

MHBI010044082023 	Presented on	:-	05.12.2023
	Registered on	:-	06.12.2023
	Decided on	:-	14.07.2026
	Duration	:-	Yrs. Ms. Ds. 02 07 09

Exhibit No.89/A

	<u>IN THE COURT OF SESSIONS JUDGE, BEED,</u> <u>DISTRICT BEED.</u> (Presided over by Dinesh P. Surana) <u>Sessions Case No.221 of 2023</u>		
	(Crime No.240 of 2023, under Section 302 of the Indian Penal Code, Police Station, Chaklamba, Taluka Georai, District Beed).		
Complainant (Prosecution)	:		STATE OF MAHARASHTRA, Police Station, Chaklamba, Taluka Georai, District. Beed.
REPRESENTED BY	:		PP Adv. A.D. Rakh, for the State
ACCUSED	:		Sharamat @ Sameer Kadar Shaikh, Age 35 years, R/o. Akhadwada, Taluka Paithan, District Chhatrapati Sambhaji Nagar.
REPRESENTED BY	:		Adv. H.R. Sayyed, for the accused.

Part 'B'

Date of offence	:-	25.08.2023
Date of FIR	:-	25.08.2023
Date of charge-sheet	:-	13.11.2023
Date of Framing of Charges	:-	08.04.2025
Date of commencement of evidence	:-	11.08.2025
Date on which judgment is reserved	:-	
Date of the Judgment	:-	14.07.2026
Date of the Sentencing Order, if any.	:-	14.07.2026

Accused Details

Rank	Name	Arrested on	Released on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428
1.	Sharamat @ Sameer Kadar Shaikh	25.08.2023	UTP	Sec.302 of I.P. Code	Convicted	Life imprisonment with fine.	-----

JUDGEMENT

(Delivered on 14.07.2026)

INTRODUCTION:

The accused is charged and prosecuted by the Chaklamba Police Station, Taluka Georai, District Beed (in short "PS"), in Crime No.240 of 2023, for committing the murder of his wife - Shabana Samir Shaikh, by hitting a stone on her head, as he was suspecting her character, an offence punishable under Section 302 of the Indian Penal Code (in short, "I.P. Code").

PROSECUTION CASE IN NUTSHELL:

2 i. The deceased Shabana was earlier married to Akhil Ahmed Shaikh. She had a son and a daughter from her first marriage. After the death of her first husband, her second marriage was performed with the accused in the year 2021. Shabana gave birth to a daughter, namely Taimur, from wedlock with the accused.

2 ii. The accused was suspecting her character. Therefore, there was a dispute between Shabana and her husband. 15 days before the incident, Shabana came to stay with her father Nabi Kasam Shaikh (PW-7) at Bhatkudgaon, Taluka Shevgaon, District Ahilyanagar.

2 iii. On 24.08.2023, the accused, along with his sister Laila Shaikh (DW-1), went to the house of PW-7 Nabi and took Shabana and her daughter - Taimur, with them to Ambirbaba Dargah at Chaklamba (in short "Dargah").

2 iv. On the evening of 24.08.2023, at the said Dargah, a quarrel broke out between the accused and Shabana. Laila gave them understanding. At night, in the hall of the Dargah, they all slept. On the same intervening night of 24.08.2023 to 25.08.2023, at around 12:30 am to 01:00 am of 25.08.2023, the accused assaulted Shabana on her head with a stone in the Dargah, as he was suspecting her character.

2 v. Due to the sound, Laila and other people woke up and noticed Shabana lying in the Dargah with blood oozing from her head injury. Thereafter, Laila, with the help of others, took Shabana to Gade Hospital, which was in front of the said Dargah.

2 vi. The accused came to Chaklamba PS and confessed to the said crime with the Police, including PSI Ananta Tangde (informant PW-1). The informant PSI Ananta, along with Maroti Kedar, a Police Head Constable B/No.1722 (in short "HC") and Police Constable Khetre B/No.2173 (in short "PC"), went to the Gade Hospital and noticed injured Shabana in an unconscious condition. They also noticed Laila sitting beside Shabana. Laila informed them that his brother Samir Shaikh (accused) had assaulted Shabana with a stone on her head while she was sleeping. With the help of Laila, the police brought Shabana to the hospital at Chaklamba. On the advice of the Medical Officer (in short "MO"), HC Kedar and PC Khetre took

Shabana to Civil Hospital, Beed. On the same day, Shabana was declared dead at 05:20 am at Civil Hospital, Beed.

FIR AND INVESTIGATION:

3 i. Based on the information given by the PW-1 PSI Ananta, Crime No.240 of 2023 was registered with PS Chaklamba against the accused for an offence punishable under Section 302 of the I.P. Code.

3 ii. During the investigation of the said crime, police performed an inquest panchanama (Exh.61) on the dead body of Shabana. After postmortem examination of Shabana, her clothes, which she was wearing at the time of the incident, i.e., black Veil, Maxi and Salwar, were seized by the police under clothes seizure panchanama Exh.51. Police also collected the memorandum of postmortem examination Exh.66, held on the body of Shabana, at the Civil Hospital, Beed.

3 iii. Under arrest panchanama Exh.76, the accused was arrested. The clothes on his person, i.e., a white full-sleeved Shirt and black full Pant were seized under clothes seizure panchanama Exh.42. Police, along with panchas, went to the spot of the incident and prepared spot panchanama Exh.43.

3 iv. Police seized the weapon of the offence, i.e., a Stone of 7.380 kg, stained with blood, and the blood sample of Shabana in the cotton swab from the spot of the incident, i.e., Dargah. The Police also collected the blood sample from the said stone in a cotton swab. One handkerchief/scarf was also seized from the spot. Such seizure from the spot was shown by the police in the spot panchanama

Exh.43. Police also got snapped photographs of the spot of the incident.

3 v. Police deposited the seized muddemal and seized clothes in the said crime in the Malkhana of Chaklamba PS, and obtained its receipts Exh.2. Along with the query letter Exh.54, Police forwarded the seized and sealed articles in the said crime to the office of the Regional Forensic Scientific Laboratory, Chhatrapati Sambhaji Nagar (in short “RFSL”), for analysis, and obtained receipts Exh.55 from the office of RFSL. Exh.14 to Exh.16 and Exh.33 are the reports of analysis of the seized articles in the said crime by the office of RFSL.

3 vi. A statement of Laila was recorded under Section 164 of the Code of Criminal Procedure (in short “Cr.P.C.”), on 05.09.2023, by the Ld. Judicial Magistrate First Class (Court No.3), Georai (in short “JMFC”). During the investigation of the said crime, police recorded the statements of witnesses.

CHARGE SHEET BY POLICE:

4. After completion of due investigation in the said crime, the police investigation officer (in short “IO”) filed a charge-sheet under Section 173 of Cr.P.C., against the accused, for the offence punishable under Section 302 of the I.P. Code.

COMMITTAL OF THE CASE:

5. As the offence punishable under Section 302 of the I.P. Code is exclusively triable by the Court of Session, Ld. JMFC, Georai, committed the case to the Court of Session for the trial.

FRAMING OF CHARGE AND ACCUSED ADJURE NOT GUILTY:

6. Charge vide Exh.25 was framed against the accused for the offence punishable under Section 302 of the I.P. Code, to which he pleaded not guilty, and claimed to be tried.

WITNESSES EXAMINED BY THE PROSECUTION:

7. To substantiate the charge against the accused, the prosecution examined the following witnesses.

Rank	Name	NATURE OF EVIDENCE	Exhibit
PW-1	PSI Ananta Pandurang Tangde	Informant	Exh.36
PW-2	Tukaram Subhash Gunjal	Panch on clothes seizure panchanama of the accused	Exh.40
PW-3	Rambhau Mukinda Dhakne	Witness	Exh.45
PW-4	Irfan Mainoddin Gulam Kadari	Witness	Exh.47
PW-5	Chand Gulab Shaikh	Panch on the seizure panchanama of the clothes of the deceased	Exh.50
PW-6	PC Prashant Kalyan Ghongde	He carried the seized articles in the crime to the office of RFSL	Exh.53
PW-7	Nabi Kasam Shaikh	Witness / Father of Shabana	Exh.56
PW-8	Chabulal Kasam Shaikh	Panch on the inquest panchanama	Exh.60
PW-9	Dr. Pravin Shankarrao Deshmukh	MO, who conducted the PM on the body of Shabana	Exh.64
PW-10	HC Maruti Raghunath Kedar	Police witness	Exh.69
PW-11	API Narayan Ratan Ekshinge	Investigating Officer	Exh.71

DOCUMENTS AND ARTICLES RELIED BY THE PROSECUTION:

8. Apart from the oral testimony, the prosecution has also placed its reliance on the following documents, articles, and Chemical analysis reports.

Documents:

	Exhibit	Description	Proved by
1.	Exh.37	FIR / Complaint	PW-1
2.	Exh.38	Printed FIR	PW-1
3.	Exh.39	Station Diary Entry No.4;	PW-1
4.	Exh.41	Letter dated 25.08.2023, issued by the IO to the Gramvikas Officer, Grampanchayat Office, Chaklamba.	PW-2
5.	Exh.42	Seizure panchanama of the clothes of the accused	PW-2
6.	Exh.43	Spot panchanama	PW-2
7.	Exh.51	Seizure panchanama of the clothes of the deceased	PW-5
8.	Exh.54	Letter dated 18.09.2023 by IO to RFSL.	-6
9.	Exh.55	4 acknowledgments of receipt of the seized articles issued by RFSL	PW-6
10.	Exh.61	Inquest panchanama held on the body of Shabana	PW-8
11.	Exh.65	Letter dated 25.08.2023, issued to the MO, Civil Hospital, Beed, for conducting a PM on the body of Shabana	PW-9
12.	Exh.66	Memorandum of PM Examination held on the body of Shabana	PW-9
13.	Exh.70	Acknowledgment dated 25.08.2023, regarding receipt of the dead body of Shabana	PW-10

14.	Exh.72	Station Diary (in short "SD") Entry No.3 dated 25.08.2023	PW-11
15.	Exh.73	SD entry No.5 dated 25.08.2023	PW-11
16.	Exh.74	SD entry No.7 dated 25.08.2023	PW-11
17.	Exh.75	SD entry No.10 dated 25.08.2023	PW-11
18.	Exh.76	Arrest panchanama of the accused	PW-11
19.	Exh.77	Portion mark "A" in the statement of PW-3 Rambhau	PW-11
20.	Exh.78	Letter dated 25.08.2023, written to the MO, Civil Hospital, Beed, regarding the collection of a blood sample of the accused	PW-11
21.	Exh.79	Medical case paper of the accused	PW-11
22.	Exh.80	Letter dated 01.09.2023, written to JMFC, Georai, for recording the statement of Laila u/Sec.164 of Cr.P.C.	PW-11
23.	Exh.81	Letter dated 26.09.2023, by IO, seeking opinion of MO, regarding injury caused to Shabana	PW-11

Articles / Material Object:

	Article Number	Description	Referred to
1.	Article-1	Stone	PWs-2, 3, 4, 9 & PW-11
2.	Article-4	Handkerchief	PW-2 & PW-11
3.	Article-5	Maxi of Shabana	PWs-3, 5, 7, 10 & PW-11
4.	Article-6	Salwar of Shabana	PWs-3, 5, 7, 10 & PW-11
5.	Article-7	White Shirt of the accused	PWs-1, 2, & PW-11
6.	Article-8	Black Pant of the accused	PWs-1, 2, 3 & PW-11

7.	Article-9 colly.	Photographs of the spot	PWs-2, 4 & PW-11
8.	Article-10	Marriage Photo of the accused and Shabana	PW-11

Chemical Analysis Reports:

	Exhibit	Description
1.	Exh.14	CA Report regarding the analysis of the blood of the accused, wherein his blood group is Group "B".
2.	Exh.15	CA Report regarding the analysis of the blood of the deceased Shabana, wherein her blood group cannot be determined.
3.	Exh.16	CA Report regarding the analysis of (1) clothes of the accused, (2) clothes of the deceased, (3) the Stone Article-1, and (4) cotton swab wherein blood was taken from the spot.
4.	Exh.23	DNA Report of Blood stain of deceased Shabana.
5.	Exh.24	DNA Report of (1) Blood stains cutting from Salwar of Shabana, (2) Blood stains prepared from Stone Article-1, (3) Blood stains cutting from full Shirt of accused, and (4) Blood stains cutting from full Pant of accused.
6.	Exh.33	DNA Report of Blood Sample of Taimur (daughter of the accused and deceased).

9. The accused, after his examination under Section 313 of Cr.P.C., at Exh.83, examined his sister DW-1 Laila Shaikh at Exh.85.

10. Based on the cross-examination of the prosecution witnesses by the accused, the statement of the accused recorded under Section 313 of Cr.P.C., and the evidence of DW-1 Laila, the defence of the accused is that of total denial and his false implication

in the said crime. The accused also took the defence that the death of Shabana was accidental and not homicidal.

11 i. Heard arguments advanced by Public Prosecutor (in short “P.P.”) Adv. A.D. Rakh for the prosecution, and Adv. H.R. Sayyed for the accused.

11 ii. P.P. Adv. Rakh submitted that the accused had a motive to kill his wife Shabana, as he was suspecting her character. The conduct of the accused, going to the Police Station to confess the said crime, is also relevant. The accused has admitted his presence at the spot, i.e., Dargah, at the time of the incident. The witnesses have also deposed the presence of the accused, his sister Laila, with Shabana, and her daughter Taimur, at the time of the incident. The doctor, who performed an autopsy on the body of Shabana, has categorically opined (para No.19) that the head injury noticed by him to Shabana is not possible due to a fall. As such, the defence taken by the accused, and as deposed by the DW-1 Laila, about the accidental death of Shabana, is not proved and is against the medical opinion. Though there is no direct eyewitness to the alleged incident, APP Adv. Rakh submitted that the motive of the accused, his conduct, and he being last seen with the deceased, immediately before the incident, are the strong circumstances that point to his guilt, with no other possibility of hypothesis. As such, PP Adv. Rakh prayed for the conviction of the accused for the offence for which he was charged.

11 iii. As against this, Adv. Sayyed for the accused, by way of oral and written notes of argument Exh.87, contended that – (1) The prosecution has failed to prove any motive of the accused for the

commission of the crime. There is no investigation into the alleged suspicion by the accused on the character of the deceased. No independent witnesses are examined by the prosecution to point out the motive. The examined witnesses on the said point of motive cannot be relied upon. The mobile phones of the deceased or the accused were not seized by the IO, which could have been vital electronic evidence to show the said motive; and no statement of villagers from the native place of the accused or the deceased was recorded by the IO. Such witnesses would have been independent witnesses on the point of the alleged suspicion by the accused on his wife, Shabana. (2) There is no eyewitness to the alleged incident. Therefore, the entire case of the prosecution is based on circumstantial evidence, but the chain of which is not linked. No separate seizure panchanama of the alleged weapon – Stone was prepared by the Police. As such, the seizure of Stone cannot be said to have been proved. The chain of custody of the alleged weapon is broken from the inception. The report of the Chemical Analyser, RFSL, in respect of blood found on the Stone is inconclusive. No DNA profile on the blood of the Stone was done. (3) Nowhere in the PM notes there is mention of the homicidal death of Shabana. There is every possibility of her accidental death due to a fall. Therefore, the prosecution has failed to prove beyond a reasonable doubt that the death of Shabana was homicidal. (4) The accused is a person of unsound mind. He is suffering from mental illness (psychosis). His mental condition is established by the documentary evidence on record. The accused was under regular medical treatment for the said psychiatric illness. Therefore, the accused is entitled to the benefit of Section 84 of the I.P. Code. A letter/certificate Exh.18 was issued by the Psychiatrist / District Medical Officer, Beed, regarding the mental

condition of the accused. The medical condition of the accused was also admitted by PW-11 IO API Ekshinge, as by letter dated 28.08.2023, the I.O. himself has brought to the notice of the Court about his mental condition. (5) The Station Diary (in short "SD") entries Exh.39, Exh.72, Exh.73, Exh.74, and Exh.75, relied on by the prosecution, are computer-generated documents. They are inadmissible in evidence, as no certificate under Section 65-B of the Indian Evidence Act is filed on record in respect of such SD entries. (6) There are several contradictions and omissions in the deposition of the prosecution witnesses. The prosecution has not examined the key witness - Laila Shaikh, despite her statement (Exh.80) being recorded by the JMFC, Georai, under Section 164 of Cr.P.C. Therefore, the evidence of Laila about the non-involvement of the accused in the alleged crime is crucial. Her evidence points out that the accused is not guilty of the said crime. (7) The alleged confessional statement of the accused to the police is inadmissible, as hit by Section 25 of the Indian Evidence Act. As such, contending that the prosecution has failed to prove the guilt of the accused, for which he is charged, Adv. Sayyed prayed for the acquittal of the accused.

POINTS FOR DETERMINATION:

12. Based on the evidence and rival contentions, the following points arise for my determination, and I record my findings against them for reasons discussed thereunder.

P O I N T S

FINDINGS

- | | |
|---|-------------|
| 1. Whether the prosecution proves that the death of Shabana Shaikh was homicidal? | Yes. |
|---|-------------|

2. Whether the prosecution proves that on the given date, time, and place, the accused, with knowledge and intention, caused head injury to his wife Shabana by hitting her with a Stone on her head, as he was suspecting her character, and thereby committed her murder, an offence punishable under Section 302 of the I.P. Code? : **In the Affirmative.**
3. What order? : **As per the final order.**

REASONS

As to Point No.1:

DEATH OF SHABANA - HOMICIDAL OR ACCIDENTAL:

13. PW-9 Dr. Deshmukh is a Medical Officer attached to Civil Hospital, Beed. He had performed an autopsy on the body of Shabana on 25.08.2023. He deposed that while conducting a postmortem examination, he observed the following external anti-mortem injuries, i.e., Contusion with Abrasion over the frontal region and head having a size of 4 X 5 cm, with nasal bleeding present. He has observed a fracture of her frontal bone and skull with a subdural hematoma in her brain. He opined that her cause of death was due to hemorrhagic shock, due to a head injury. He opined that the injuries to Shabana were sufficient in the ordinary course of nature to cause her death. He has specifically opined that the death of Shabana was homicidal.

14. PW-9 Dr. Deshmukh further opined that if a person is forcefully assaulted by a Stone, the external injury and its corresponding internal injuries are possible. On being shown the seized Stone (Article-1), from the spot by the police while drawing

the spot panchanama, he opined that the injuries to Shabana are possible by the assault with it. The testimony of PW-9 Dr. Deshmukh is corroborated by the PM Report Exh.66, prepared by him in his handwriting, which also bears the signature of Dr. Gavhane.

In cross-examination of PW-9 Dr. Deshmukh, he has clarified that the abrasion mentioned by him in his PM Report Exh.66, is the bleeding injury to the head. In his further cross-examination by the accused, it was opined by him that if in a case of poisoning, or gastroenteritis, or sinus travel on a motorcycle for a long distance, due to allergy, dizziness and giddiness may occur. He also opined that due to allergic sinusitis, epistaxis, i.e., huge nasal bleeding, is possible. However, PW-9 Dr. Deshmukh had specifically opined that if a person with high blood pressure falls at night hours on stone due to giddiness, the injuries mentioned to Shabana in PM Report Exh.66, cannot be caused. He denied the said suggestion of the defence. He has also opined that if a person is assaulted by a Stone with 7 to 8 kg, with intent to kill, the crush injury to him/her is not possible. He has also specifically denied the suggestion put to him by the defence that the injury mentioned by him to Shabana can be caused by the accident. He admitted that he had not mentioned the homicidal death of Shabana in his postmortem report Exh.66. However, there is no column in the proforma of memorandum of PM examination Exh.66, for any doctor to opine whether the death is accidental, suicidal, or homicidal.

15. The accused himself is coming with the case that on the said date, period, and place, Shabana received a bleeding head injury. PW-9 Dr. Deshmukh, while conducting the PM examination by opening the skull of Shabana, has given findings regarding the

internal head injury caused to her. Hence, I do not find that non-collection of the viscera, non-mentioning the colour or age of the injury to Shabana, or approximate ascertain or the time of her death, are in any manner relevant and fatal to the case of prosecution.

16. It is pertinent to note here that PW-9 Dr. Deshmukh is an Orthopedic Surgeon by profession. Since 2010, he has been serving as an MO. He is neither the witness of the prosecution nor of the police. He is an expert witness of opinion, that to assist the Court based on his experience and the findings noticed by him. Therefore, I do not find any reason for Dr. Deshmukh to give false information or to depose falsely in the Court as to his opinion. There is no other scientific or medical literature put to PW-9 Dr. Deshmukh to falsify his opinion and expertise, as to his opinion regarding the homicidal death of Shabana.

17. The accused has examined his sister DW-1 Laila, mainly to show that the death of Shabana was accidental and not homicidal. She deposed that on the given date and time, when she, her accused brother Sharamat, Shabana, and Taimur were sleeping in the Dargah, at night she heard the noise of something falling down. Shabana told her that she had fallen down due to giddiness and asked her to take her to the hospital. She woke up the accused, who was sleeping there, and other people, who were sleeping there, and took Shabana to the hospital. She further deposed that the doctor was not ready to hospitalize/admit Shabana. Therefore, the accused created ruckus, due to which the police came there, and the doctor and police brought Shabana to the Hospital at Beed. The doctor at Civil Hospital, Beed, informed that Shabana had died due to a fall.

18. I would like to mention here that, (1) DW-1 Laila is the sister of the accused, (2) she had not deposed as to which hospital Shabana was first taken, (3) she has neither named any doctor, police, nor police station in her deposition, and (4) she admitted that for the first time, she is deposing that Shabana had fallen due to giddiness. The statement of DW-1 Laila, recorded by the police under Section 161 of Cr.P.C., though contrary to her entire testimony, but as she was not called by the prosecution to depose, but was examined as a defence witness, in view of the Proviso to Section 162(1) of Cr.P.C., the prosecution was prevented to confronted her with her such statement, for the purpose of bringing contradictions, and omissions in the manner provided under Section 145 of the Indian Evidence Act, 1872.

19. The statement of DW-1 Laila was also recorded on oath by the JMFC, Georai, on 05.09.2023, under Section 164 of Cr.P.C., which can be used by the defence as well as the prosecution for the purpose of confronting the witness to bring out the contradictions and omissions. Such a statement is a valuable document, though is not substantive evidence of the fact. Such a statement can definitely be used by the defence as well as the prosecution to corroborate the testimony of its maker. The testimony of DW-1 Laila, as to the facts that (1) she heard the sound of someone fallen, (2) Shabana told her that she has fallen due to giddiness, (3) Shabana asked her to take her to Hospital, (4) she woke up the accused, who was sleeping there, (4) the accused created rucks at hospital, and (5) the doctor at Civil Hospital, Beed, told her that Shabana died due to fall, though not confronted by the prosecution to her from her such statement, but rather even not corroborating to her testimony.

20. It is contended by the defence that the prosecution has not examined the sister of the accused, Laila, though she was present at the spot of the incident and was a vital witness. However, as of fact, (1) she is not an eyewitness to the alleged incident; (2) she is examined by the defence; (3) thereby, the prosecution was deprived of confronting her with her previous statement recorded by police under Section 161 of the Cr.P.C.; (4) she had supported the accused, by taking a U turn from her earlier statement given by her to the JMFC, recorded under Section 164 of Cr.P.C.; and (5) her non-examination by the prosecution cannot be said to be a crucial gap in the case of the prosecution, as no prejudice is shown to have caused to defence due to her non examination as a prosecution witness. So also, without her examination as a prosecution witness, if the prosecution can succeed in linking the chain of circumstances against the accused, her non-examination will not be fatal to the case of the prosecution.

21. Moreover, PW-9 Dr. Deshmukh had noticed a frontal region head contusion with abrasion with 4 X 4 cm, and a fracture to the frontal bone, and skull to Shabana, and had not opined that with such head injury any person is in a position to speak. Neither such fact is brought on the record by the defence. Hence, the testimony of DW-1 Laila about the non-corroborated facts to her previous statement recorded by the JMFC, under Section 164 of Cr.P.C., cannot be accepted as gospel truth. It is legally permissible to use the statement recorded under Section 164 of Cr.P.C. to see whether it corroborates the testimony of the witness to verify whether it is a truthful or trustworthy witness. For the above-said reasons, her testimony cannot be relied upon. DW-1 Laila was suggested by the

prosecution in her cross-examination, though she denied, that she was deposing falsely as to the above facts to save his accused brother.

22. In the legal context of the Hypothesis regarding, certain factual circumstantial evidence must only be rational. Explanation for a statement to establish the fact without other possible or alternative possibilities. In the case at hand, the fact of homicidal or accidental death of Shabana can be better opined medically, rather than factually, when there seems to be no eyewitness to the alleged incident. As the testimony of DW-1 Laila, in my view, is untrustworthy, as she is not an eyewitness to the alleged accidental death of Shabana due to a fall. In the case at hand, I do not find any other possibility of hypothesis than the homicidal death of Shabana. Having regard to my above discussions, in my view, the prosecution has proved beyond reasonable doubt that the death of Shabana was homicidal only, and not accidental. As such, my answer to Point No.1 in the affirmative.

As to Point No.2:

IS THE ACCUSED GUILTY?

PANCHSHEEL PRINCIPALS TO BE ESTABLISHED IN CIRCUMSTANTIAL EVIDENCE:

23. Admittedly, there is no eyewitness to the alleged incident. The entire case of the prosecution is based on circumstantial evidence. In the case of **Sharad Birdhichand Sarda V/s. State of Maharashtra, 1984 AIR (SC) 1622** (cited by the accused), the Hon'ble Supreme Court of India had laid down the following Panchsheel (5 golden) principles, which are required to be established by the prosecution, in the case of circumstantial evidence.

- (1) **Fully Established Circumstances:** the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;*
- (2) **Consistency with Guilt:** 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) **Conclusive Nature:** the circumstances should be of a conclusive nature and tendency;*
- (4) **Exclusion of Innocence:** they should exclude every possible hypothesis except the one to be proved, and*
- (5) **A Complete Chain:** 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.*

24. In the case in hand, the prosecution is relying on the following circumstantial evidence;

- (1) The accused was suspecting the character of his wife, Shabana, which was the motive for him to commit the said crime;*
- (2) The accused and deceased were last seen together, immediately before the incident;*
- (3) The blood of the deceased Shabana was found on the clothes of the accused and on the Stone.*
- (4) The conduct of the accused in going to the Police Station to confess the commission of the said crime.*

MOTIVE:

25. Advocate Rakh placed his reliance on the judgment of the Hon'ble Bombay High Court, in the case of **Sheikh Jahangir Ali Vs. State of Maha. [2021 (2) Mh.L.J. 67]**, wherein it is held that -

“Motive is always locked in the heart of the accused, and it is well known dictum that even devil may not know the thoughts of man motive, no doubt, assumes importance in a case resting on circumstantial evidence, yet the absence of motive is not fatal if the circumstantial evidence is established with cogent evidence.”

26. PW-7 Nabi, father of Shabana, deposed that Shabana's earlier marriage was performed with one Akhil Shaikh. She has a son and a daughter from her first wedlock. Due to the dispute with her first husband, she was staying with him. However, after the demise of her husband Akhil, he performed the second marriage of Shabana with the accused in the year 2021. After her marriage, Shabana went for cohabitation with the accused at Akhatwada. She gave birth to a daughter, Taimur, out of wedlock with the accused. He deposed that the accused was suspecting the character of his daughter Shabana; hence, there was a dispute between them. Prior to 15 days of the incident, Shabana came to stay with him due to such a dispute. On 24.08.2023, when he was at home, the accused, along with his sister Laila, came to his house on a motorcycle at 02:00 pm. They took Shabana to the Dargah. Taimur also accompanied them. He further testified that on 25.08.2023, DW-1 Laila informed him on the mobile that the accused had assaulted Shabana with a stone on her head, and blood was oozing from her ear and mouth; therefore, he came to Chaklamba. However, DW-1 Laila asked him to come to Civil Hospital, Beed. Therefore, he went to the said hospital, where, again,

DW-1 Laila told him that the accused had committed the murder of Shabana by stone. He identified Maxi Article-5 and Salwar Article-6 to be the clothes that Shabana was wearing while leaving his house with the accused.

27. In cross-examination of PW-7 Nabi, by the accused, some omissions were brought on record from the earlier police statement given by PW-7 Nabi, those are that (1) first husband of Shabana had died; (2) after marriage, Shabana went for cohabitation with accused at Akhatwada; and (3) the accused and deceased went to Chaklamba at 04:00 pm (only time 04:00 pm is an omission). PW-7 Nabi, in his cross-examination, admitted that (1) he had not filed any complaint against the accused; (2) he did not personally inquire about the suspecting of the accused on Shabana; (3) the fact that it was the second marriage of Shabana with the accused, and (4) Shabana was having two children from her previous wedlock, is not disputed. There is no improvement in the testimony of PW-7 Nabi from his previous statement that Shabana accompanied them to Dargah.

28. There was a dispute in respect of the earlier marriage of Shabana, and she had two kids from her first wedlock. After the death of her earlier husband, Shabana's marriage with the accused was performed. She has begotten a daughter Taimur, from the wedlock with the accused, is also not disputed. It is also not disputed from the testimony of PW-7 Nabi that before 15 days of the incident, Shabana was residing with her father. Under such circumstances, non-filing of the complaint by her father to the Police Station, or non-inquiry by him regarding the suspecting of the accused, cannot be said to be unnatural and unbelievable conduct on the part of a father.

No other reason is forthcoming from the accused for Shabana to reside with her father. In the cross-examination of PW-7 Nabi by the accused, it was not suggested that the accused had not been to his house on 24.08.2023 to take Shabana with him to the Dargah. Having regard to the past matrimonial situation of Shabana, such non-disclosure by PW-7 Nabi, or non-filing of the police complaint by him, cannot be the ground to disbelieve his testimony. So also, having regard to the religious reason and the past matrimonial situation of Shabana, his father PW-7 Nabi might have sent Shabana to the said Dargah, with the accused, who had accompanied his sister.

29. It was argued on behalf of the accused that no independent witness is examined by the prosecution to prove the fact that the accused was suspecting the character of Shabana. However, under such circumstances, the parents are the best witnesses to speak about the alleged facts. The PW-7 Nabi has specifically denied the suggestion put to him by the defence that he did not personally know that the accused was suspecting the character of the deceased Shabana. When PW-7 Nabi had specifically deposed about the said aspect, his said information may be from his deceased daughter, as there are hardly any other sources of such information to know. Therefore, PW-7 Nabi might not have personally known about the said aspect of the accused suspecting her character. But even such information is admissible under Section 32 of the Indian Evidence Act, as it relates to the cause of death of Shabana, whose cause of death is in question; such statement relates to the circumstances of the transaction which resulted in the death of Shabana. So also, he is not supposed to personally inquire about the details of such suspicion

by the accused. Therefore, the argument advanced in this regard on behalf of the accused has no force.

30. It is also contended by the defence that the mobile phone of Shabana was not seized in the said crime to show that the allegations of suspecting her character, or her illicit relations with someone else, which is a glaring lapse in the investigation. However, mere non-seizure of the mobile by the IO of such victim women cannot be a ground to disbelieve that there was no such suspicion being raised by the accused on Shabana. Such suspecting on character by the husband of his wife is not always openly made. Mostly, those are kept in the closet or under the blanket, mainly known to the couple or the nearest relatives.

31. From the examination of PW-7 Nabi, I do not find that his evidence as to such suspicion being raised by the accused on the character of his daughter Shabana is untrue or unreliable. Under such circumstances, I am of the view that the prosecution has established the facts that the accused was suspecting the character of his deceased wife, Shabana.

**ACCUSED LAST SEEN TOGETHER WITH DECEASED,
IMMEDIATELY BEFORE THE INCIDENT:**

32. The other chain of circumstances against the accused is that he was last seen with the deceased at the spot of the incident, i.e., Dargah. The accused, Shabana, DW-1 Laila, and their daughter Taimur were present. There were other persons, including witnesses, who were present. The family of the accused might have slept together in close proximity. It is not the defence of the accused that

Shabana was assaulted by any other person. On the contrary, he is coming with a case that Shabana suffered a head injury due to giddiness and then fell. This possibility is already negated by the clear-cut opinion of PW-9 Dr. Deshmukh.

33. The accused has not disputed his presence at the spot of the incident. He has taken a defence that on 24.08.2023, he, his sister DW-1 Laila, and wife Shabana had been to Dargah at Chaklamba for Darshan.

34. The prosecution has also examined PW-3 Rambhau, an agriculturist of 60 years old, who on that day was present in the Dargah. He deposed that while he was sleeping in the main part of Dargah with other people, at around 12:00 midnight to 01:00 am, there was some noise. He got up, and saw a woman lying on the ground and a blood-stained Stone near her. According to him, a Muslim woman was assaulted with the said stone by her husband. He deposed that the accused, his deceased wife, and sister had come to Dargah. He was confronted and admitted that the accused told him that since he was suspecting her character, he killed his wife. He identified Maxi Article-5 and Salwar Article-6 to be worn by the deceased, and Shirt Article-8 to be that of the accused. However, he denied having stated in his police statement that the accused told him his name as Samir Shaikh, and the name of his wife as Shabana.

35. PW-3 Rambhau was confronted, to some extent, in his examination-in-chief, by the prosecution putting leading questions. However, he is not an interested witness. He is a rustic old agriculturist villager of 60 years old. His testimony was recorded

around two years after the incident. His presence at the Dargah is not denied in the cross-examination by the defence. He has given a specific position in his cross-examination, in respect of the Dargah from inside, which is not disputed to be false. He has not stated to the police that (1) the accused put a stone on the head of the deceased; (2) the accused had killed his wife Shabana; (3) the accused told him that he killed the deceased, as he was suspecting her character. Therefore, what was being brought in the examination-in-chief of PW-3 Rambhau, by confronting him with the leading portion, that the accused told him that since he is suspecting her character, he killed his wife, cannot be relied upon. Therefore, though prosecution has failed to establish from the testimony of this witness that the accused told him that he was suspecting character of his wife Shabana, and therefore, he killed her, but from his testimony, the facts are proved by the prosecution, that (1) he was present on the spot; (2) he heard some noise; and (3) he saw a Muslim female lying on the spot with a Stone stained with blood lying near her. The testimony of PW-3 Rambhau to these facts is also corroborated by the testimony of PW-4 Irfan Kadari.

36. PW-4 Irfan Kadari deposed that on 24.08.2023, he saw two Muslim ladies with one small child and a male in the Dargah. The husband and wife were quarreling. The second lady was the sister of the male person. She was giving them understanding. Thereafter, they all slept at 09:00 pm. He further deposed that on 25.08.2023 between 12:30 to 01:00 am, he heard some noise in Dargah and saw the wife of that man, namely Shabana, lying there with an injury on her head and blood oozing from her head injury. The name of Shabana's husband was Sharamat. A stone was also

lying there. Sharamat was suspecting the character of Shabana; hence, the said incident happened. He identified the accused as the same person who was present in the Dargah. He identified the Stone Article-1 to be the same, which was lying on the spot. He also identified himself to be seen in one of the photos in Article-9 colly., which were snapped by the police while drawing the spot panchanama.

37. In cross-examination of PW-4 Irfan, by the accused, he admitted certain facts to have not stated by him to the Police i.e., (1) another lady was the sister of that man; (2) husband, and wife were quarreling; (3) hearing the noise, they all went there (the letter “**all**” is only an omission), and (4) name of husband of Shabana was Sharamat. He also admitted in his cross-examination by the accused that he personally does not know whether the accused was suspecting the character of Shabana. He does not know who came first on the spot after the noise. At the time of the incident, he was sleeping in his room.

38. PW-4 Irfan, had no personal knowledge about the accused suspecting character on his wife Shabana, and as it is an admitted omission in his police statement, with other admitted omission, that, there was a quarrel between the accused and Shabana, but from his testimony again, the presence of the accused with his wife Shabana, his sister DW-1 Laila, and daughter Taimur, a fact which is not disputed by the defence, is established.

39. The fact which is established from the testimony of PW-4 Irfan, and which corroborates with the testimony of PW-3 Rambhau,

is that Shabana was seen by them with the accused, and later on lying on the spot with an injury on her head, and blood oozing from her head, and a Stone was lying nearby to Shabana.

40. From the consistent, intra-corroborated testimony of the above witnesses, and the defence taken by the accused, this chain of accusation, of the accused last seen together with the deceased, is also established by the prosecution.

BLOOD OF SHABANA FOUND ON THE ACCUSED'S CLOTHES AND THE STONE (ARTICLE-1):

41. The fact of head injury being caused to Shabana is not disputed by the accused. It is also established by the prosecution from the inquest panchanama Exh.61, proved by PW-8 Chabulal Shaikh – an inquest panch, and PM report Exh.66, of Shabana.

42. PW-8 Chabulal deposed that on 25.08.2023, he, along with other panch and police, conducted an inquest panchanama on the dead body of Shabana in the postmortem room. There was swelling on the right side of the forehead along with an abrasion. The blood was oozing from her nose, mouth, and ears. He proved the inquest panchanama Exh.61 to be prepared by the Police, under his signature. In the inquest panchanama Exh.61, such head injury and bleeding were testified by PW-8 Chabulal, is specifically mentioned. The clothes on the person of the dead body of Shabana are also mentioned in the inquest panchanama Exh.61. Those are a black Veil, a black Maxi, a salwar, a red bra, and Blue Nicker.

In cross-examination by the defence, PW-8 Chabulal admitted that columns Nos.10 and 12 of the inquest panchanama in respect of

the cause of injury and weapon used are blank. The panchas are not expert witnesses to comment on the cause of injury or the weapon used to cause any injury. They are also not the eyewitnesses to the incident. Therefore, they are not expected to mention the same in the inquest panchanama.

43. PW-5 Chand Shaikh is the panch witness to the seizure of the clothes of Shabana. He deposed that on 25.08.2023, in the afternoon, he, along with one Shoukat Shaikh were called by the Chaklamba Police. In their presence, the police seized the clothes of the deceased, i.e., black colour Salwar and Maxi stained with blood under the clothes seizure panchanama Exh.51, which bears his signature, that of another panch, and IO. He identified the Article-6 Salwar and Article-5 Maxi as the same seized clothes. According to him, those clothes were seized and sealed, and the label on the envelope bears his signature at Articles-5/A, and 6/A. The testimony of PW-5 Chand, as to the seizure of clothes of the deceased, which were on her person, is corroborated by the clothes seizure panchanama Exh.51, which also says that those were packed and sealed. PW-7 Nabi also deposed and identified the Maxi and Salwar, which were the clothes of the deceased Shabana. It is further corroborated from the PM report of Shabana Exh.66, wherein in Column No.8, black Maxi, Black Salwar are shown to be the clothes which were stained with blood on the dead body of Shabana. Except for the denied suggestion, no circumstances are brought on record in cross-examination by the defence to disbelieve the testimony of PW-5 Chand, as to the seizure of the blood-stained said clothes of the deceased. Even otherwise, those clothes were bound to be stained with the blood of the Shabana, as she had sustained a bleeding head

injury, as deposed by PW-9 Dr. Deshmukh, who performed an autopsy on her body, and as deposed by PW-3 Rambhau and PW-4 Irfan, that they had noticed a bleeding injury to Shabana at Dargah, when she was found lying in the Dargah.

44. The white shirt of the accused was also seized during the investigation of the said crime. PW-2 Tukaram deposed that on 25.08.2023, by letter Exh.41, he was asked to go to the police and act as a panch. Accordingly, he, along with Sham Kolse, who was working with him in Grampanchayat, went to Chaklamba. In their presence, police seized and sealed the clothes of the accused under clothes seizure panchanama Exh.42, which, according to him, bears his signature. He identified the white blood stained Shirt Article-7 and the black blood stained Pant Article-8 to be the same, which were seized from the accused. He also identified the envelope Article-7/A, in which the Shirt was seized and sealed, and Article-8/A, in which pant of the accused were seized and sealed. The testimony of PW-2 Tukaram as to the seizure of the blood stained clothes of the accused is corroborated by the clothes seizure panchanama Exh.42.

In cross-examination of PW-2 Tukaram by the accused, it was brought that the time was not mentioned in the letter Exh.41. He has worked as a panch once previously a long time ago. No written direction had been given to him by the Gram Panchayat to act as a panch. Police recorded his statement. However, for the said reason, his testimony as to he, being a panch witness on the seizure of clothes of the accused, which were stained with blood, cannot be disbelieved.

45. In the statement of the accused, recorded under Section 313 of Cr.P.C., he has not disputed that his clothes were stained with the blood of the deceased. He has explained that, as he had taken the deceased to the Hospital, in an injured condition, his clothes were stained with her blood.

46. As per the prosecution, the seized and sealed clothes of the deceased and the accused were sent for analysis to the office of RFSL. PW-6 HC Prashant Ghongde, attached then to the Chaklamba PS, deposed that on 18.09.2023, he was assigned to C.A. Carrier duty by the IO, in Crime No.240 of 2023. He collected the muddemal from the muddemal Moharil by making an endorsement. He went to the office of RFSL and deposited the seized muddemal there. He obtained acknowledgment of such deposit of the muddemal from the said office. According to him, Exh.54 is the forwarding letter issued to him by the IO, and Exh.55 colly. are the receipts issued by the office of RFSL, regarding receipt of those muddemals.

47. The three muddemal receipts Exh.2 colly. show that in the said crime, the seized clothes of the deceased and the accused were deposited in the Malkhana on 25.08.2023 itself. Receipt Exh.55 colly., issued by RFSL, shows that when the parcels were received, they were in sealed condition. PW-6 Prashant was not suggested in his cross-examination by the defence that the seized muddemals taken by him were not in sealed conditions. PW-6 HC Prashant is not supposed to know from whom and how many said the muddemal was seized. From the documentary as well as oral evidence on record, it is apparent that the clothes of accused and deceased were seized and sealed from the inception, till were forwarded to the RFSL office.

48. It is mentioned in the report Exh.16 of the analysis of the seized clothes of the deceased and the accused in the crime that a considerable number of blood stains were noticed on the seized Maxi, and a moderate number of bleeding stains were noticed on the Salwar of the deceased. Likewise, few blood stains were noticed on the seized full Shirt and full Pant of the accused. Salwar of the deceased, and both the seized clothes of the accused were referred by the RFSL, for DNA analysis.

49. In the results of the DNA analysis Exh.24, issued by the office of RFSL, the DNA of the blood stains on the Salwar, which I have already discussed, to be bound to be that of the deceased, entirely matched with the DNA of blood on the clothes of the accused.

50. The explanation given by the accused in his statement recorded under Section 313 of Cr.P.C., about the said blood stains on his clothes, is also required to be seen. He has stated that he and his sister DW-1 Laila had taken Shabana to the hospital; therefore, his clothes were stained with the blood of the deceased.

51. PW-3 Rambhau deposed that after the incident, the deceased was taken to the hospital. However, he has not deposed that the accused has taken her to the hospital. PW-7 Nabi deposed that when he went to Dargah, he again received a call from DW-1 Laila, and she asked him to come to Civil Hospital, Beed, and accordingly, he went to Civil Hospital, Beed, where DW-1 Laila told him that the accused had committed the murder of Shabana by assaulting her with the help of a Stone. PW-7 Nabi has not stated that

the accused was noticed by him at Dargah. As per the prosecution, the incident took place between 12:30 am and 01:00 am of the intervening night of 24.08.2023 to 25.08.2023. PW-1 PSI Tangde, then attached as PSI at Chaklamba PS, deposed that on 25.08.2023, at around 01:40 am, when he was at home, PSO Gurkhude informed him that a person by name Samir Shaikh (the accused) had come to the PS and was confessing the crime. At Chaklamba PS, API Ekshinge (PW-11), PC Kedar, PC Khetre, and PSO Gurkhude were present. The accused was standing in their with red stains on his white Shirt, and wet dark stains on his Pant. On being asked, the accused told his name as Samir Shaikh, R/o. Paithan Taluka.

52. PW-10 PHC Maruti Kedar deposed that on 25.08.2023, when he was at home, at around 02:00 am, he received a call from PSO Gurkhude, who called him PS. Accordingly, he went to PS, where PC Khetre and PSI Tangde were present. Thereafter, API Ekshinge came there. The accused Samir was present there and had confessed the said crime.

53. PW-11 API Ekshinge deposed that on 25.08.2023 at around 01:30 am – 02:00 am, he received a call from PSO Gurkhude that one person had come to the PS and was confessing to having committed the said crime. At Chaklamba PS, he saw the accused Samir Shaikh, who confessed to the commission of the said crime. There is consistency in the testimony of PW-1 PSI Tangde, PW-10 PHC Maruti, and PW-11 API Ekshinge as to the accused being present at the concerned PS at around 01:30 am to 02:00 am.

54. PSO Gurkhude is not examined by the prosecution, as he is reported to be dead. But, all the above 3 witnesses in one voice deposed that when they went on the information of Gurkhude at the concerned PS at midnight, they found the accused present there. Therefore, from the prosecution witnesses, it is nowhere seen that the accused took Shabana to the hospital. On the contrary, at the relevant time, he is deposed to have been present at Chaklamba PS.

55. The Gade Hospital is situated in front of the Dargah (para No.5 of PW-3). Chaklamba PS is at an approximate distance of 400 meters from the spot of the incident (column No.5(1)(a) of Printed FIR Exh.38). DW-1 Laila is the only witness, who deposed that she and her accused brother, with the help of others, took Shabana to the hospital. As per DW-1 Laila, the doctor was not allowed to admit Shabana; therefore, the accused created rucks there. Therefore, the police came there, and the doctor and the police took Shabana to Beed Hospital. She has not deposed that the accused accompanied her to Civil Hospital, Beed. The distance between the Chaklamba Dargah and Beed Civil Hospital is more than 50 km. Under such circumstances, it is apparent that the accused had not been to Civil Hospital, Beed. The testimony of DW-1 Laila as to the said aspect is not corroborated by her statement recorded by the JMFC, Georai, under Section 164 of Cr.P.C. On the contrary, in her statement, she had stated that she requested her brother to take Shabana to the hospital, but without listening, the accused ran away from the spot.

56. Having regard to the above evidence on record, it is apparent that the accused had not taken his wife either to the hospital in front of Dargah or to Civil Hospital, Beed. Therefore, the

explanation given by him in his statement recorded under Section 313 of Cr.P.C. cannot be accepted.

57. The blood stains of the deceased on the clothes of the accused, which were also noticed by the Police immediately after the incident, and further corroborated from the analysis of those clothes by the office of RFSL, as discussed above, coupled with the fact that the accused has admitted his presence on the scene of occurrence, is a strong circumstantial evidence against the accused.

58. As per the prosecution case, the accused hit the deceased Shabana with a stone. PW-1 PSI Tangde had stated that when he went to the Hospital of Dr. Gade to verify the information given by the accused, he saw Shabana lying in an unconscious state and DW-1 Laila sitting next to her. On being asked, DW-1 Laila told her name and the name of the injured/unconscious victim as Shabana Shaikh. She also said that her brother assaulted her with a stone on her head. She has not stated that it was the accused who brought or helped her bring the injured Shabana to the Clinic of Dr. Gade.

59. PW-1 PSI Tangde informed at the PS that the accused told him that he and DW-1 Laila brought Shabana to the Clinic of Dr. Gade. But since the blood was continuously oozing from the head of Shabana, he (accused) became afraid and came to the PS. But PW-1 PSI Tangde is not a direct witness as to who has brought Shabana to the Hospital of Dr. Gade. In his cross-examination, the defence has suggested to PW-1 PSI Tangde, which is specifically denied by him, that the accused and his sister DW-1 Laila, had taken Shabana to the Hospital. Having regard to my above discussions, it is apparent that it

is not possible for the accused to come to the Chaklamba PS, after taking Shabana to the Clinic of Dr. Gade. In this regard, direct witness is DW-1 Laila, who in her previous statement to the Ld. JMFC, recorded under Section 164 of Cr.P.C., had not stated that the accused had taken or assisted her in taking Shabana to the Clinic of Dr. Gade, as her testimony in this regard does not corroborate her said statement to the Ld. JMFC.

60. PW-2 Tukaram also deposed that on 25.08.2023 he was again called by the police at Dargah at 10.00 am. He, along with another panch Sham Kolse, went there. The spot of the incident was near the Donation Box. Blood was lying on the spot. A Stone with blood on it was also lying there. Police seized those articles under spot panchnama Exh.23. He also identified the Stone Article-1 to be the same, which was seized from the spot. According to him, the police had taken photographs on the spot while conducting spot panchnama Exh.43, which are at Article-9 collectively.

There is no substantive cross-examination as to the testimony of PW-2 Tukaram regarding the preparation of the spot panchnama and seizure of the Stone along with other articles from the spot of the incident. The testimony of PW-2 Tukaram as to the position of the spot noticed by him corroborates the photographs of the spot, filed by the Police, wherein the Stone, Donation Box, Blood on the Stone, and the floor are clearly seen. PW-3 Rambhau and PW-4 Irfan also deposed that a Stone was lying on the spot. They identified the Stone Article-1 to be the same. In their cross-examination by the accused, except for denied suggestions, as to the position on the spot, no material to disbelieve their testimony has been brought by the defence.

61. PW-10 Police HC Maroti also deposed that when he, along with HC Khetre and PSI Tangde, came inside the Dargah, he saw blood on the floor and on the stone lying there. PW-11 IO API Ekshinge deposed that he went to the spot to verify the information given by the accused, where he saw blood and a Stone lying on the spot. PW-11 API Ekshinge prepared the spot panchnama Exh.43 in the presence of the panchas. He identified his signature and the signatures of the panchas on the spot panchnama Exh.43. He also deposed that photographs of the spot were also snapped. According to him, a Stone was seized from the spot. The samples of blood from the spot and on the stone were collected in a cotton swab. He identified the Article-1 to be the same Stone, which was seized from the spot. He also deposed that the Stone was kept in a cotton bag.

62. The oral testimony of all the above witnesses is consistent on the fact that blood and a blood-stained Stone were noticed on the spot. The testimony of IO PW-11 Ekshinge, and panch witness to the spot panchnama, that blood stained Stone, lying on the spot, was seized from the spot, are not only consistent but also corroborated by the spot panchnama Exh.43, wherein, in column "Description of physical evidence from scene of crime for the property recovered/seized for the purpose of investigation", a Stone stained with blood and blood stain on the spot collected in the cotton swab are shown to have been seized. The position of the spot, i.e., Donation Box and a Stone, as seen in the sketch map of the spot panchnama Exh.43, not only corroborates with the testimony of the above witnesses, but it seems to be at the same position, as seen in photographs, snapped from the spot of incident, i.e., Article-9 collectively. So also, the testimony of PW-11 IO API Ekshinge, as to

the seizure of the Stone from the spot in a cotton bag and blood samples in a cotton swab, is also seen in the photographs Article-9 collectively snapped while drawing the spot panchnama Exh.43.

63. It is contended by the defence that no separate and formal seizure panchnama of the alleged weapon, i.e., Stone, was prepared by the Investigating agency. Therefore, there is no proper seizure of the alleged weapon. The chain of custody of the alleged weapon is broken from the inception. However, when the printed format of the spot panchnama provides for description of the property seized/recovered from the spot, for the purpose of investigation, there is no requirement of law to seize such incriminating evidence, i.e., a weapon, by a distinct or separate panchnama. There is no uniform codified procedure for such seizure. Under such circumstances, consistent, inter-se corroborative evidence of the direct witnesses to these facts, which is further corroborated from the spot panchnama Exh.43, about seizure of blood-stained Stone Article-1, cannot be disbelieved, only because a formal or separate panchnama was not prepared.

64. Moreover, along with spot panchnama Exh.43, under the signature of panchas and the IO PW-11 API Ekshinge, again the detailed description of the properties, including the Stone seized from the spot, is mentioned in the separate paper, attached to the spot panchnama.

65. In this region, a rectangular stone is called 'Chira' (चिरा). In the spot panchnama Exh.43, the Stone found on the spot is described as 'Chira'. In photographs, Article-9 collectively snapped at

the spot, the rectangular Stone is seen. Moreover, Article-1 before the court is a rectangular Stone, which is known as Chira. Therefore, seizure of Stone from the spot is established by the prosecution beyond reasonable doubt, and by leading cogent evidence.

66. Admittedly, the said Stone/Chira was not sent for weapon query to the MO, but PW-9 Dr. Deshmukh, who performed autopsy on the body of Shabana, has categorically opined that the injury mentioned by him in his PM Notes Exh.66 of Shabana can be caused by assault, with the Stone Article-1, which was shown to him in the Court. It cannot be said that, if such an opinion of a medical expert was not sought during the investigation, his opinion in the Court has no sanctity. At the most, the opinion sought during the investigation can be used as corroborative evidence to the testimony in the form of the opinion of such a medical expert in the Court. Therefore, not procuring earlier opinion in this regard cannot be a ground to disbelieve the opinion of PW-9 Dr. Deshmukh given while testifying in the Court. PW-9 Dr. Deshmukh has specifically opined that if a person is forcibly assaulted by a Stone, external injury and its corresponding internal injuries, as noticed by him, to Shabana can be caused.

67. Neither from the testimony of the witnesses, who have seen the spot, nor in the spot panchnama, nor in the photographs, any other weapon is deposed to have seen or was noticed or seen. In the cross-examination of these witnesses, no possibility of any other weapon being implanted is brought on record.

68. The description i.e., the width, length, and breadth of the Stone seized from the spot, is mentioned under the spot panchnama Exh.43. PW-6 Ghongde had also taken the Stone with another muddemal seized in the crime, to the office of RFSL. The receipts issued by the office of RFSL show that all the articles were received in sealed condition. In the report of RFSL Exh.16, on examination of the Stone, blood stains were noticed on it. Though those blood stains were human, and its grouping was inclusive, and the blood on it was not analyzed by DNA profiling, still the accused is not coming up with the defence that the blood of any person other than the deceased was on the spot on the night of the incident. Under such circumstances, there is no other possibility of any other blood than that of the deceased to be on the Stone. Therefore, the prosecution has also established another chain of circumstances of use of the Stone as a weapon of crime used for assaulting Shabana and committing her homicidal death. The mere fact that the fingerprints of the accused were not attempted by the investigating agency on the Stone does not mean that it is not a weapon of offence.

THE CONDUCT OF THE ACCUSED, IN GOING TO THE POLICE STATION TO CONFESS THE SAID CRIME: RELEVANT:

69. The other circumstance against the accused is his conduct in going to the Police to confess the said crime, which is relevant under Section 8 of the Indian Evidence Act. The Hon'ble Bombay High Court in the cases of *Arjun Datir Vs. The State of Maharashtra, Criminal Appeal No. 183 of 2015*, and *Smt. Suman Dhabekar & Anr. Vs. The State of Maharashtra (2016 ALL MR (Cri) 4771)*, cited by the prosecution, held that, the confession given by the

accused to the Police is inadmissible, due to bar under Section 25 of the Indian Evidence Act, but the fact of giving information to the Police is admissible against him as evidence of his conduct under Sections 8 and 21 of the Indian Evidence Act, and to that extent, it is not confessional in nature.

70. In the case in hand, PW-1 PSI Tangde deposed that he was first telephonically informed by PSO Gurkhude (now deceased) that the accused had approached the PS and that he was confessing to having committed the said offence. At Chaklamba PS, in the presence of API Ekshinge, Police HC Maroti Kedar, PC Kishor Khetre, and PSO Gurkhude, the accused, who was wearing a white Shirt with red stains on it and a black Pant with dark stains on it, told his name as 'Samir Kadar Shaikh, R/o. Paithan Taluka. The accused then confessed to have committed the said crime, since he was suspecting his wife's character. PW-10 PHC Kedar deposed that on the call of PSO Gurkhude, he went to Chaklamba PS, where the accused was present, and he confessed the crime before him. PW-11 API Ekshigne deposed that on the night of the incident, PSO Gurkhude telephonically informed him that a person had come to the PS and confessed to have assaulted his wife with a stone on her head. When he went to the PS, he saw the accused sitting and identified himself as Samir Kadar Shaikh. The accused again told him that he had a suspicion on his wife, and hence assaulted her with a Stone at Dargah.

71. There are three consistent statements of the Police Officers, who inter-se corroborate each other about the accused approaching the PS to confess the crime. Their testimony as to the

conduct of the accused coming to the Chakalamba PS with said confession is also corroborated by the FIR Exh.37, given by him, PW-1 PSI Tangde at Chaklamba PS. As per PW-11, API Ekshinge, PC Gurkhude is no more. Constable Gurkhude had taken an endorsement in the Station Diary regarding the accused coming to the Chaklamba PS and had confessed to have committed the said crime.

72. IO PW-11 API Ekshinge had filed an abstract of the General Diary Entry No.3 Exh.72, with the Charge-sheet. He deposed that it bears his signature and its contents are true and correct. The extract of the General Diary Entry No.3 is dated 25.08.2023, taken at 03.05 am, wherein it is mentioned that it is taken by PC Ganesh Gurkhude. It is also mentioned therein by PC Gurkhude that *“one person had come to the Police Station at 1.30 am. He was wearing a white Shirt and black Pant. The Shirt had red stains. The Pant was also stained. He confessed to have committed the murder of his wife, as he was suspecting her character, and had assaulted her with a stone. On being asked, he stated his name as Samir Kadar Shaikh and the name of his wife as Shabana Kadar Shaikh, R/o. Akhatwada, Taluka Paithan, District Aurangabad.”*

73. It is vehemently contended by the defence that the SD entry Exh.72 is a computer-generated print. Certificate under Section 65-B of the Evidence Act is not filed by the prosecution, in respect of the said SD entry Exh.72. As such, in view of the judgment of the Hon'ble Supreme Court in the case of **Anwar P.V. Vs. P.K. Basheer & others [(2014) 10 SCC 473]**, and reiterated in the case of **Arjun Khotkar Vs. Kailash Gorantyal [(2020) 7 SCC 1]**, has categorically

held that the electronic evidence in the form of computer-generated records is inadmissible unless accompanied by a certificate under Section 65-B of the Indian Evidence Act. He further submitted that PW-11 IO API Ekshinge, has admitted in his cross-examination that the SD entries are the computer print-outs, and those are not digitally signed. As such, he submitted that no reliance can be placed on such SD entries.

74. PW-11 IO API Ekshinge had deposed that PC Gurkhude, who was on PSO duty, had taken endorsement in SD Exh.72, but said endorsement bears his name in the Crime and Criminal Tracking Network and Systems (in short "CCTNS"), and he had obtained said SD entry Exh.72, which bears his signature. Though PW-11 API Ekshinge admitted in his cross-examination by the accused that SD entry Exh.72 is a computer print-out, and not digitally signed, but it bears his manual signature.

75. On perusal of SD entry Exh.72, it is apparent that it bears the signature of PW-11 IO API Ekshinge, and it also bears the stamp of the Police Station. The signature of PW-11 IO API Ekshinge and print out was taken on the same day, i.e., on 25.08.2023, by PW-11 IO API Ekshinge himself. Therefore, the General Diary Entry Exh.72 does not pertain to the information already contained in the computer. It is the document which is scribe, and printout was taken out then and there. The printout is signed contemporaneously by the IO as maker of the entry. A certificate becomes necessary only when the underlying electronic record (the CCTNS database entry itself) is what is being relied upon, rather than the signed physical document.

76. The distinction turns on “primary versus secondary” evidence of an electronic record. It is settled by the Constitution Bench of the **Hon’ble Supreme Court of India**, in the case of **Arjun Khotkar**, affirming the ratio laid down in the case of **Anvar Vs. Basheer** (cited by the accused), that Section 65B, Evidence Act, mandates a certificate only where a party seeks to prove the contents of an electronic record through a "computer output" i.e., secondary evidence, without producing the record-generating device itself. Where the original device/record is produced, and its maker is examined, that is primary evidence under Section 62 of the Evidence Act, and no certificate is required.

77. In the cases, the entry is typed into CCTNS, printed immediately, and signed by the IO before the ink is dry, the signed printout ceases to be a mere "computer output" tendered as secondary evidence of a server-stored record. It becomes a contemporaneous original document created and authenticated by the maker in discharge of official duty, no different in principle from a panchnama or seizure memo typed on a computer and then signed. Its proof is governed by the ordinary rule for proof of documents proved by the IO. Therefore, Section 65-B of the Evidence Act does not apply to the said SD entry Exh.72.

78. Even otherwise, the abstract of SD entry Exh.72 is taken by PC Gurkhude on 25.08.2023. Such SD entry is a statement in writing of the relevant fact that the accused had been to the PS and had confessed the crime. Such an entry is taken by PC Gurkhude, who is now dead. Such a written statement was made by PC Gurkhude in the ordinary course of the business, and in particular, it

is an entry made by him in the books kept in the ordinary course of business of the Police machinery and also in discharge of his professional duty, which shows the date, time, place, and his name as a person who had taken the said entry. As such, under Section 32 (2) of the Evidence Act, such a statement of fact becomes relevant. Section 32(2) of the Evidence Act is reproduced herein below.

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. —

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —

(1) —

(2) or is made in course of business. - *When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.*

79. Assuming that the abstract Exh.72 is a certified copy of a public document, as all such requirements are fulfilled, and it falls under the category mentioned under Sections 74 and 76 of the Evidence Act. As per Section 79 of the Evidence Act, there is a presumption as to the genuineness of the document purporting to be a certificate, certified copy, or other document of a public document.

80. Therefore, I again reiterate that the contention of the defence about the inadmissibility of the SD entry Exh.72, for want of a certificate under Section 65-B of the Indian Evidence Act, cannot be accepted.

81. Assuming, for the sake of argument, that the SD entry Exh.72 is inadmissible, the testimony of all 3 police witnesses is consistent, and found to be trustworthy, and is not shaken in their cross-examination, as to the fact that the accused came to Chaklamba PS to confess and thereby confessed the said crime. The FIR Exh.38 was given by the PW-1 PSI Tangde within a few hours of the incident, and after the death of Shabana, wherein he has specifically mentioned the fact that the accused came to the PS to confess and thereby had confessed the crime. The testimony of the informant as to the said conduct of the accused also corroborates with the FIR.

82. The conduct of the accused coming to the PS to confess the crime, which is relevant under Sections 8 and 21 of the Evidence Act, is not the sole circumstantial evidence against the accused that points out his guilt. If such conduct it is coupled with the other linked chain of the circumstances against the accused, as discussed above, such conduct becomes more relevant, as against the accused.

83. As such, I am of the view that the prosecution has proved beyond reasonable doubt all the chain of circumstances which, without any other hypothesis, point out the guilt of the accused, that he has committed the said crime, and he is only the author of the injury caused to his wife Shabana.

DEFENCE OF UNSOUNDNESS OF MIND TAKEN BY THE ACCUSED:

84. In the light of the above-discussed facts, it is necessary to see whether the accused at the time of commission of the said crime, by reason of unsoundness of mind, was incapable of knowing the nature of the act, or that he was doing what is either wrong or contrary to law. As the plea of unsoundness of mind of the accused is raised by the accused, Section 84 of the I.P. Code, reproduced herein below, becomes relevant.

Section 84 - Act of a person of unsound mind - Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

85. The Hon'ble Supreme Court in the case of **Mohd. Anwar Vs. State (NCT of Delhi) [(2020) 7 SCC 391]**, has held that - *in order to successfully claim defence of mental unsoundness under Section 84 of the I.P. Code, the accused must show by preponderance of probabilities that he/she suffered from serious enough mental disease, or infirmity, which would affect individual's ability to distinguish the right from wrong. Further, it must be established, that the accused was afflicted by such disability particularly at the time of crime, and that but for such impairment, crime would not have been committed.*

86. Adv. Sayyed, for the accused, submitted that the documentary evidence on record establishes that the accused is a person suffering from Psychosis, which is a serious psychiatric illness, and was under regular medical treatment; therefore, the accused is entitled to the complete defence, under Section 84 of the I.P. Code.

87. The burden of proof, even on the lighter test of the preponderance of the probability, is on the accused, that at the time of the incident, he was suffering from unsoundness of mind, and was incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. To see whether the accused had discharged this burden, all the material on record, proved or not, can be looked into.

88. PW-11 IO API Ekshinge has deposed in his cross-examination (Para No.23), that he informed the Court at Georai that the accused was under psychiatric treatment.

89. The medical examination of the accused was done at PHC Chaklamba on 25.08.2023. There is no mention in the examination report of PHC Chaklamba about any medical abnormality noticed by the MO. The accused was arrested under arrest panchanama Exh.76 at 06:59 am. He was produced before the Ld. JMFC, Georai at 01:15 pm, with a request for his Magistrate Custody Remand. In his Magisterial Remand Application dated 25.08.2023, nowhere it is mentioned that the Police has noticed any mental abnormality of the accused. The accused, on being confronted by the Ld. remand magistrate, has stated that he has no complaint of ill-treatment at the hands of the police. At that time too, the Ld. JMFC has not noticed any medical abnormality of the accused. Thereafter, on the same day, the IO wrote a letter Exh.78 to the MO, Civil Hospital, Beed, to extract the blood sample of the accused. While extracting his blood sample for chemical analysis, for handing it over to the Police, under medical documents Exh.79, the MO had not mentioned that the accused was noticed to have some mental

abnormality. Again, on the same day, the IO requested the MO, Civil Hospital, Beed, to get done the Covid-19 and general examination of the accused. On the same day, at 03:00 pm, the accused was examined. The MO of Civil Hospital, Beed, in his examination report of the accused, has not mentioned that he noticed any mental abnormality in the accused.

90. By letter dated 28.08.2023, the IO PW-11 API Ekshinge issued a letter to the Ld. Remand Magistrate, i.e., JMFC, Georai, to direct the Jail Authority to get the mental medical examination of the accused. By order dated 30.08.2023, the Ld. Magistrate directed the IO to produce the past history of the accused or his medical examination at PHC to show his mental illness. No document of any past medical history of the accused is filed by the accused on record, nor there is any document of his mental condition before or at the time of the incident filed on the record. Even in the bail application Exh.19, filed by the accused, he has not taken any ground of his mental illness.

91. Along with the letter Exh.18, the MO has sent a mental medical examination report of the accused under the signature of Dr. Mujahid, a psychiatrist at Civil Hospital, Beed. The psychiatrist has specifically mentioned in his report that -

“the accused is on treatment for “psychosis”, and stable on treatment, he has examined the accused, first on 29.09.2023. At that time, he was having signs, and symptoms of “psychosis”. He started treatment on him, He was on regular treatment in Beed Prison from his side. His psychosis symptoms decreased on treatment. The accused was on regular fit, and still on treatment in Beed Prison. The accused is stable on treatment. No psychosis symptoms present at present. He should continue his treatment regularly. The impression that he is suffering

from “psychosis”. The accused is stale on treatment. No active complaint at present”.

92. Therefore, from the said medical certificate of the accused, issued by the Civil Hospital, Beed, it seems that the accused was under treatment for his symptoms of “Psychosis” from 29.09.2023, i.e., after more than a month from the date of the incident. Since thereafter, i.e., 29.09.2023, the accused was under regular treatment by Dr. Mujahid, a psychiatrist, in Beed Prison. Nowhere, Dr. Mujahid has opined that due to the existing medical mental condition of the accused, noticed by him as on 29.09.2023, the accused was incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, at the time when the crime was committed. He has also not certified that at the time of the incident, this mental condition of the accused was subsisting, and for that reason too, he was having such mental incapacity.

93. Moreover, thereafter, the accused was charged by this Court of Session, to which he pleaded not guilty. He faced the trial. In his examination, under Section 313 of the Cr.P.C., he has not taken any defence/ plea of his unsound mind, as provided under Section 84 of the I.P. Code.

94. Most importantly, DW-1 Laila, sister of the accused, had not deposed that at the time of the incident, the accused was suffering from any unsoundness of mind, or about his mental incapability to know the nature of the act, when such act was committed.

95. Legal and medical insanity are two different aspects. What the Court requires for extending benefits of Section 84 of the I.P. Code is that the accused should prove, on the test of preponderance of the probability, his legal insanity (i.e., an impairment of the cognitive faculties to the point of not understanding the act's consequences) rather than mere medical insanity (emotional imbalances or abnormal behavior). Such a state of unsoundness must exist precisely at the exact time the offence was committed. Under Section 105 of the Indian Evidence Act, such a legal burden to establish this defence lies with the accused.

96. In the case of **Surendra Mishra Vs. Jharkhand, [2011 (11) SCC 495]**, (cited by the accused), the Hon'ble Supreme Court held that -

the accused appellant was examined a little before as also a little after the occurrence, and he was found insane. The doctor found that he was talking in a very unusual manner, saying things to the fact that he had seen Lord Shiva in front of him and alike. The first evidence in regard to the unsoundness of mind, as brought by the accused is the medical prescription dated 18.10.1987 (Ext. A-1) in which symptom of the appellant has been noted as psychiatric with paranoid features and medicine was advised for sleep. Other prescriptions are dated 09.01.1988 (Ext. A) and 05.09.1998, in which only medicines have been prescribed. Other prescriptions (Exts. A-5 to A-7) also do not spell out the disease the appellant was suffering but give the names of the medicines, he was advised to take. From these prescriptions, the only inference one can draw is that the appellant had paranoid feeling but that too was not proximate to the date of occurrence. It has to be borne in mind that to establish that acts done are not offence and come within general exception it is required to be proved that at the time of commission of the act, accused by reason of unsoundness of mind was incapable of knowing that his acts were wrong or contrary to law. However, the conduct of the appellant subsequent to the commission of the offence clearly goes to suggest that he knew that

whatever he had done was wrong and illegal. Further, he was running a medical shop and came to the place of occurrence and shot dead the deceased. Had the appellant been a person of unsound mind, it may not have been possible for him to run a medical shop. We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the I.P. Code.

97. As discussed above, the previous and subsequent conducts of the accused, from taking Shabana from her prenatal house to Dargah and at midnight when all were under deep sleep committing the said crime, and then going to the PS to confess the said crime, are relevant, which shows his guilty mind and not an insane mind. Therefore, the said plea of the accused does not come within the exception contemplated under Section 84 of the I.P. Code, which he has otherwise failed to prove.

98. In the case of **Sharad Sarda**, cited supra by the accused, the Hon'ble Supreme Court held that there was doubt, and benefit which was given to the accused as to the homicidal or suicidal death of the deceased. Moreover, it was also the case based on circumstantial evidence, wherein two views are possible on the evidence on record, one pointing to the guilt of the accused and the other his innocence; therefore, the accused was held to be entitled to have the benefit of one which is favourable to him.

99. However, in the case in hand, having regard to my above discussions, the Panchasheel principles of proof of the case based on

the circumstantial evidence are established by the prosecution, beyond reasonable doubt, and hence, this is not the case of the accused is found may be guilty, but he is proved to be guilty. The chain of circumstantial evidence is so linked by the prosecution that there is no reasonable ground for a conclusion consistent with the innocence of the accused in all human probability. As such, the act of the accused of committing the murder of his wife Shabana, is proved by the prosecution beyond reasonable doubt. Therefore, my answer to Point No.2 is in the affirmative.

100. Heard the accused and Adv. Sayyed on the question/quantum of the sentence. They in one voice contended that accused has not committed the said offence. His old age parents, and 3 children are dependent on him. There is no criminal past of the accused. Therefore, they prayed for leniency in awarding the sentence. APP Adv. B.S. Rakh h/f PP Adv. A.D. Rakh, fairly contended that this is not a case which falls under the category of the rarest of rare case.

101. So also, in the case of **Bachan Sing Vs. State of Punjab [AIR 1980 S.C. 898]**, the Hon'ble Supreme Court had given an exhaustive list of the aggravating circumstances and mitigating circumstances. Relying Bachan Singh's case, the Hon'ble Apex Court in the case of **Santoshkumar Vs. State of Maharashtra [SCC 2009(6) 498]** had held that, "to make out the case for awarding capital punishment, prosecution must prove by evidence that the accused does not satisfy condition Nos.3 and 4 of the mitigating circumstances. The third and fourth mitigating circumstances are reproduced below.

1]

2]

3] *The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society.*

4] *The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.”*

102. Admittedly, there is no such evidence as to my satisfaction that there is no such probability. The mitigating circumstances, according to the Hon'ble Supreme Court, must be given great weightage in the determination of the sentence. Murder by any means or form is the act of brutality, but as mitigating circumstances, as discussed above, seem to be overlapping over aggravating circumstances with great weightage. As such, I am of the view that this is not a rarest of rare case, wherein the accused deserves capital punishment. In the result, I proceed to pass the following order.

ORDER

1. Accused Sharamat @ Sameer Kadar Shaikh, is hereby convicted under Section 235 of the Code of Criminal Procedure for the offence punishable under Section 302 of the Indian Penal Code, for committing murder of his wife Shabana Shaikh and is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.25,000/- (Rs. Twenty Five Thousand only), in default of payment of fine, to further undergo rigorous imprisonment for Six months.

2. The accused is in jail. The pre-conviction detention period undergone by the accused shall be set off against the substantive sentence of imprisonment under Section 428 of the Code of Criminal Procedure, provided that a benefit is given under Section 433 of the Code of Criminal Procedure, but subject to limitations in Section 433-A of the Code of Criminal Procedure.

3. The seized properties in the crime, i.e., Clothes and Stone being worthless, shall be destroyed after one year, but subject to confirmation from the Hon'ble High Court about any appeal being filed or pending against this order of conviction.

4. This judgment is dictated in parts, and some parts are directly typed.

5. The judgment is pronounced in open Court.

6. A copy of this judgment shall be given to the accused free of cost.

Beed
Date : 14.07.2026

(Dinesh P. Surana)
SESSIONS JUDGE, BEED.

Part 'C'**List of Prosecution/Defence/Court Witnesses.****A. Prosecution:**

Rank	Name	NATURE OF EVIDENCE	Exhibit
PW-1	PSI Ananta Pandurang Tangde	Informant	Exh.36
PW-2	Tukaram Subhash Gunjal	Panch on clothes seizure panchanama of the accused	Exh.40
PW-3	Rambhau Mukinda Dhakne	Witness	Exh.45
PW-4	Irfan Mainoddin Gulam Kadari	Witness	Exh.47
PW-5	Chand Gulab Shaikh	Panch on the seizure panchanama of the clothes of the deceased	Exh.50
PW-6	PC Prashant Kalyan Ghongde	He carried the seized articles in the crime to the office of RFSL	Exh.53
PW-7	Nabi Kasam Shaikh	Witness / Father of Shabana	Exh.56
PW-8	Chabulal Kasam Shaikh	Panch on the inquest panchanama	Exh.60
PW-9	Dr. Pravin Shankarrao Deshmukh	MO, who conducted the PM on the body of Shabana	Exh.64
PW-10	HC Maruti Raghunath Kedar	Police witness	Exh.69
PW-11	API Narayan Ratan Ekshinge	Investigating Officer	Exh.71

List of prosecution/defence/Court Exhibits**A. Prosecution:-**

	Exhibit	Description	Proved by
1.	Exh.37	FIR / Complaint	PW-1
2.	Exh.38	Printed FIR	PW-1
3.	Exh.39	Station Diary Entry No.4;	PW-1
4.	Exh.41	Letter dated 25.08.2023, issued by the IO to the Gramvikas Officer, Grampanchayat Office, Chaklamba.	PW-2
5.	Exh.42	Seizure panchanama of the clothes of the accused	PW-2
6.	Exh.43	Spot panchanama	PW-2
7.	Exh.51	Seizure panchanama of the clothes of the deceased	PW-5
8.	Exh.54	Letter dated 18.09.2023 by IO to RFSL.	-6
9.	Exh.55	4 acknowledgments of receipt of the seized articles issued by RFSL	PW-6
10.	Exh.61	Inquest panchanama held on the body of Shabana	PW-8
11.	Exh.65	Letter dated 25.08.2023, issued to the MO, Civil Hospital, Beed, for conducting a PM on the body of Shabana	PW-9
12.	Exh.66	Memorandum of PM Examination held on the body of Shabana	PW-9
13.	Exh.70	Acknowledgment dated 25.08.2023, regarding receipt of the dead body of Shabana	PW-10
14.	Exh.72	Station Diary (in short "SD") Entry No.3 dated 25.08.2023	PW-11
15.	Exh.73	SD entry No.5 dated 25.08.2023	PW-11
16.	Exh.74	SD entry No.7 dated 25.08.2023	PW-11

17.	Exh.75	SD entry No.10 dated 25.08.2023	PW-11
18.	Exh.76	Arrest panchanama of the accused	PW-11
19.	Exh.77	Portion mark "A" in the statement of PW-3 Rambhau	PW-11
20.	Exh.78	Letter dated 25.08.2023, written to the MO, Civil Hospital, Beed, regarding the collection of a blood sample of the accused	PW-11
21.	Exh.79	Medical case paper of the accused	PW-11
22.	Exh.80	Letter dated 01.09.2023, written to JMFC, Georai, for recording the statement of Laila u/Sec.164 of Cr.P.C.	PW-11
23.	Exh.81	Letter dated 26.09.2023, by IO, seeking opinion of MO, regarding injury caused to Shabana	PW-11

C. Court Exhibits:

	Exhibit	Description
1.	Exh.14	CA Report regarding the analysis of the blood of the accused, wherein his blood group is Group "B".
2.	Exh.15	CA Report regarding the analysis of the blood of the deceased Shabana, wherein her blood group cannot be determined.
3.	Exh.16	CA Report regarding the analysis of (1) clothes of the accused, (2) clothes of the deceased, (3) the Stone Article-1, and (4) cotton swab wherein blood was taken from the spot.
4.	Exh.23	DNA Report of Blood stain of deceased Shabana.
5.	Exh.24	DNA Report of (1) Blood stains cutting from Salwar of Shabana, (2) Blood stains prepared from Stone Article-1, (3) Blood stains cutting from full Shirt of accused, and (4) Blood stains cutting from full Pant of accused.

6.	Exh.33	DNA Report of Blood Sample of Taimur (daughter of the accused and deceased).
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D. Material Objects:-

	Article Number	Description	Referred to
1.	Article-1	Stone	PWs-2, 3, 4, 9 & PW-11
2.	Article-4	Handkerchief	PW-2 & PW-11
3.	Article-5	Maxi of Shabana	PWs-3, 5, 7, 10 & PW-11
4.	Article-6	Salwar of Shabana	PWs-3, 5, 7, 10 & PW-11
5.	Article-7	White Shirt of the accused	PWs-1, 2, & PW-11
6.	Article-8	Black Pant of the accused	PWs-1, 2, 3 & PW-11
7.	Article-9 colly.	Photographs of the spot	PWs-2, 4 & PW-11
8.	Article-10	Marriage Photo of the accused and Shabana	PW-11

Beed

Date : 14.07.2026

(Dinesh P. Surana)
SESSIONS JUDGE, BEED.

Dictated on : 30.06.2026, 03.07.2026, 04.07.2026,
06.07.2026, 09.07.2026
Transcribed on : 30.06.2026, 03.07.2026, 04 & 05.07.2026,
07.07.2026, 09.07.2026
Checked & signed on : 14.07.2026.

I affirm that the contents of this PDF file are word to word as per the original Judgment/order.

Name of Steno : G.N. Ghayal
Name of Court : Sessions Court, Beed,

Sd/-
(G. N. Ghayal)
Stenographer Grade-I