



2026:AHC:198362-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 11672 of 2025

A.F.R.

Judgment reserved on 24.8.2026

Judgment delivered on 22.9.2026

Shahrukh

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Satendra Singh
Counsel for Respondent(s)	:	G.A., Pavan Kumar Kushwaha

With

JAIL APPEAL No. - 112 of 2026

Hasnera @ Shabana

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ashutosh Yadav
Counsel for Respondent(s)	:	G.A.

Court No. - 29

HON'BLE SIDDHARTHA VARMA, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Per : Jai Krishna Upadhyay, J.)

1. Since these criminal appeal and jail appeal arise out of same case crime number, they have been heard together and are being decided by a common judgment and order. Criminal Appeal No. 11672 of 2025 is being treated as a leading case.

2. The validity and sustainability of the judgment and order dated 14.11.2025 passed by the Additional Sessions Judge / Special Judge (POCSO Act), Court No.3, Firozabad in Session Trial No.1061 of 2023

(State of U.P. Vs. Shahrukh and others) arising out of Case Crime No. 06 of 2023 under Sections 302, 120-B IPC, Police Station Shikohabad, District Firozabad has been challenged by way of instant appeals whereby the appellants have been convicted and sentenced to undergo imprisonment for life under Section 302/120-B IPC with a fine of Rs.30,000/- each with default clause.

3. Heard Shri Satendra Singh, learned counsel for the appellant in criminal appeal no. 11672 of 2025, Shri Ashutosh Yadav, learned counsel for the appellant in jail appeal no. 112 of 2026 and Shri Muniraj Mehrotra, learned AGA for the State-respondent. No one has appeared on behalf of the informant.

4. The prosecution story, in brief, as unfolded by the informant Sayra Khatoon wife of Shahid, in the First Information Report (in short 'FIR') is that her brother Naeem was married to Hasnera alias Shabana, resident of Shankarpuri Gali No. 1 in Shikohabad. He was living with his wife and children in his in-laws' house for about 7-8 years. On 1.1.2023, the informant received an information that her brother Naeem, aged about 40 years, was murdered by unknown persons by crushing his head near Malkhanpur Road Pawan Bhatta.

5. On the basis of written report, *chik* F.I.R. was lodged on 4.1.2023 at 3.16 p.m. for the offence under Section 302 IPC and G.D. report was prepared. Investigation in the matter started. The Investigating Officer visited the place of occurrence, prepared site plan. The Investigating Officer prepared all other papers and after completing necessary formalities submitted charge sheet in the matter.

6. Dr. Abhishek Vats conducted the postmortem of the deceased on 2.1.2023 at 1.25 p.m. He found two injuries on the body of the deceased. The cause of the death was shock and hemorrhage owing to ante mortem injuries.

7. The accused persons appeared and charges under Sections 302 and 120-B IPC were framed against them. They denied the charges, pleaded not guilty and claimed their trial.

8. Trial proceeded and in order to prove its case on behalf of the prosecution seven witnesses, namely, Sayra Khatoon (P.W.-1-informant), H.C. Harish Gupta (P.W.-2), Farukh (P.W.-3), Dr. Abhishek Vats (P.W.-4), S.I. Mahendra Singh (P.W.-5), S.I. Bhavendra Singh Rajpoot (P.W.-6) and Inspector Harvendra Kumar Mishra (PW-7) were examined.

9. In documentary evidence, documents / papers exhibited as Ext. Ka.-1 to

Ext. ka-12 respectively have been proved.

10. PW-1 - Sayra Khatoon has stated that the incident is of 01.01.2023. A call from Naeem's wife Hasnera alias Shabana came to her, she had told that her brother Naeem was lying dead near the Mathiya of Kekad wale Baba near the brick kiln. After that they came to Shikohabad and took the dead body of Naeem to the hospital with the police. Her brother Naeem was crushed to death by Shahrukh and Hasnera alias Shabana by hitting him with a brick at the Pawan brick kiln, because these two had an illicit relationship. Therefore, Hasnera alias Shabana, in collusion with her lover Shahrukh, murdered her brother Naeem.

11. PW-2 - H.C. Harish Gupta has stated that on 04.01.2023 he was posted on the post of Constable Clerk at Police Station Shikohabad. On that day, on the basis of the typed written complaint of the complainant, he had registered Case Crime No. 06/2023 under Section 302 IPC. G.D. No. 37 dated 04.01.2023 at 15:10 hours was also prepared.

12. PW-3 - Farukh, has stated that the incident is of about two years ago from today. In the evening he had received information that someone had murdered his maternal uncle (mama) Naeem by crushing his head with a brick near Pawan brick kiln. He had come to the spot with his family. His maternal uncle Naeem had sustained severe head injuries. The police had filled the inquest report (panchnama). The postmortem of the dead body could not be done due to it being night. The postmortem of the dead body was done the next day. After the postmortem was done, they took the dead body of his maternal uncle to their village Sikandra Rau. They had a suspicion that his maternal uncle's murder has been committed by his maternal aunt Hasnera alias Shabana and Shahrukh together. Shahrukh used to keep coming and going to Hasnera's place. He had gone to Police Station Shikohabad with his mother Sayra Khatoon.

13. PW-4 - Dr. Abhishek Vats, who conducted the post mortem of the deceased on 02.01.2023, has opined that the cause of death was shock and hemorrhage. The dead body had the following injuries-

(i). The face was crushed from the left side, the size of which was 20 cm x 12 cm, the forehead bone was broken from the left side. The maxilla bone was broken. The orbit of the left eye was broken.

(ii). Lacerated wound on the left leg was 4cm x 1cm.

14. Sub-Inspector Mahendra Singh, was examined as **PW-5**. He has stated that on 01.01.2023, he was told about the information of number / dial 112

arriving at the police station. He had come to the spot from the said police station along with Sub-Inspector Ashok Kumar and with companions Constable Harishchandra, Shivshankar and Rakesh Kumar carrying the inquest papers. After some time, the Inspector In-charge also arrived on the spot. A huge crowd had gathered near the dead body of the deceased Naeem. Identification of the deceased was sought from the crowd. Then no person identified the dead body. A woman Smt. Hasnera alias Shabana wife of Naeem became present on the spot. She identified the deceased as her husband. The family members of the deceased also arrived on the spot. Upon inspecting the dead body, panchas (witnesses) were appointed. The dead body of the deceased was lying in a supine position. There was a crushing injury on the face of the deceased. The face was crushed from the side of the head. The dead body was sent for postmortem.

15. PW-6 - Sub-Inspector Bhavendra Singh Rajput, has stated that on 01.01.2023, he was posted on the post of In-charge of the Field Unit in District Firozabad. On that day he received information from the Control Room and Police Station Shikohabad that the dead body of a person is lying at Pawan brick kiln, Malikpur Road Shikohabad. He reached the place of occurrence with his unit, in his unit H.C. Ravindra Singh, Constable Akhil Singh, Driver Jitendra Singh were posted and the Dog Squad team and Dog Handler Bhuprakash Singh along with dog Honey reached the spot for the inspection of the place of occurrence. The dead body of the unknown deceased was lying in a blood-stained condition at the place of occurrence. There was a lot of crowd.

16. PW-7 - Inspector Harvendra Kumar Mishra has stated that on 01.01.2023, he was posted on the post of Inspector In-charge Police Station Shikohabad. On 04.01.2023, on the basis of the written complaint of the complainant Smt. Saira Khatoon, Case Crime No. 06/2023 under Section 302 IPC against unknown was registered. The investigation was handed over to him as Inspector In-charge. After obtaining the copy of the check (FIR), copy of the report (Rapat) from the office, Parcha (Case Diary) No. 1 dated 04.01.2023 was entered. In which, after copying the F.I.R. check, copy of the registration report, the proceedings taken after the information given on dial 112 by caller Mukesh Kumar on 01.01.2023 were endorsed and the physical evidence collected from the spot by the Field Unit and the inquest proceedings were endorsed. The statement of the writer of the above-mentioned case, Harish Babu Gupta, was recorded and the copy of the G.D. report of the information received from 112 on 01.01.2023, return report of the Field Unit, copy of the memo prepared at the spot of the physical evidence taken from the spot by the Field Unit was made. The statements of

the complainant Smt. Saira Khatoon of the above-mentioned case and the complainant's son Farukh were recorded. Upon the pointing out of the complainant, the place of occurrence was inspected and a site plan was prepared. Information was gathered from the informer, then it was told by him that the character of the deceased Naeem's wife Hasnera alias Shabana is not good, whose mobile number is 8126695279 and a boy, her neighbor Shahrukh, mobile no. 9758759125, is missing from his house. Shahrukh was searched for. Who was not found at home. By obtaining the C.D.R. (Call Detail Records) of the mobile numbers of the deceased Naeem's wife Hasnera alias Shabana and Shahrukh from the Surveillance Cell and perusing it, it was found that there has been a conversation among the said persons prior to the incident and the location of Shahrukh has been found at the place of occurrence and on the basis of the prosecution evidence, enhancing Section 120B IPC, the names of the accused Shahrukh and Hasnera alias Shabana were brought to light. Accused Shahrukh was arrested and in his statement he confessed the incident. Accused Hasnera alias Shabana was also arrested and her statement was also recorded wherein she has mentioned getting the incident done by her male friend Shahrukh.

17. After closure of prosecution evidence, statement of accused appellants under Section 313 CrPC was recorded in which they denied the prosecution case and stated that they have been falsely implicated due to enmity and for harassment.

18. In defence, no evidence has been produced.

19. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellants and recorded conviction and sentenced them, as mentioned here-in-above.

20. Castigating impugned judgment and order, learned counsel appearing for the appellants submitted that:

- i). The prosecution case is based on circumstantial evidence. There is no direct evidence against the appellants. They were not named in the FIR.
- ii) There are material contradictions in the statements of prosecution witnesses.
- iii). In a case based on circumstantial evidence, motive assumes significant importance, but no motive at all has been proved by the prosecution.
- iv). The chain of the circumstance is not complete and the evidence does not exclude the possibility of hypothesis of innocence of the accused. The

circumstance alleged by the prosecution is not of conclusive nature.

v). That no recovery at all has been effected from the possession or pointing out of the appellants.

vi) The story of illicit relationship of the wife of deceased with the appellant Shahrukh is ridiculous, created by the family members so as to assign motive to the accused persons.

vii) The trial court has committed grave error of law in treating each circumstances as true separately to assume a chain ignoring the fact that the circumstances of the mobile location and extra-judicial confession could not be proved by the prosecution beyond reasonable doubt. The findings recorded by the trial court in the impugned judgment suffers from infirmity, illegality and perversity warranting interference by this Court.

21. On the other hand, supporting the impugned judgment, it has been submitted by the learned A.G.A. for the State that there is sufficient evidence on record that wife of the deceased was having illicit relation with the co-accused Shahrukh. Thus, there was strong motive to commit the crime. It has also been submitted that CDRs go to prove that the deceased was in communication with the appellant Shahrukh, and they were in close proximity to each other on the day of incident. It has also been submitted that they have confessed their guilt before the Investigating Officer. He further submits that the murder weapon bloodstained brick was recovered from the place of occurrence by the Investigating Officer. It was also submitted that there was no reason to falsely implicate the accused persons in this case by the prosecution witnesses. There is no major contradiction or infirmity in the statements of witnesses. The conviction is based on evidence and there are no reasons to interfere with the same.

22. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned judgment and order carefully.

23. It is clear that there is no eye-witness of the alleged incident and the case is based on circumstantial evidence. Though conviction can be based on circumstantial evidence alone but for that the prosecution must establish the chain of circumstances, which consistently points to the accused and accused alone and is inconsistent with their innocence. It is further essential for the prosecution to cogently and firmly establish the circumstances from which inference of guilt of accused is to be drawn. These circumstances then have to be taken into consideration cumulatively. They must be complete to conclude that within all human probability the accused and none else have

committed the offence. In a landmark judgment of the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622**, the Hon'le Apex Court held as under:

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this Court in **Shivaji Sahebrao Bobade V State of Maharashtra 1973 CriLJ 1783** where the following observations were made :*

(1) certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence".

24. In Joseph vs. State of Kerala, 2000 SCC(Cri) 926], the Hon'ble Apex court has explained under what circumstances conviction can be based purely on circumstantial evidence. It is observed, that :

"it is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating

circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavor in the case should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused."

25. Similar view has been expressed in **Padala Veera Reddy v. State of Andhra Pradesh, (AIR 1990 SC 79)**. In **C. Chenga Reddy and others v. State of Andhra Pradesh, (AIR 1996 SC 3390)**, the Supreme Court has held that:-

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

26. In **State of U.P. vs. Ashok Kumar Srivastava, [(1992) 2 SCC 86]**, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on, is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

27. The principle that emerges from these decisions is that conviction can be based solely on circumstantial evidence but it should be tested on the

touchstone of law relating to circumstantial evidence laid down by the Hon'ble Apex Court. In the present case, the circumstances relied by the prosecution is that the CDRs go to prove that the deceased was in communication with the appellant Shahrukh and they were in close proximity to each other on the day of incident, wife of deceased was having illicit relation with the co-accused and the accused persons have confessed their guilt before the Investigating Officer.

28. Close scrutiny of evidence shows that P.W.1 - informant has stated that on 1.1.2023, she received an information that her brother Naeem, aged about 40 years, was murdered by unknown persons by crushing his head near Malkhanpur Road Pawan Bhatta. Subsequently, on the basis of suspicion she stated that her brother Naeem was crushed to death by Shahrukh and Hasnera alias Shabana by hitting him with a brick at the Pawan brick kiln, because these two had an illicit relationship. P.W.3, who is son of PW-1-informant, has also stated that he had a suspicion that his maternal uncle's murder has been committed by his maternal aunt Hasnera alias Shabana and Shahrukh together and PW-7, the Investigating Officer has stated that they have confessed their guilt before him and he recovered the murder weapon bloodstained brick from the place of occurrence.

29. As per the F.I.R. the deceased was living with his wife and children in his in-laws' house for about 7-8 years. Prosecution has set up the motive that the accused Shahrukh was having illicit relationship with the co-accused, wife of the deceased. To prove this fact PW-1 and PW-3 have deposed in their respective statements that the accused persons were having illicit relationship but they were not having personal knowledge that accused persons were in illicit relationship, as the deceased and his wife were living in their in-laws' house at Shikohabad District Firozabad whereas the informant was of District Hathras. No complaint was lodged in this regard by PW-1 and PW-3. No other witness of fact has been produced by the prosecution. Hence, the motive, as set up by the prosecution, fails and when the motive is failed then it creates a great dent in the prosecution case and doubt emerges as to why the person would commit offence like murder without any motive and thus, the averment made in the report to the police regarding motive, is not proved by the prosecution and first of all chain of circumstances breaks here.

30. As regards the confession of the accused persons about their guilt before the Investigating Officer is concerned, we may quote the provisions of Section 26 of the Evidence Act, which are as under :

"26. Confession by accused while in custody of

police not to be proved against him.

No confession made by any person while he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate."

31. Hence, the plea that the accused persons have confessed their guilt before the Investigating Officer cannot be accepted. Further, the murder weapon 'brick' has been recovered from the place of occurrence and not from the possession or pointing of the appellants and the said recovery is not in accordance with law. Another chain of circumstances breaks here also.

32. So far as the submission of the learned AGA that the CDRs go to prove that the deceased was in communication with the appellant Shahrukh and they were in close proximity to each other on the day of incident, in our view, reliance upon the CDR as a piece of evidence in order to prove the prosecution's case is most dangerous as the same will be used by criminals tomorrow to prove their alibi. For, sauce for the goose is sauce for the gander. If the prosecution's case can be proved and justified on the basis of a CDR, any criminal wanting to commit a crime just needs to ensure that someone takes his mobile and goes to a different city or State altogether and commits the crime in another place and at that time, the trial court in such cases would fall into silence because, earlier, it had taken the same evidence to convict a man on the basis of CDR. Thus, this court holds that CDRs are no evidence of the persons being together. It may be corroborative of other eyewitness testimonies, which are unshakable or scientific evidence by way of recovery of articles belonging to a deceased found in the possession of the accused, which the accused is unable to explain. In such situations, the CDR may be considered to clear a cobweb of doubt, but most certainly cannot be used as an exclusive piece of evidence to arrive at a finding that the appellant and the deceased were together on that day. Moreover, if it is assumed that the appellant Shahrukh and deceased were in close proximity to each other on the day of incident, it may be a case that they were under the network of one tower but not on the place of incident. The another chain of circumstance breaks here also.

33. Applying the aforesaid legal preposition in the present case, it is quite apparent that the neither the chain of circumstances is complete nor the alleged circumstances have been established.

34. After taking into consideration the totality of the facts and circumstances of the case and the evidence led on record by the prosecution, we find that many important links are missing so as to form the complete chain of evidence, which could conclusively establish the guilt on the part of the

accused persons consistent only with the hypothesis of the guilt of the accused persons. Hence, it will not be safe for this Court to uphold the conviction of the accused appellants Shahrukh and Hasnera @ Shabana in commission of the murder of the deceased. The accused appellants Shahrukh and Hasnera @ Shabana are entitled for benefit of doubt.

35. The appeals succeed and are **allowed** and the impugned judgment and order dated 14.11.2025 passed by the learned Trial Court is hereby set aside and the accused persons are acquitted of charges framed against them. They are in jail. They be released forthwith if not required in any other case.

36. Copy of this order alongwith trial court record be sent back to the trial court for compliance.

September 22, 2026

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(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)