, he shall further undergo simple imprisonment for six months. He shall be hanged by neck till his death. Both sentences shall run concurrently.

79. The learned trial court has discussed the judgments of the Hon’ble Supreme Court in the case of **Bachan Singh** (*supra*), wherein the Hon’ble Constitution Bench of the Supreme Court of India held that capital punishment should be awarded only in the rarest of the rare cases, when the alternative option of



life imprisonment is unquestionably foreclosed. The Hon'ble Supreme Court laid down that courts must balance aggravating and mitigating circumstances relating to the crime and the criminal.

80. In the case of **Machhi Singh and Ors. vs. State of Punjab** reported in **(1983) 3 SCC 470**, the Hon'ble Supreme Court provided a guideline whereunder (a) manner of commission of murder, (b) motive, (c) anti-social or socially abhorrent nature of the crime, (d) magnitude of the crime and (e) personality of victim and status are required to be taken into consideration.

81. Learned Amicus Curiae has placed before this Court a recent judgment of the Hon'ble Supreme Court in case of **Navas @ Mulanavas** (*supra*). This was a case based on circumstantial evidence relating to killing of four persons at a place where the appellant alone was the other person present. No explanation was offered by the accused. He failed to discharge the burden put on him under Section 106 of the Indian Evidence Act, 1872. The motive shown was previous illicit relationship of accused with the wife of the person 'R', the incident occurred when the wife of 'R' tried to distance herself from the accused. It resulted in killing of the 'R', his wife, daughter and mother.



82. The Hon'ble Supreme Court has considered the previous case laws on the subject, including the landmark judgments in the case of **Bachan Singh** (*supra*) and **Machhi Singh** (*supra*). It has been noted that the High Court had noticed the judgment of the Hon'ble Supreme Court in case of **Swamy Shraddananda (2) vs. State of Karnataka** reported in (2008) 13 SCC 767 and held that to avoid a sentence to death, it is possible for the courts to devise a graver form of sentence of imprisonment for life beyond 14 years which would ensure that the society is insulated from the criminal for such period as the court may specify, including if the facts warranted, the entire rest of his life. In paragraph '41' to '47' of the judgment in case of **Navas @ Mulanavas** (*supra*) would be important to take note of hereunder, which we reproduce for a ready reference:-

“41. Thereafter, the High Court dealt with the precedents laid down by this Court in *Bachan Singh v. State of Punjab*¹¹, *Machhi Singh v. State of Punjab*¹² to examine whether the litmus test, namely, that the *alternative option being unquestionably foreclosed* was fulfilled or not. Thereafter, the High Court noticed the judgment of this Court in *Swamy Shraddananda*¹⁰ and the holding thereon that to avoid a sentence of death, it is possible for the courts to devise a graver form of sentence of imprisonment for life beyond fourteen

11. (1980) 2 SCC 684 : 1980 SCC (Cri) 580

12. (1983) 3 SCC 470 : 1983 SCC (Cri) 681

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113



years which would ensure that the society is insulated from the criminal for such period as the Court may specify, including if the facts warranted, the entire rest of his life.

42. Thereafter applying *Swamy Shraddananda*¹⁰, the High Court observed as follows: (*Navas case*¹, SCC OnLine Ker paras 54 & 59)

“54. A question still remains whether the instant case is one in which the graver alternatives of a life sentence are also unquestionably foreclosed. We have rendered our anxious consideration to all the relevant inputs. We are unable to agree that all the options now available can be said to be unquestionably foreclosed in the given circumstances. In every case of death sentence, the court must consider the purpose of the sentence. The theory of reformation will have no place whatsoever in a case of imposition of death sentence. In a case like the instant one, the consideration of compensation/restoration cannot also have any place, as all the members of the family have been liquidated by the conduct of the accused. The purpose of a death sentence — of eliminating the menace to the society in the form of a hardened criminal and to save society from the activities of such criminal may not also have much role, given the alternative option of a life sentence which will ensure that the accused does not come into contact with the society thereafter. ...

* * *

59. Let it not be assumed that this court does not perceive the instant one to be a serious and dastardly crime. We, to say the least, are convinced that the offence committed calls for societal abhorrence and disapproval. But, the totality of circumstances instill in us the satisfaction that this is not a case where the range of further options available to the court after *Swamy Shraddananda*¹⁰ are unquestionably

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113
1. *State of Kerala v. Navas*, 2010 SCC OnLine Ker 5224



foreclosed. Placing fetter on the powers of the Executive under Sections 432 and 433 CrPC for a prescribed period (and with due caution administered that the powers under Article 72 and Article 161 should not be lightly invoked to get over the prescription of such period fixed by this Court) a sentence of imprisonment for life which shall ensure that the offender does not get exposed to society for a period of 30 years can be imposed. We are not prescribing the “entire rest of the life” as the period, as fixed by their Lordships in *Swamy Shraddananda*¹⁰, considering the totality of circumstances and because of the optimistic faith in the infinite capacity of the human soul to repent and reform.”

Holding so, the High Court modified the sentence of death to that of imprisonment for life with the further direction that the accused shall not be released from prison for a period of 30 (thirty) years including the period already undergone with set-off under Section 428 CrPC alone.

43. The State is not in appeal, having accepted the verdict of the High Court. It is only the appellant who is in appeal. It is his submission that the imposition of 30 (thirty) years' sentence without remission is excessive and the counsel urges that a suitable lesser sentence be imposed under the *Swamy Shraddananda*¹⁰ principle. This is the alternative submission advanced.

44. *Swamy Shraddananda*¹⁰, since affirmed subsequently in *Union of India v. V. Sriharan*¹³, resolved a Judge's dilemma. Often it happens that a case that falls short of the rarest of the rare category may also be one where a mere sentence of 14 years (the normal benchmark for life imprisonment) may be grossly disproportionate and inadequate. The Court may find that while death penalty may not be warranted keeping in mind the overall circumstances, a proportionate penalty would be to fix the period between 14 years and for the imprisonment till rest of the life without remission.

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

13. (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



Addressing this issue felicitously in *Swamy Shraddananda*¹⁰ Aftab Alam, J. speaking for the Court, held as follows: (*Swamy Shraddananda case*¹⁰, SCC pp. 804-805, para 92)

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, *that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do?* If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.”

(emphasis supplied)

45. In *V. Sriharan*¹³, a Constitution Bench of this Court affirmed the principle laid down in *Swamy Shraddananda*¹⁰. It first affirmed the principle that imprisonment for life meant imprisonment for rest of the life, subject however, to the right to claim

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

13. *Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



remission, as provided in the Constitution and the statutes. It was further held that the judgment in *Swamy Shraddananda*¹⁰ did not violate any statutory prescription. The Court went on to observe that all that *Swamy Shraddananda*¹⁰ sought to declare was that within the prescribed limit of the punishment of life imprisonment, having regard to the nature of offence committed by imposing life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim.

46. Thereafter, in the same judgment Ibrahim Kalifulla, J., in a passage which repays study held as under: (*V. Sriharan case*¹³, SCC p. 100, para 98)

“98. While that be so, it cannot also be lost sight of that it will be next to impossible for even the lawmakers to think of or prescribe in exactitude all kinds of such criminal conduct to fit into any appropriate pigeonhole for structured punishments to run in between the minimum and maximum period of imprisonment. Therefore, the lawmakers thought it fit to prescribe the minimum and the maximum sentence to be imposed for such diabolic nature of crimes and leave it for the adjudication authorities, namely, the Institution of Judiciary which is fully and appropriately equipped with the necessary knowledge of law, experience, talent and infrastructure to study the detailed parts of each such case based on the legally acceptable material evidence, apply the legal principles and the law on the subject, apart from the guidance it gets from the jurists *and judicial pronouncements revealed earlier*, to determine from the nature of such grave offences found proved and depending upon the facts noted, what kind of punishment within the prescribed limits under the relevant provision would appropriately fit in. In other words, while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions noted above, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, *what*

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

13. *Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes, the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae.”

(emphasis supplied)

It will be clear from the paragraph above that the question of fixing the number of years within the maximum, in the case of life imprisonment, was to be left to the courts. It was mandated that the courts would with its experience, knowledge of law, the talent and infrastructure after studying the detailed parts of each case, *with the guidance from the jurists and judicial pronouncements revealed earlier* would decide judiciously about the period of incarceration which the case warranted. It was also indicated that for this, apart from the crime itself; the angle of the commission of such crime or crimes; the interest of society at large and all other relevant facts which cannot be put in any straitjacket formulae would be taken into account.

47. Once the court decides that the death penalty is not to be imposed and also that the convict cannot be released on the expiry of 14 years, the guidelines set out in *Swamy Shraddananda*¹⁰, *V. Sriharan*¹³ and the line of cases which have applied these judgments will have to be considered and principles, if any, set out therein have to be applied.”

83. The Hon’ble Supreme Court noticed the various case laws in order to come to a conclusion as to how much is too much and how much is too little? This has been termed as a difficult area to address. The Hon’ble Supreme Court held that there can be no straitjacket formulae and pegging the point up to which remission

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

13. *Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



powers cannot be invoked is an exercise that has to be carefully undertaken and the discretion should be exercised on reasonable grounds. The Hon'ble Supreme Court has noticed the catena of judgments on this on this point such as, **Haru Ghosh vs. State of W.B.** reported in (2009) 15 SCC 551, **Mulla vs. State of U.P.** reported in (2010) 3 SCC 508, **Ramraj vs. State of Chhattisgarh** reported in (2010) 1 SCC 573, **Ramnaresh vs. State of Chhattisgarh** reported in (2012) 4 SCC 257, **Neel Kumar vs. State of Haryana** reported in (2012) 5 SCC 766, **Sandeep vs. State of U.P.** reported in (2012) 6 SCC 107, **Shankar Kisanrao Khade vs. State of Maharashtra** reported in (2013) 5 SCC 546, **Sahib Hussain vs. State of Rajasthan** reported in (2013) 9 SCC 778, **Gurvail Singh vs. State of Punjab** reported in (2013) 2 SCC 713, **Alber Oraon vs. State of Jharkhand** reported in (2014) 12 SCC 306, **Rajkumar vs. State of M.P.** reported in (2014) 5 SCC 353, **Selvam vs. State** reported in (2014) 12 SCC 274, **Birju vs. State of M.P.** reported in (2014) 3 SCC 421, **Tattu Lodhi vs. State of M.P.** reported in (2016) 9 SCC 675, **Vijay Kumar vs. State of J&K** reported in (2019) 12 SCC 791, **Parsuram vs. State of M.P.** reported in (2019) 8 SCC 382, **Nand Kishore vs. State of M.P.** reported in (2019) 16 SCC 278, **Swapan Kumar Jha vs. State of Jharkhand** reported in (2019) 13 SCC 579, **Raju**



Jagdish Paswan vs. State of Maharashtra reported in (2019) 16 SCC 380, **'X' vs. State of Maharashtra** reported in (2019) 7 SCC 1, **Irappa Siddappa Murgannavar vs. State of Karnataka** reported in (2022) 2 SCC 801, **Shiva Kumar vs. State of Karnataka** reported in (2023) 9 SCC 817, **Manoj vs. State of M.P.** reported in (2023) 2 SCC 353, **Madan vs. State of U.P.** reported in (2023) 15 SCC 701, **Sundar vs. State** reported in (2024) 12 SCC 764 and **Ravinder Singh vs. State (NCT of Delhi)** reported in (2024) 2 SCC 323.

84. The Hon'ble Supreme Court found that keeping in view the relevant circumstances applicable to respective cases, courts have fixed the range between 20 years and 35 years and in few cases have imposed imprisonment for the rest of the life. Thereafter, the Hon'ble Supreme Court utilised the judgments referred above to take a guidance in terms of discerning the principle. Paragraph '78', '79' and '80' of the judgment in case of **Navas @ Mulanavas** are as under:-

"78. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they



would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the *Swamy Shraddananda*¹⁰ principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in *V. Sriharan*¹³.

79. Illustratively, in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:

- (a) the number of deceased who are victims of that crime and their age and gender;
- (b) the nature of injuries including sexual assault if any;
- (c) the motive for which the offence was committed;
- (d) whether the offence was committed when the convict was on bail in another case;
- (e) the premeditated nature of the offence;
- (f) the relationship between the offender and the victim;
- (g) the abuse of trust if any;
- (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

Some of the positive factors have been:

- (1) age of the convict;
- (2) the probability of reformation of convict;
- (3) the convict not being a professional killer;
- (4) the socio-economic condition of the accused;
- (5) the composition of the family of the accused; and
- (6) conduct expressing remorse.

80. These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein.”

10. *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

13. *Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695



85. Referring to the guidelines provided in paragraph '79' of the judgment, the learned Amicus Curiae have pointed out that in this case the aggravating circumstances are the number of deceased who are victims of the crime and their age and gender. The nature of injuries, the motive, the premeditated nature of offence, the relationship and the abuse of trust. However, the appellant Md. Tahir is comparatively young aged about 37 years, not having any criminal antecedent and he is not a professional criminal. Some other positive factors are the probability of reformation of convict and the socio-economic condition of the convict. The appellant comes from a poor strata of family. He was earning his livelihood by selling fruits near railway station, no material has been brought by the State to show that there is no probability of his reformation. It is pleaded that instead of death sentence, the appellant Md. Tahir may be awarded a special sentence. In the case of **Navas @ Mulanavas** (*supra*), the Hon'ble Supreme Court finally took a view to modify the sentence under Section 302 IPC imposed by the High Court from a period of 30 years imprisonment without remission to that of a period of 25 years of imprisonment without remission, including the period already undergone.

86. Having gone through the case laws discussed hereinabove, we are of the considered opinion that the sentence awarded to the appellant is fit to be modified from that of a sentence



of death to a special sentence of 20 years rigorous imprisonment without remission, including the period already served. Accordingly, the reference made by the learned trial court would fail. The sentence awarded to Md. Tahir under Section 302/34 by the learned trial court is modified to the extent that he would undergo 20 years rigorous imprisonment without remission, including the period already served and shall pay the fine of Rs. 50,000/- (Rupees Fifty Thousand) for the offence under Section 302 IPC.

87. Accordingly, the Death Reference No. 1 of 2025 fails. Criminal Appeal (DB) No. 627 of 2025 is partly allowed and Criminal Appeal (DB) No. 639 of 2025 is allowed as indicated above.

88. We acknowledge the assistance rendered by Ms. Surya Nilambari and Mr. Pratik Mishra, the two learned Advocates as Amicus Curiae during the hearing. In token of their assistance, we direct that each of them shall be paid a consolidated sum of Rs. 15,000/- (Rupees Fifteen Thousand) by the Patna High Court Legal Services Committee within one month from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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CAV DATE	
Uploading Date	12.01.2026
Transmission Date	12.01.2026

