

CNR NO.MHBU11-001074-2021



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|---------------|---------------------------|
| Presented on | : 26/08/2021 |
| Registered on | : 26/08/2021 |
| Decided on | : 30/03/2026 |
| Duration | : Yr. Ms. Ds. 04 07 04 |

EXH. NO. 111

FORM NO. XXXII

Part 'A'

(Title Page of Judgment)

[Para 44(i) of Chapter VI of Criminal Manual]

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| IN THE COURT OF SESSION, BULDHANA SUB-DIVISION – MALKAPUR, DISTRICT BULDHANA. (Presided over by Purushottam B. Jadhav, Additional S.J. Malkapur) | |
| | Date of Judgment :- 30/03/2026. SESSIONS CASE NO. 37/2021. |
| | F.I.R./Crime No. 283/2021. Nandura Police Station. |
| COMPLAINANT/ PROSECUTION | State of Maharashtra, through Police Station, Nandura. |
| REPRESENTED BY | A.P.P. Mr. V.M. Bapat. |
| ACCUSED | Vishnu Atmaram Khaire, Age – 37 Years, Occupation – Labour, Resident of Narayanpur, Taluka Nandura, District Buldhana. |
| REPRESENTED BY | Advocate Mr. V.M. Patil for accused. |

Judge

Part 'B'

[Para 44(ii) of Chapter VI of Criminal Manual]

| | |
|---------------------------------------|-------------|
| Date of Offence | 28/05/2021 |
| Date of F.I.R. | 28/05/2021 |
| Date of Charge-sheet | 09/08/2021 |
| Date of framing of Charges | 08/11/2024 |
| Date of Commencement of Evidence | 05/02/2025. |
| Date on which judgment is reserved | 13/03/2026. |
| Date of the Judgment | 30/03/2026. |
| Date of the Sentencing order, if any. | N.A. |

Accused Details

| Rank of the Accused | Name of accused | Date of Arrest | Date of Release on Bail | Offences charged with | Whether acquitted or convicted | Sentence Imposed | Period of Detention undergone during Trial for purpose of Section 428 Cr.P.C. |
|---------------------|-----------------------|----------------|-------------------------|--|--------------------------------|------------------|---|
| 1) | Vishnu Atmaram Khaire | 29/05/2021 | Under Trial Prisoner | Under Sections 302, 201, 498A, 316 of the Indian Penal Code, 1860. | Acquitted | N. A. | N.A. |

Judge

Part 'C'

[Para 44(iii) of Chapter VI of Criminal Manual]

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**A. Prosecution :**

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|-------------|--|---|
| PW-1 | Yogesh Bhaskar Bombatkar (Exh. 17) | First Informant |
| PW-2 | Sarthak Vishnu Khaire (Exh. 21) | Son of deceased and accused. |
| PW-3 | Samarth Vishnu Khaire (Exh. 22) | Son of deceased and accused. |
| PW-4 | Nandabai Devkrushna Dhage (Exh. 23) | Other Witness |
| PW-5 | Atmaram Jankiram Khaire (Exh. 24) | Eye Witness/Father of accused |
| PW-6 | Nirmala Vijay Chopade (Exh. 26) | Other Witness. |
| PW-7 | Dnyaneshwar Pandurang Shrinath (Exh. 28) | Other witness. |
| PW-8 | Sunil Madhukar Kholgade (Exh. 30) | Other Witness. |
| PW-9 | Jaya Vilas Katkar (Exh. 32) | Police Patil of village Narayanpur. |

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| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|-------------|--|---|
| PW-10 | Nitesh Santosh Ganage (Exh. 33) | Home-guard. |
| PW-11 | Police Constable Vinayak Devanand Mankar (Exh. 40) | A Police Constable taking the accused for a medical examination. |
| PW-12 | Yogesh Mahadev Chavare (Exh. 43) | Panch Witness. |
| PW-13 | Satish Vasudev Ugle (Exh. 46) | Panch Witness. |
| PW-14 | Gopal Trambak Sushir (Exh. 51) | Panch Witness. |
| PW-15 | Retired Assit. Police Inspector Chandraprakash Sukhdev Ingle (Exh. 54) | Day-Officer. |
| PW-16 | Police Constable Sukhdev Uttam Kakad (Exh. 56) | A Police Constable taking samples to the laboratory. |
| PW-17 | Ganesh Govardhan Bakal (Exh. 71) | Panch Witness |
| PW-18 | Dr. Chetan Sureshrao Bende (Exh. 74) | Medical Officer |
| PW-19 | Deputy S.P. Suresh Haribhau Naiknaware (Exh. 78) | Investigating Officer. |

B. Defence Witnesses, if any :

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|-------|--|
| | -NIL- | -NIL- |

C. Court Witnesses, if any :

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|-------|--|
| | -NIL- | -NIL- |

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution :**

| Sr. No. | Exhibit Number | Description |
|---------|----------------|--|
| 1. | Exh. 10 to 14 | Chemical Analysis Reports. |
| 2. | Exh. 18/P-1 | Report. |
| 3. | Exh. 19/P-2 | Printed First Information Report. |
| 4. | Exh. 25/P-3 | Statement under Section 164 of the Cr.P.C. of Witness No. 5 Atmaram Jankiram Khaire. |
| 5. | Exh. 26/P-4 | Statement under Section 164 of the Cr.P.C. of Witness No. 4 Nandabai Devkrushna Dhage. |

Judge

| Sr. No. | Exhibit Number | Description |
|---------|----------------|--|
| 6. | Exh. 31/P-4 | Letter for cutting the part of Iron frame of the bed. |
| 7. | Exh. 41/PW-11 | Medical Memo |
| 8. | Exh. 42/PW-11 | Seizure Panchnama regarding the seizure of the accused's blood sample, fingernail and toenail samples and hair sample. |
| 9. | Exh. 44/PW-12 | Spot Panchanama |
| 10. | Exh. 45/PW-12 | Seizure Panchnama regarding the seizure muddemal from spot of incident. |
| 11. | Exh. 47/PW-13 | Memorandum Panchanama. |
| 12. | Exh. 48/PW-13 | Seizure Memorandum of Articles Produced by the Accused |
| 13. | Exh. 49/PW-13 | Seizure Panchnama regarding the seizure muddemal i.e. Saree, Petticoat etc. Of deceased. |
| 14. | Exh. 50/PW-13 | Seizure Panchnama regarding the seizure muddemal i.e. part of iron bed. |
| 15. | Exh. 51/PW-14 | Seizure Panchnama regarding the |

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| Sr. No. | Exhibit Number | Description |
|---------|--------------------------------|---|
| | | seizure muddemal i.e. cloths of Sarthak. |
| 16. | Exh. 55/PW-15 | Panchnama of the dead body. |
| 17. | Exh. 57/PW-16 | Duty Pass |
| 18. | Exh. 58/PW-16 Exh. 59/PW-16 | Two letters accompanying the seized material sent to the Chemical Laboratory at Amravati. |
| 19. | Exh. 60/PW-16 | Return Report |
| 20. | Exh. 61/PW-16 | Letter from the Laboratory Regarding Errors |
| 21. | Exh. 62/PW-16 | Entry in the station diary regarding the letter given by the laboratory regarding the errors to the Police Station. |
| 22. | Exh. 63/PW-16 | Station Diary Entry recorded at the Police Station upon departing for Amravati. |
| 23. | Exh. 64/PW-16 | Duty pass issued by the Police Station Officer on 14/06/2021. |
| 24. | Exh. 65/PW-16 | Station Diary Entry made in the Station diary while going to the |

Judge

| Sr. No. | Exhibit Number | Description |
|---------|------------------------------|---|
| | | chemical laboratory in Amravati on 14/06/2021. |
| 25. | Exh. 66/PW-16 | Letter regarding the submission of seized material to the Chemical Laboratory, Amravati. |
| 26. | Exh. 72/PW-17 | Report on acceptance of returned samples from the laboratory |
| 27. | Exh. 75/PW-18 | Letter of Police Station, Nandura for postmortem. |
| 28. | Exh. 76/PW-18 | Report of postmortem. |
| 29. | Exh. 79/PW-19 | Arrest Panchanama of accused. |
| 30. | Exh. 80/PW19 | Entries recorded in the Station Diary regarding the Accused's Statement Panchnama and the Seizure Panchnama. |
| 31. | Exh. 81/PW19 | Extract from the logbook regarding the police jeep journey—accompanied by the accused—undertaken for the purpose of drawing up the seizure panchnama. |
| 32. | Exh. 82/PW19 Exh. 83/PW19 | Muddemal Receipts. |

| Sr. No. | Exhibit Number | Description |
|---------|--|--|
| 33. | Exh. 84/PW19 | Muddemal receipts of seized muddemal by Assistant Police Sub-Inspector |
| 34. | Exh. 85/PW19 | Seizure Panchanama of seizure regarding the son's clothes used to wipe away the blood at the crime scene. |
| 35. | Exh. 86/PW19 Exh. 87/PW19 Exh. 88/PW19 | Letters seeking opinion of Medical Officer regarding injuries sustained by deceased. |
| 36. | Exh. 89/PW19 | Letter to the Medical Officer regarding correction of the number of Pigeon pea stalks. |
| 37. | Exh. 90/PW19 | The reply given by the Medical Officers to that letter. |
| 38. | Exh. 91/PW19 | Letter submitted to the Magistrate regarding the addition of an offense under Section 316 of the IPC in this matter. |
| 39. | Exh. 92/PW19 | Letter to the Magistrate regarding enhancement of the offence under Section 2011 of the IPC as the investigation revealed that the accused had destroyed evidence. |

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| Sr. No. | Exhibit Number | Description |
|---------|---|--|
| 40. | Exh. 93/PW19 | Letter issued to obtain medical examination of the accused after his arrest. |
| 41. | Exh. 94/PW19 Exh. 95/PW19 Exh. 96/PW19 | Portion Marks A, B, C of the statement of witness Atmaram. |
| 42. | Exh. 97/PW19 Exh. 98/PW19 Exh. 99/PW19 | Portion Marks A, B, C of the statement of witness Nandabai Devkrishna Dhage. |
| 43. | Exh. 100/PW19 Exh. 101/PW19 Exh. 102/PW19 | Portion Marks A, B, C of the statement of witness Dnyaneshwar Pandurang Shrinath. |
| 44. | Exh. 103/PW19 Exh. 104/PW19 | Portion Marks A, B of the statement of witness Nirmalabai Vinay Chopade. |
| 45. | Exh. 105/PW19 | Letter given to the Magistrate to record the statement of both the children of the deceased under Section 164 of the Cr.P.C. |

B. Defence :

| Sr.No. | Exhibit Number | Description |
|--------|----------------|-------------|
| | -NIL- | -NIL- |

Judge

C. Court Exhibits :

| Sr.No. | Exhibit Number | Description |
|--------|----------------|-------------|
| | -NIL- | -NIL- |

D. Material Objects :

| Sr.No. | Material Object Number | Description |
|--------|------------------------|--|
| 1. | Material Object No. 1 | Iron frame of the bed. |
| 2. | Material Object No. 2 | Wooden stick. |
| 3. | Material Object No. 3 | Saree of deceased. |
| 4. | Material Object No. 4 | Petticoat of deceased. |
| 5. | Material Object No. 5 | Blouse of deceased. |
| 6. | Material Object No. 6 | Sarthak's shirt |
| 7. | Material Object No. 7 | Checkered half-sleeved shirt of accused. |
| 8. | Material Object No. 8 | Grey jeans Pant of accused. |
| 9. | Material Object No. 9 | Sarthak's jeans pant. |
| 10. | Material Object No. 10 | T-shirt of accused. |
| 11. | Material Object No. 11 | Total 8 Pigeon pea stalks. |

Judge

JUDGMENT

(Delivered on 30th day of March, 2026)

Accused Vishnu Atmaram Khaire is facing trial for the offences punishable under Sections 302, 201, 498-A and 316 of the Indian Penal Code, 1860 (In short "IPC") on allegations that he subjected the cruelty to his wife Varsha, on 28/05/2021, he committed her murder, caused death of quick unborn child by act amounting to culpable homicide and caused disappearance of the evidence of the offences.

Brief facts of the prosecution case are as under:-

2) That, accused married to Varsha on 24/03/2011. They have three sons and a daughter; namely Samarth, Sarthak, Om and Bhakti. She found dead in their house on 28/05/2021. Informant Yogesh Bhaskar Bombatkar is her brother. Accused used to beat his wife, deceased Varsha. Moreover, Ravindra, the elder brother of the accused was mentally ill and he also used to beat her. Therefore, the informant and his father tried to take her to their house, but she refused to the same. Accused also used to threaten

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to kill Varsha and his children. On 28/05/2021, at about 6.30 pm, Atmaram Khaire, father-in-law of Varsha informed the informant on phone that accused killed Varsha, the accused also assaulted him and the informant should come early. Therefore, the informant went to the house of the accused along with Bhaskar Punjaji Bombatkar, Amol Suresh Raut, Gajanan Dashrath Dhole, Santosh Kaduba Napte and Vithal Shriram Mandokar. The police had arrived there before them.

3) That, when, the informant and others went into the house, they saw Varsha lying supine on the floor of the front side thatched room, both of her eyes were swollen and black, and there were bleeding wounds under them. She had contusions all over body and a big bleeding wound to her head. Her hair was stained with blood.

4) That, when the informant and his father asked the father-in-law of Varsha why accused did this, he said that the accused came home from work at 5:00 pm, Varsha had latched the door of the house from the inside, she delayed opening it, so the accused started beating her with

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kicks and punches, when he tried to rescue her, the accused kicked him down, then the accused started hitting Varsha on the face, eyes, and other parts of her body with Pigeon pea stalks (*turatyā*); and the accused also hit her head twice on the head board of the iron bed (*thava*); therefore she died. The informant went to the police station and lodged report there.

5) That, on report of the informant Yogesh Bombatkar, Police Station, Nandura registered Crime No. 283 of 2021 against the accused for the offences punishable under Sections 302, 323, 498-A of IPC. After registration of the crime, the investigation was taken over by Police Inspector Shri. Suresh Naiknavare. Before that, ASI Shri. Chandraprakash Ingle had visited the spot and prepared the spot-panchanama in presence of two panchas. He had also seized the iron bed, the blood stained soil, simple soil and Pigeon pea stalks (*turatyā*). He also collected the blood with cotton ball. He produced all these seized articles before the Investigating Officer, who seized them under the panchanama prepared in presence of two panchas.

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6) That, the Investigating Officer arrested the accused on 29/05/2021 and sent for medical examination. The Medical Officer took samples of the blood, nails and hair of the accused. The IO seized them under the seizure panchanama prepared in presence of panchas. In the police custody of the accused, in pursuance of the statement made by the accused, the clothes of the accused and wooden log were discovered under Section 27 of the Code of Criminal Procedure, 1973 (For short “Cr.P.C.”). The IO seized them. He also seized the clothes of the deceased.

7) That, the accused had wiped blood at the spot with the clothes of his son and those clothes were produced by the father of the accused before the IO, who seized them in presence of the panchas. The IO obtained the medical opinion as to whether the injuries of the deceased were possible by assaulting with Pigeon pea stalks (*turaty*) and headboard of the iron bed (*thava*). The IO sent all the seized Muddemal to Regional Forensic Science Lab., Amaravati (RFSL) for examination. The IO also recorded the statements of the witnesses and got recorded the

Judge

statements of the sons of the accused under Section 164 of Cr.P.C. During investigation, it was revealed that Varsha was pregnant. After completion of the investigation, the IO submitted charge-sheet to the jurisdictional Magistrate alleging that the accused has committed the offences under Sections 302, 201, 316, 323, 498A of the IPC.

8) After taking the cognizance of the said offences and finding offence under Sections 302 of the IPC exclusively triable by the Court of Session, learned Magistrate committed the case to this Court after making compliance under Section 207 of Cr.P.C. My learned predecessor has framed the charge at Exh. 6 for the offences under Sections 302, 201, 316, 323, 498A of the IPC against the accused. It was read over and explained to the accused, who pleaded not guilty and claimed to be tried. His plea came to be recorded at Exh. 7.

9) In order to prove the guilt of accused, the prosecution examined in all 19 witnesses and produced several documents, the details thereof are stated in the tabular forms. After completion of the prosecution

Judge

evidence, this court recorded the statement of the accused under Section 313 of Cr.P.C. at Exh.108. His defence is that he was out of station on the fateful day and he has been falsely implicated. He has not led any evidence, oral or documentary.

10) Following points arise for my determination and I have recorded findings thereon for the reasons stated thereunder:-

| S.No. | Points | Findings |
|-------|--|----------|
| 1. | Whether the prosecution proves that, on 28/05/2021 in between 01.00 p.m. to 04.30 p.m. at Narayanpur, Taluka Nandura, District Buldhana in the house of accused, accused caused death of his wife by name Varsha Vishnu Khaire with intention to cause her death or by causing bodily injuries as he knew to be likely to cause death or with intention of causing bodily injury to his wife and the bodily injuries intended to be inflicted were sufficient in ordinary course of nature to cause death or while committing the act of causing injuries your act was so imminently dangerous that in all | |

Judge

| S.No. | Points | Findings |
|-------|--|----------|
| | probabilities it would have cause death and thereby committed murder punishable under Section 302 of the Indian Penal Code, 1860? | No. |
| 2. | Whether the prosecution proves that, on the same date, time and place, accused committed disappearance of evidence in the form of blood on the cloths and body of deceased Varsha, blood on the surface of the room and his cloths and thereby committed an offence punishable under Section 201 of the Indian Penal Code, 1860? | No. |
| 3. | Whether the prosecution proves that, on the same date, time and place, accused subjected the cruelty, physical and mental to the deceased Sau. Varsha on the count of suspecting her character and thereby committed an offence punishable under Section 498-A of the Indian Penal Code, 1860? | No. |
| 4. | Whether the prosecution proves that, on the same date, time and place, accused knowing that his wife Sau. Varsha was pregnant and the child was quick wick child/quick unborn child | |

| S.No. | Points | Findings |
|-------|---|-------------------------|
| | caused culpable homicide of his wife resultantly causing death of the child in the womb of Varsha and thereby committed an offence punishable under Section 316 of the Indian Penal Code, 1860? | No. |
| 5. | What offences are proved against the accused? | ... No offence. |
| 6. | What Order? | ... As per final order. |

REASONS

11) I have heard Shri. V. M. Bapat, learned APP for the prosecution and Shri. V. M. Patil, learned Advocate for the accused. I have gone through the record of the case.

AS TO POINT NOS. 1 TO 5:-

ARGUMENTS OF THE PROSECUTION

12) Shri. V.M. Bapat, learned APP submitted that in order to prove the guilt of the accused, the prosecution

Judge

examined in all 19 witnesses. PW-1 Yogesh Bombatkar (Exh.17) is the brother of deceased Varsha. He deposed that, he had got the knowledge of death of Varsha from her father-in-law, then he visited the house of the accused and saw the dead body of Varsha having multiple injuries. When he asked her father-in-law about the happening of the incident, her father-in-law told that Varsha had delayed opening of the door of the house, therefore, the accused started assaulting her, the accused also kicked down her father-in-law, when he tried to rescue her. Accused hit her head on headboard of the iron bed (*thava*). He lodged the report (Exh. P-18/PW-1) and thereon printed First information report (Exh. P-19/PW-2) was prepared. Learned APP submitted that there is nothing to disbelieve the evidence of PW-1.

13) Learned APP submitted that, PW-2 Sarthak (Exh.21) and PW-3 Samarth (Exh. 22) are children of the accused and deceased Varsha. PW-2 and PW-3 are eyewitnesses. Their evidence recorded after preliminary inquiry, they supported the prosecution, identified the

Judge

material objects (MO-1 to MO-11) and also to the accused. In cross-examination, they denied all material suggestions. Though, there are some contradictions and omissions in their evidence, considering their age and gap between the incident and the recording of their evidence, such minor contradictions and omissions are bound to occur, therefore, their evidence would not be affected by such minor contradictions and omissions. Their evidence appears natural and there is nothing to disbelieve their evidence. Moreover, they corroborate the evidence of each other; and their evidence is also supported by the medical evidence and evidence as to other circumstances.

14) Learned APP submitted that, PW-9 Jaya Katkar (Exh.32) is the Police Patil of village Narayanpur. According to her, the father of the accused told her incident, she went to the spot and saw the spot of incident and accused there. There is nothing on record to disbelieve her. Learned APP submitted that PW-15 Chandraprakash Ingle (Exh.54), ASI visited the spot along with PW-10 Nitesh Ganage (Exh.33) in presence of PW-12 Yogesh Chavre (Exh.43), prepared the

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spot panchanama (Exh.44), seized the iron bed along with other articles under the seizure panchanama (Exh.45). PW-8 Sunil Kholgade (Exh.30) cut the headboard of the iron bed (*thava*) in presence of PW-13 Satish Ugale (Exh.16), who witnessed the panchanama (Exh. 50). All these witnesses supported the prosecution and there is nothing on record to disbelieve them.

15) Learned APP submitted that, the accused made statement to the Investigating Officer PW-19 Suresh Naiknavare (Exh.78) in presence of panch witness namely PW-13 Satish Ugale (Exh. 46) that, he would take out the shirt, pant and handkerchief; and then took out them from his fodder room; and according the memorandum panchanama (Exh. 47) and seizure panchanama (Exh. 48) was prepared. These witnesses also identified these clothes (MO-8, MO-7 and MO-12). The blood and nail samples of the accused were produced before the IO by PW-11 Vinayak Mankar (Exh.40) in presence of PW-13 Satish Ugale (Exh. 16) and IO prepared panchanama (Exh. 49) thereof.

16) The Investigating Officer PW-19 Suresh

Naiknavare (Exh.78) seized the clothes of the children of the deceased, which were produced by the father of the accused before IO in presence of PW-14 Gopal Sushir (Exh.51). Each of them supported the prosecution case and there is nothing on record to disbelieve the seizure of the clothes. All the seized Muddemal was sent to CA firstly by the hand of PW-16 Sukhdeo Kakad (Exh. 56), there was some discrepancies in the description of some muddemal, therefore CA returned them, therefore, IO Shri. Suresh Naiknavare (Exh.78) prepared the panchanama of the muddemal (Exh.72) in presence of PW-17 Ganesh Bakal (Exh.71); and again, sent the muddemal to CA.

17) Learned APP submitted that PW-18 Dr. Chetan Bende (Exh.74) conducted the postmortem of the deceased, he found as many as 34 antemortem injuries on the dead body and the deceased was pregnant for 24 to 25 weeks. The nature and number of the injuries clearly show the intention of the accused and it cannot be said that the death of Varsha was accidental. One of the injuries is post-mortem and it was caused since after death of Varsha,

Judge

accused pulled her body. The evidence of PW-18 supports the evidence of the children of deceased Varsha (PW-2 and PW-3).

18) Learned APP submitted that the prosecution also examined the Investigating Officer/PW-19 Suresh Naiknavare (Exh.78). Though PW-4 Nandabai Dhage (Exh.23), PW-5 Atmaram Khaire (Exh.24), PW-6 Nirmala Chopade (Exh.26) and PW-7 Dyaneshwar Shrinath (Exh.28) have not supported the prosecution case, admittedly PW-5 is the father of the accused, all of them are resident of the village of the accused, their cross-examinations taken by the prosecution show that they deposed false, therefore their evidence would not affect the prosecution case. Learned APP submitted that, the evidence on record is more than sufficient to prove the guilt of the accused beyond reasonable doubt.

ARGUMENTS OF THE DEFENCE

19) Shri. V.M. Patil, learned Advocate for the accused submitted that, there is no case of the prosecution that, the

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deceased Varsha was beaten by axe, belt and wire, but each of PW-2 and PW-3, the children of deceased Varsha stated so, therefore their evidence is inconsistent with the prosecution case and creates serious doubt whether they had seen the incident. He also submitted that, moreover, these articles are not seized by the Investigating Officer. He also submitted that PW-2 and PW-3 are child witnesses, they were tutored by their relatives and therefore it is not safe to rely on them.

20) Learned Advocate for the accused further submitted that in the first information report (Exh.18), it is stated that the elder brother of the accused was mentally ill and he used to assault deceased Varsha. However, the Investigating Officer admitted that he had not investigated in that direction, the IO could not explain why he had not made any investigation of the prime suspect of the crime. He submitted that, it has come in the evidence of the Medical Officer that there was an incised wound, but there is no case of use of a sharp edged weapon in the alleged commission of the offence. He also submitted that, the

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accused and deceased Varsha cohabited for 10 to 12 years happily, they were blessed with 4 children, there was no major issue between them, therefore, the accused had no motive for killing Varsha. He also submitted that, the alleged motive, i.e. delay in opening door, is not proved. Moreover, it is highly improbable that the accused would kill his wife on such trifle issue. He submitted that, these circumstances show that there is serious doubt about the prosecution case and evidence, therefore, the accused is entitled to benefit of doubt.

THE EVIDENCE AND ITS ANALYSIS

21) Now, I propose to state the evidence on record and its analysis in the light of the rival submissions. At the outset, it would proper consider the medical evidence.

MEDICAL EVIDENCE

22) According to the prosecution, PW-18 Dr. Chetan Bende (Exh. 74) conducted the postmortem on the dead body of deceased Varsha and prepared the postmortem report (Exh.76). It is not disputed that, PW-18 Dr. Chetan

Bende was serving as Medical Officer at Primary Health Centre, Nandura and he had received a letter (Exh.P-75/PW18) from Police Station, Nandura, for the postmortem. It is also not much disputed that, he conducted the postmortem on the dead body of deceased Varsha and prepared postmortem report (Exh.P-76/PW-18). He found 35 external injuries on the body of Varsha as under:-

- (1) Incised wound over forehead, vertically placed in middle between eyebrow, edges regular and minimal swellings right of size 2.5 cm X 0.5 cm X 0.5 cm
- (2) Lacerated wound over left occipital region near midline vertically oblique placed, edges irregular and minimal swelling right of size 6 cm X 0.5 cm X 0.5 cm.
- (3) Lacerated wound over left parietal region near midline obliquely placed of size 3 cms X 0.5 cm X 0.5 cm edge irregular and minimal swelling present.
- (4) Contusion over right eye of size 7 cms X 6 cm with eyelid swollen parietal region swelling right with congestion of left eye present, reddish brown discoloration with hematoma.

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- (5) Incised wound over left upper eyelid of size 1.5 cm X 0.2 cm X 0.2 cm horizontally placed, edges regular and minimal swelling right.
- (6) Incised wound over left side face just inferior-lateral to right eye of size 2 cm X 0.5 cm X 0.5 cm, edges regular and minimal swelling presence.
- (7) Contusion over left eye region, eyelids swollen and peri-orbital swelling right with left eye congested of size 7.5 cm X 6 cm, reddish discoloration present with subcutaneous harmotome.
- (8) Incised wound over left lower lid region of size 3 cms X 0.2 cms obliquely placed, irregular shape, edges regular and minimal swelling present.
- (9) Incised wound over left infra-orbital region just below to injury No.(8) of size 2 cms X 0.2 cm X 0.1 cm horizontally placed, edges regular and minimal swelling present.
- (10) Contusion over nasal bridge of size 3.5 cmx 1.5 cms with reddish discoloration with swelling right.
- (11) Linear abrasion over nasal bridge horizontally placed of size 1.2 cm, redness right.

- (12) Lacerated wound over left side of face just lateral to right eye of size 1.5 cm X 0.5 cm X 0.5 cm swelling right blow stain right.
- (13) Contusion over left side face laterally, just below injury No.(12) of size 6 cms X 5 cms, redness right, subcutaneous hematoma right.
- (14) Contused abrasion over left side of face, lateral to left eye size 8 cms X 6 cms, redness discoloration right subcutaneous hematoma present.
- (15) Linear abrasion over left side neck, supraclavitory region mediatly of size 5 cms, redness present? Nail.
- (16) Contusion over left size of nail laterally 5 cms X 5 cms redness right, swelling right, subcutaneous blow clot presence.
- (17) Contusion over left side of neck anterior laterally of size 6 cms X 4 cms, redness right swelling right.
- (18) Linear abrasion over left side of neck just below injury No.(17) of size 4 cms? Nail.
- (19) Contusion over right front parietal region of size 6 cm X 4 cms, redness right swelling right, subcutaneous blood clot right.

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- (20) Contusion over left front parietal region of size 7 cms X 3 cms redness right, swelling right, subcutaneous blood clot right.
- (21) Contusion over right shoulder region superior side of size 4 cms X 3 cms, redness right, minimal swelling right.
- (22) Contusion over left forearm near elbow region posterity of size 6 cms X 3 cms redness right, swelling right.
- (23) Contusion over right forearm laterally near wrist region of size 3 cms X 2.5 cms redness right, minimal swelling right.
- (24) Abrasion over left shoulder posterity two in numbers of size (a) 3 cm X 1.5 cm, (b) 2.5 cm X 1.3 cm, No swelling, no tissue reaction.
- (25) Oval shape mark present over left arm below shoulder region anteriority, redness right, swelling right? Teeth bite.
- (26) Contusion over left forearm posterity below elbow region of size 6 cms X 4 cms, redness.

- (27) Contusion over left side of chest laterally lower costal region of size 5 cms X 3 cms, redness right, swelling right, fracture 7th rib underneath with small hematoma present.
- (28) Multiple contusion over back (Seven in numbers) redness right, swelling right of size (a) 7 cms X 4 cms (b) 6 cms X 2.5 cms, (c) 8 cms X 4 cms, (d) 3 cms X 2 cms, (e) 3.5 cms X 2 cms, (f) 5 cms X 3 cms, (g) 8 cms X 4 cms.
- (29) Contusion over left thigh antero laterally size in numbers redness right, minimal swelling right (a) 7 cms X 2 cms (b) 6 cms X 2 cms (c) 7 cms X 2 cms (d) 10 cms X 4 cms (e) 5 cms X 2 cms (f) 6 cms X 4 cms.
- (30) Contusion over left calf region of size 8 cms X 4 cms, redness right, swelling right.
- (31) Contusion over left thigh of size 6 cms X 3 cms antero laterally redness right, swelling right.
- (32) Contusion over left calf region postero-medially of size 7 cms X 3 cms, redness right, swelling right, near knee region.
- (33) Contusion over left hand of size 5 cms X 3 cms,

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redness right, swelling right with swollen right hand thumb and below region (proximal)

(34) Contusion over left hand palmar region of size 6 cms X 3 cms, redness right, swelling right.

(35) Abrasion over left side of abdomen below costal margin.

23) According to PW-18 Dr. Chetan Bende (Exh.74), injury Nos. 1 to 23, 25 to 35 were antemortem, whereas injury No. 24 was postmortem. He also deposed that, the cause of death was due to injuries to the vital organ namely brain. He admitted that, it is written in the last column of postmortem report that the final opinion will be given after viscera report. The viscera report is filed at Exh.14. After perusal of the viscera report, PW-18 Dr. Chetan Bende opined that since viscera report does not reveal any poison, the final cause of death is injury to brain. According to him injury Nos. 21, 22, 23, 26, 28 to 34 were possible by Pigeon pea stalks/*turaty* (MO-11) and injury Nos. 1 to 14, 19, 20 and 27 were possible by metal bed's leg (*thava*) (MO-1).

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He also stated that injury Nos. 13, 19, 20, 26, 27, 30 to 34 were possible by wooden Danda (MO–2).

24) In cross-examination of PW–18 Dr. Chetan Bende (Exh. 74), the defence tried to suggest that the injuries were possible by falling on any object and the head injury was possible in case of fall on the ground. But this suggestion is denied by PW–18. He admitted the suggestion that incised wound is only possible by sharp or pointed weapon; and the Pigeon pea stalks (*turatyā*), metal bed's leg (*thava*) and wooden log are not such sharp weapons. He denied the suggestions that none of the injuries were caused by pointed weapon. He denied the suggestions that, the abrasions found in present case were possible, if the deceased had come in contact with rough surface of the ground or bushes.

25) Perusal of the cross–examination shows that the testimony of PW–18 Dr. Bende remained intact since he stood firm in the cross–examination. The defence could not shatter the testimony of PW–18. Therefore, his testimony is trustworthy. On the basis of his testimony, it is proved that there were in all 35 injuries on the dead body of Varsha, out

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of them, injury Nos. 1 to 23, 25 to 35 were antemortem and injury No. 24 was postmortem. It is also proved that injury Nos. 21, 22, 23, 26, 28 to 34 were possible by Pigeon pea stalks/*turatyā* (MO-11) and injury Nos. 1 to 14, 19, 20 and 27 were possible by metal bed's leg (*thava*) (MO-1). It is further proved that, injury Nos. 13, 19, 20, 26, 27, 30 to 34 were possible by wooden Danda (MO-2). It is proved that the cause of death is injury to vital organ i.e. brain. In other words, the cause of death is head injury resulting in injury to brain.

THE PLACE, WHERE DEAD BODY FOUND

26) According to the prosecution, the dead body of Varsha and material objects namely the Pigeon pea stalks (*turatyā*) and iron bed were found in the house of the accused. The place of incident is also the house of the accused. Now it is to be seen whether the prosecution proved these facts. In this respect, the evidence of PW-9 Jaya Katkar (Exh.32), PW-10 Nitesh Gange (Exh.33), PW-12 Yogesh Chavare (Exh. 43) and PW-15 Chandraprakash Ingle (Exh.54) is relevant.

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27) PW-9 Jaya Katarar (Exh.32) is the Police Patil of village Narayanpur. She deposed that on 28/05/2021, when she was at her house, the father of the accused had been to her house and told her that the accused assaulted deceased Varsha and she was lying in the house; thereafter she went to the house of the accused found Varsha lying in the house of the accused. She also deposed that Varsha had head injury and the blood was spreading in the house. She also deposed that the accused was also in the house. She further deposed that she phoned Police Station Officer Shri.Naiknavare, who came on the spot, prepared spot panchanama and sent the dead body for postmortem. She also deposed that Varsha was died due to assault made by the accused.

28) PW-10 Nitesh Ganage (Exh.33) is the Home-Guard. He deposed that, on 28/05/2021, as per instruction of the Police Inspector of Police Station, Nandura, he went to the house of the accused at Village Narayanpur and found one dead woman lying. He also deposed that Police Patil, four children and the father of the accused were also

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present there. He further deposed that the dead woman had injuries on all over her body. He further deposed that Shri.Ingle (PW–15) called one woman and one man; and prepared spot panchanama.

29) PW–12 Yogesh Chavare (Exh.43) is the panch witness on spot-panchanama (Exh. 44/PW–12). He deposed that on the call of the police, he went to the house of the accused, where one woman was lying dead in the house, there was a bed, Pigeon pea stalks (*turatyā*) and blood. He also deposed that the police seized the bed, Pigeon pea stalks (*turatyā*), blood sample therefrom and prepared the spot panchanama (Exh.44/PW–12) and seizure panchanama (Exh. 45/PW–12). He also admitted his signatures on these panchanamas.

30) PW–15 Chandraprakash Ingle (Exh.54) is the Asstt. Sub-Inspector, then attached to Police Station, Nandura. He deposed that, on 28/05/2019, he was on day duty and on the instruction of the Police Station Officer, he went to the house of accused along with two Home-Guards; there the father of the accused told that, he would show

the place where her daughter-in-law was murdered. He further deposed that then he called two panchas for the panchanama. He deposed that it was residential house, the dead body of woman having bleeding head injury, swollen eyes and face, having injuries to the legs and hand was lying in the house, there were Pigeon pea stalks (*turaty*) and bed in the house. He further deposed that he collected the blood with help of cotton ball, simple soil and blood stained soil from the spot. He also deposed that he seized bed and Pigeon pea stalks (*turaty*). He also deposed that all these seized articles were sealed and accordingly the spot panchanama and seizure panchanama (Exh. 44 and 45/ PW–12) were prepared in presence of panchas. He also deposed that in presence of the panchas, he also prepared inquest panchanama (Exh. 55/PW–15). He identified the headboard of the iron bed (*thava*) and Pigeon pea stalks/*turaty* (MO–1 and MO–11).

31) Learned Advocate for the accused took cross – examination of each of PW–9 Jaya Katkar (Exh.32), PW–10 Nitesh Gange (Exh.33), PW–12 Yogesh Chavare (Exh. 43)

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and PW-15 Chandraprakash Ingle (Exh.54). In the cross – examination of PW-9 Jaya Katkar, she admitted that, her information relating to the assault is hearsay and she did not know how the incident took place. But so far as finding of dead body of Varsha, head injury and blood in the house of accused, is concerned, the said facts are not challenged in her cross-examination. In cross-examination of PW-10 Nitesh Ganage (Exh.33), he admitted that he had not gone to the house of the accused on 28/05/2021. In his examination-in-chief, he stated that he had been there on 29/05/2021. It may be noted that, he deposed after five years, therefore, there may be confusion in respect of the date. Otherwise, he denied all the suggestions given in the cross-examination. His evidence cannot be disbelieved only because he stated different date, especially, there is cogent evidence on record to show that he had been there on 28/05/2021.

32) In cross-examination, PW-15 Chandraprakash Ingle (Exh. 54) admitted that there were mattress and plywood on the bed, but he did not seize them because,

the murder was committed by hitting head on the headboard of the bed (*thava*) and there is blood only on the headboard. So far as the preparation of the spot panchanama, seizure panchanama, seizure of blood sample, simple soil sample, blood stained soiled, bed, Pigeon pea stalks (*turatya*), preparation of the inquest panchanama, there is nothing in his cross-examination to disbelieve his testimony.

33) The evidence of PW–9 Jaya Katkar (Exh. 32), PW–10 Nitesh Ganage (Exh. 33), PW–12 Yogesh Chavare (Exh. 43) and PW–15 Chandraprakash Ingle (Exh. 54) is consistence with each other, there is no discrepancy in their evidence and their evidence is corroborated by the spot panchanama (Exh.44/PW–12), seizure panchanama (Exh.45/PW–12) and the inquest panchanama (Exh. 55/PW–15). Therefore, on the basis of their evidence, it is proved beyond reasonable doubt that the dead body of Varsha having head injury and other injuries were found in the house of the accused; and PW–15 seized of blood sample, simple soil sample, blood stained soiled, iron bed and Pigeon pea stalks (*turatya*).

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SEIZURE OF IRON BED

34) According to the prosecution, the iron bed was seized from the house of the accused. This fact is also proved by the prosecution. It is the further case of the prosecution that there were blood stains on the headboard/ one of the legs of the iron bed (*thava*), therefore only that leg was separated by cutting it. To prove the said fact, the prosecution examined PW-8 Sunil Kholgade (Exh.30) and PW-13 Satish Ugle (Exh.46) and relied on the panchanama (Exh.P50/PW-13).

35) PW-8 Sunil Kholgade (Exh.30) was doing the work of fabrication. He deposed that the police called him by giving a letter (Exh.31/PW-30), they asked him to cut a leg of iron bed (*thava*), therefore, he cut it with the help of cutter machine. He identified the leg (MO-1) during his evidence. PW-13 Satish Ugale (Exh. 46) deposed that he was called by the police on 03/06/2021 and the police had also called one cutter. The cutter cut the leg of the iron bed (*thava*) in his presence and the police prepared the panchanama (Exh.P-50/PW-13). He also identified the leg

of the bed/*thava* (MO-1). So far cutting of the leg of the bed (*thava*) is concerned, there is no effective cross-examination of these witnesses; and there is nothing on record to disbelieve their evidence. Therefore, it is proved that the leg of the bed (*thava*) was cut and separated from the bed.

DISCOVERY UNDER SECTION 27 OF THE EVIDENCE ACT

36) According to the prosecution, at the instance of the accused, one wooden log, jeans pant, shirt and handkerchief were discovered under Section 27 of the Indian Evidence Act. To prove this fact, the evidence of PW-13 Satish Ugale (Exh.46), PW-19 Suresh Naiknavare (Exh.78), the memorandum panchanama (Exh.P-47/PW-13) and seizure panchanama (Exh.P48/PW-13) is relevant.

37) PW-13 Satish Ugale (Exh.46) is the panch. He deposed that on 30/05/2021, at about 11.30 to 11.45 am, on the call of the police, he went to the Police Station and met Police Officer Shri. Naiknavare. He further deposed that then, the accused was brought from police lock-up

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and the accused stated that he would take out shirt, pant, handkerchief and wooden log, which were stated to be hid in the fodder room of his house. He further deposed that according, the police prepared panchanama (Exh.P47/PW-13) and he signed it. He also identified the said panchanama.

38) PW-13 Satish Ugale (Exh.46) further stated that then he went along with other panch, Police Officer and the accused in the jeep to village Narayanpur. He deposed that there, they went to the spot of incident and alighted there from the jeep. He further deposed that then accused took them to the fodder room of his house, the accused climbed up on fodder, removed some fodder and took out wooden log, shirt, handkerchief and pant therefrom. He further deposed that accordingly the Police seized them and prepared seizure panchanama (Exh.P-48/PW-13) and he signed it. He identified wooden log (MO-2), jeans pant (MO-8), Shirt (MO-7) and handkerchief (MO-12). He also identified the accused in the Court.

39) PW-19 Suresh Naiknavare (Exh.78) is the

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Investigating Officer, who prepared the memorandum panchanama, seized the aforesaid articles and prepared seizure panchanama. He also deposed on the line of PW-13.

40) Both PW-13 and PW-19 were cross-examined by the defence. PW-13 admitted in his cross-examination that he had not seen any documents as to the house of the accused and there were no blood stains on the seized articles. PW-19 denied all the suggestion given in his cross-examination. Perusal of their evidence on this point shows that there is nothing to disbelieve their evidence. Therefore, on the basis of their evidence and the panchanamas, it is proved that at the instance of the accused, the wooden log (MO-2), jeans pant (MO-8), Shirt (MO-7) and handkerchief (MO-12) were discovered under Section 27 of the Indian Evidence Act and the IO seized those articles.

SEIZURE OF CLOTHS OF CHILDREN

41) According to the prosecution, the father of the accused produced the clothes of Sarthak and Samarth (the

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children of the accused) before the police and they were seized by PW-19 Suresh Naiknavare (Exh.78) in presence of the panchas including PW-14 Gopal Sushir (Exh.51) under the seizure panchanama (Exh.P85/PW-19). PW-19 Suresh Naiknavare (Exh.78), the Investigating Officer stated so in his evidence and identified MO-6 and MO-8 as the clothes of those children. PW-14 Gopal Sushir (Exh.51) also supported the prosecution. There is no effective cross – examination on this point and all the suggestion given by the defence were denied by each of these prosecution witnesses. Therefore, seizure of these clothes is proved beyond reasonable doubt.

SEIZURE OF SAMPLE AND CLOTHS OF THE DECEASED

42) The blood sample of the deceased, her viscera, her clothes were collected by the Medical Officer and they were seized by IO namely PW-19 Suresh Naiknavare in presence of PW-13 Satish Ugale (Exh.46) under seizure panchanama (Exh. 49/PW-13). Both these witnesses deposed accordingly before the Court and there is no effective cross-examination on this point; there is nothing

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to disbelieve their testimony, therefore, it is proved beyond reasonable doubt that the blood sample of the deceased, her viscera, her clothes were collected by the Medical Officer and seized by the Investigating Officer.

COLLECTION OF BLOOD SAMPLE OF THE ACCUSED

43) PW–11 Vinayak Mankar (Exh.40) had taken the accused for medical examination, the Medical Officer took the blood sample of the accused, handed over it to PW–11, who, in turn, handed over to the Investigating Officer. PW–11 deposed accordingly and there is nothing on record to disbelieve him, therefore the said fact is proved beyond reasonable doubt.

CHEMICAL ANALYSIS EXAMINATION

44) In view of the aforesaid discussion, it is proved beyond doubt that the blood stained soil, simple soil, the Pigeon pea stalks (*turatyā*), the blood sample collected from the spot, one wooden log, jeans pant, shirt, handkerchief, clothes of Sarthak and Samarth (the children of the accused), the blood sample of the deceased, her

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viscera, her clothes and the blood sample of the accused were seized in this crime. According to the prosecution, all these articles were sent for chemical analyzer. On this point, the evidence of PW-16 Sukdeo Kakad (Exh.56), PW-17 Ganesh Bakal (Exh.71) PW-19 Suresh Naiknaware (Exh.78); and Documents (Exh. P57/PW-16 to P-66/PW-16, and panchanama (Exh.P72/PW-17) are relevant.

45) PW-16 Sukhdeo Kakad (Exh.56) deposed that the Investigating Officer deputed him to carry the muddemal to CA office on 11/06/2021, accordingly, he took the muddemal along with letter issued by IO to CA office, Amaravati, but there was some discrepancy in the details of the muddemal, therefore, CA Office returned the muddemal, he brought back the muddemal to Police Station, after removing discrepancy, he again took the muddemal to CA Office on 14/06/2021 and handed over it to CA office. Perusal of his cross-examination shows that, there is nothing therein to disbelieve him. Moreover, PW-19 Suresh Naiknavare (Exh.78) also corroborates to PW-16. When, the muddemal was returned and brought to the

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police station from CA officer, PW–19 also prepared the panchanama (Exh. P-72/PW–17) in presence of PW–17 Ganesh Bakal (Exh. 71), who also supported PW–19. Moreover, the duty pass, the office copies of the letters and panchanama are also supported to prosecution. Therefore, it is proved that the seized muddemal was sent to CA office.

46) The CA reports (Exh. 10 to 14) are filed on record. It is reported vide CA report (Exh. 10 & 11) that no blood was detected on simple soil, Pigeon pea stalks (*turaty*), metallic pipe (leg of the bed/*thava*), wooden log and full jeans pant, whereas, human blood was detected on blood stained soil, cotton swab, pant, half sleeve shirt, Dupatta, half sleeve T-shirt, saree, Blouse, Petticoat, Knickers and Half sleeve shirt. It is further reported that, the blood group of blood detected cannot be determined as the results are inconclusive, whereas, cotton swab, pant, half sleeve shirt, Dupatta, half sleeve T-shirt, saree, Blouse, Petticoat, Knickers and Half sleeve shirt are stained with blood of group 'A'. According to CA report (Exh.12), the

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blood group of accused is 'O'. CA report (Exh.13) states that the blood group of deceased Varsha was 'A'. On the basis of these CA reports, the aforesaid facts are proved.

RESULT OF CHEMICAL ANALYSIS

47) In view of the above discussion, for clarity, it is stated as follows:-

- i. No blood is detected on Pigeon pea stalks of tur (*turatyā*) seized from the spot.
- ii. No blood is detected on metallic leg of the bed (*thava*), seized from the spot.
- iii. No blood is detected on simple soil/earth seized from the spot.
- iv. No blood is detected on wooden log discovered at the instance of the accused.
- v. No blood is detected on jeans pant of the accused.
- vi. No blood is detected on nail and hair sample of the accused.
- vii. Blood group is not detected on blood stained earth/soil seized from the spot.

- viii. Blood of group 'A' i.e., blood of the deceased is detected on cotton swab by which blood was collected from the spot.
- ix. Blood of group 'A' i.e. blood of the deceased is detected on jeans pant, shirt and handkerchief discovered at the instance of accused.
- x. Blood of group 'A', i.e, blood of the deceased is detected on the clothes of the deceased.
- xi. Blood of group 'A', i.e., the blood of the deceased is detected on the *baniyan* of the accused.
- xii. Blood of group 'A', i.e, the blood of the deceased is detected on shirt of Sarthak, the son of the deceased and the accused.
- xiii. No blood detected on the jeans pant of Samarth, the son of the deceased and the accused.
- xiv. The blood group of the accused is 'O'.
- xv. There were in all 35 injures on the dead body of deceased Varsha, out of them, one injury was postmortem.
- xvi. The cause of death of deceased Varsha is injury to brain i.e external head injury.

- xvii. Injury Nos. 1 to 14, 19, 20 and 27 (antemortem) mentioned in postmortem report were possible by metal bed's leg/*thava* (MO-1).
- xviii. Injury Nos. 13, 19, 20, 26, 27, 30 to 34 (antemortem) mentioned in postmortem report were possible by wooden Danda (MO-2).
- xix. Injury Nos. 21, 22, 23, 26, 28 to 34 (antemortem) mentioned in postmortem report were possible by Pigeon pea stalks/*turaty*a (MO-11).
- xx. The dead body was found in the house of the accused.

48) It cannot be disputed only these facts would not hold the accused guilty and the prosecution must prove that the accused is the author of the injuries. For that purpose, the evidence of the remaining witnesses namely PW-1 to PW-7 and PW-9 needs to be seen.

**EVIDENCE OF THE FIRST INFORMANT AND THAT OF
ADULT EYEWITNESSES**

49) PW-1 Yogesh Bombatkar (Exh.17) is the brother

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of the deceased. He stated that, on 28/05/2021, at about 6.30 pm, the father of the accused informed him on phone that the accused killed the deceased Varsha. He further deposed that therefore, he along with his father and other relatives went to the house of the accused and found Varsha dead and having multiple injuries. He further deposed that when he asked the father of the accused about the incident, he told that as there was delay by Varsha to open the door, the accused started assaulting her, and when he tried to rescue her, the accused also kicked him in the stomach; and continued beating to Varsha; the accused also hit her head on ground and on the head of the leg of the bed (*thava*); and also assaulted her with stick. He also deposed that Varsha was pregnant for 5 months. He deposed that accordingly, he lodged the report (Exh.18/PW-1) and Printed FIR (Exh.19/PW-1).

50) PW-1 Yogesh Bombatkar admitted in his cross-examination that there was dispute between him and accused since the accused had not allowed Varsha to go to her maternal house. He further admitted that the accused

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and Varsha were doing labour work and their marital life was going well. He further admitted that, when he reached the spot, the police were already present there.

51) It is pertinent to note that, he admitted in his cross-examination that he does not know anything about the incident and he lodged report and deposed before the Court on the basis of the information given by the father of the accused. This admission and his examination-in-chief clearly show that his evidence is hearsay in nature and on the basis of the information given by the father of the accused.

52) It may be noted that according to PW-9 Jaya Katkar (Exh.32), the police Patil of village Narayanpur also stated that the father of the accused had stated her that the accused killed the deceased Varsha. She has admitted in his cross-examination that she had not seen the incident. Therefore, her evidence is also hearsay in nature and only on the basis of the information given by the father of the accused.

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53) As the evidence of PW–1 and PW–9 is based on the information given by the father of the accused, their evidence cannot be admitted in evidence, unless the father of the accused states so before the Court. Atmaram Khaire, the father of the accused is examined as PW–5 at Exh. 24. According to the prosecution, he is eyewitness. However, he did not support the prosecution case. In examination–in–chief, he stated that he was out of the house and when he returned to the house, he found Varsha dead. He further deposed that, it did not happen that the accused hit the head of Varsha.

54) Since, he was not supporting the prosecution, the permission was granted to learned APP to put the question in the nature of the cross–examination. Learned APP tried at his best to elicit facts from PW–5, but he could not succeed. Therefore; and undisputedly, the evidence of PW–5 Atmaram Khaire (Exh.24) is, at all, not helpful to the prosecution. Since, he has not supported the prosecution and the evidence of PW–1 and PW–8 is not direct, but on the information allegedly given by PW–5, the evidence of

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PW-1 and PW-8 became hearsay in nature and resultantly inadmissible in evidence.

55) Now let me consider the evidence of PW-4 Nandabai Dhage (Exh.23), PW-6 Nirmala Chopade (Exh.26) and PW-7 Dyaneshwar Shrinath (Exh.28). They are resident of the locality of the accused. According to the prosecution, they are eyewitness. However, they only stated that Varsha died. In their respective evidence, they had shown ignorance about the incident. They have not supported the prosecution case, therefore learned APP was permitted to ask question in nature of the cross-examination. Learned APP had taken cross-examination of each of them at length. But, he could not elicit any incriminating evidence against the accused. Therefore, their evidence is not helpful to the prosecution.

EVIDENCE OF CHILD EYEWITNESSES

56) PW-2 Sarthak Khaire (Exh. 21) and PW-3 Samarth Khaire (Exh.22) are the sons of the accused and deceased Varsha. At the time of recording of their evidence,

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PW-2 Sarthak and PW-3 Samarth were 10 and 13 years old. As such, they are child-witnesses.

57) Before appreciating the evidence of these child witnesses, it is deemed apposite to refresh the position of law on the appreciation of evidence of a child witnesses. In **State of Madhya Pradesh Vs. Balveer Singh, reported in 2025 SCC OnLine SC 390**, the Supreme Court has examined the principles governing the testimony of a child-witness and summarized the legal position in the following manner:-

“58. We summarize our conclusion as under:-

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding

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sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.

(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the

child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and molded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.:-

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the Investigating Officer by proving that part of police

statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:-

Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose

falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the

version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the

evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.”

58) Let me, now consider the evidence of PW–2 and PW–3 in the light of the aforesaid legal principles. At the outset, it may be noted that the evidence of these child-witnesses was recorded by my learned predecessor after conducting preliminary examination as to ascertain if they are capable of understanding sanctity of giving evidence and the import of the questions that are being put to him. After recording the few questions and answers, my learned predecessor recorded his satisfaction that each of these witnesses are capable of understanding sanctity of giving evidence and the import of the questions that are being put to them. Thereafter, my learned predecessor proceeded to administer them oath. Few more questions were asked them after administration of the oath. And thereafter, they were asked the questions regarding the present case. Their evidence is recorded in question-answer form.

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59) PW-2 Sarthak Khaire (Exh.21) deposed that, Varsha and Vishnu are his parents, his mother died, his father assaulted her, his father had come to the house in drunken condition, he had brought chicken and mango, he started assaulting her, he was assaulting her continuously from 12:30 to 5:00, he assaulted her with an axe and belt. When, PW-2 was asked about the injuries, he deposed that she had cut injury to the head and also injuries on hand and lips, her eyes were swollen, she closed the door, his father was hitting the door with an axe, the neighbour lady come, tried to pacify the quarrel, but his father kicked her in the stomach, his grandfather had also come to save his mother. He further deposed that, when his grandfather had come to save her mother, they had gone backside of his grandfather, his sister was in the cradle and the rope was tucked to her neck, his grandfather went to save her sister and took her out of the house, his father pushed his elder brother by catching his collar, his elder brother sustained injury, his grandfather saved him. He further deposed that his father assaulted his mother by slap and belt. He also deposed that his father hit his mother on the ground and at that time,

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she sustained injury to head by sharp-point of the bed and bleeding was started. He further deposed that when he went to save her mother, his father gave abuses. He identified the clothes of the accused, those of the deceased and leg of the bed/*thava* (MO–1 to MO–11).

60) PW–3 Samarth Khaire (Exh.22) deposed that, Vishnu and Varsha are his parents, his mother died, his father killed her, his father had come in drunken condition, he had brought chicken and mango, he came inside the house and started assaulting his mother, he came at 12:00, his sister was saved from hanging, he and his grandfather was at the house, they asked his father not to assault, his head was about to break out, but he saved because of knee of his grandfather, his father assaulted her mother with wire, a blow-pipe, sticks, wooden log, his father was insisting her mother to cook chicken, her eyes were swollen, scar of sticks were impressed on her limbs and back, his father went outside, he was drinking liquor, he gave mangoes to the children, then he closed the door, his father pushed her mother on the bed, she was hit by sharp-

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point of the bed, the blood was spread in the house, He further deposed when he went to call (for help), nobody meet him, his father wiped out the blood and laid down her on the ground, then police came and took away her mother and father. He identified the clothes of the accused, those of his mother, Pigeon pea stalks/*turaty*a (MO-1 to MO-11).

61) In cross-examination, PW-2 Sarthak stated that, he stated to the police that his father had come in drunken condition, his father had brought chicken and mango, his father was assaulting his mother since 12 O'clock, his father assaulted his mother with the axe and wire, his father hit door with axe, his father kicked neighbour lady, his father abused him, his mother sustained cut injury to the head, her lips were turn blue. But these facts are not appearing in his police statement. He also admitted that he had gone to the house of his maternal uncle Yogesh (the informant) in Dipawali vacation and he would go to his house in summer vacation. PW-3 Sarthak also admitted in his cross-examination that he had been to the house of his maternal uncle Yogesh (informant) along with his brother during

Dipwali vacation for 9 days. He further admitted that he and his brother had met the police uncle in the Court. He further admitted that, the police uncle told them what is to be stated before the Court. He also admitted that accordingly, he deposed before the Court. It may be noted PW-2 Sarthak denied these facts, but PW-3 Sarthak admitted that the police uncle told him and his brother what is to be stated before the Court. These facts can be said foundational facts suggesting or demonstrating that both the child witnesses might have been tutored.

62) By pointing out aforesaid evidence, learned Advocate for the accused submitted that, it clearly shows that both child witnesses were tutored. It appears from the evidence of PW-2 Sarthak that there are material omissions in his evidence. Secondly, at the time of incident, he was just 7 years old at the time of incident. PW-3 Samarth clearly admitted that he was tutored by the police in the Court before his evidence. He was just 8 years old at the time of the incident. The evidence of both child witnesses came to be recorded in 2025, whereas the incident took

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place in 2021. At the time of incident, they were just 7 to 8 years old.

63) PW-3 Samarth's statement under Section 164 of Cr.P.C. shows that he stated before learned Magistrate that when his father came to the house, he along with his brother and grandfather were sitting outside the house and his mother was inside the house. He further stated that his father assaulted his mother with stick and when they went inside the house, his mother had sustained head injury. However, before this Court, he materially improved his version. It is pertinent to note that according to the prosecution case, the accused had come to the house at 5:00 pm and then he assaulted the deceased, however both child-witnesses stated that the accused had come to the house at 12:00 or 12:00 O'clock and started assaulting continuously since then. It appears unnatural.

64) Considering the aforesaid facts and circumstances, especially, there are circumstances suggesting tutoring of both child witnesses, improvements

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in their version, their age at the time of incident and at the time of deposition, material omissions etc., I am of the opinion that it is not safe to rely them. Their evidence cannot be said trustworthy. Moreover, there is no corroboration to their evidence, which was required in the circumstances stated above.

CONCLUSION

65) It is true that it is proved beyond doubt that the dead body of Varsha was found in the house of the accused. It would have a circumstance, which would command the accused to explain the said circumstance. But this is not the case that the accused and deceased were only person residing in the house. According to the prosecution itself, apart from the accused and the deceased, the father, brother and children of the accused were also residing in the same house. The house situated in the locality of the village. The informant stated in his report that the brother of the accused is mentally ill and he also used to assault the deceased Varsha. Despite such allegations, the Investigating Officer did not investigate the case in that direction. In

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cross-examination, he failed to explain this fact. This fact raises grave doubt about the prosecution case. Therefore, in this case, the provisions of Section 106 of the Indian Evidence Act would play any role and burden would not shift on the accused.

66) It is true that it is proved that at the instance of the accused, the clothes of the accused and wooden log were discovered under Section 27 of the Code of Criminal Procedure, 1973, but no blood is detected on wooden log, though Blood of group 'A' i.e. blood of the deceased is detected on jeans pant, shirt and handkerchief discovered at the instance of accused. There is no reliable evidence on record to show that these clothes were worn by the accused at the time of alleged incident.

67) At the risk of repetition, it is stated here that other proved facts namely, no blood is detected on Pigeon pea stalks (*turaty*) seized from the spot; no blood is detected on metallic leg of the bed (*thava*), seized from the spot; no blood is detected on simple soil/earth seized from the spot; no blood is detected on jeans pant of the accused.;

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no blood is detected on nail and hair sample of the accused; Blood group is not detected on blood stained earth/soil seized from the spot; Blood of group 'A' i.e., blood of the deceased is detected on cotton swab by which blood was collected from the spot; Blood of group 'A', i.e, blood of the deceased is detected on the clothes of the deceased; Blood of group 'A', i.e., the blood of the deceased is detected on the *baniyan* of the accused; Blood of group 'A', i.e, the blood of the deceased is detected on shirt of Sarthak, the son of the deceased and the accused; no blood detected on the jeans pant of Samarth, the son of the deceased and the accused; the blood group of the accused is 'O'; there were in all 35 injures on the dead body of deceased Varsha, out of them, one injury was postmortem; the cause of death of deceased Varsha is injury to brain i.e external head injury; Injury Nos. 1 to 14, 19, 20 and 27 (antemortem) mentioned in postmortem report were possible by metal bed's leg/*thava* (MO-1); Injury Nos. 13, 19, 20, 26, 27, 30 to 34 (antemortem) mentioned in postmortem report were possible by wooden Danda/log (MO-2); and Injury Nos. 21, 22, 23, 26, 28 to 34 (antemortem) mentioned in

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postmortem report were possible by Pigeon pea stalks/*turatya* (MO–11), are not helpful to the prosecution to prove the guilt of accused in absence of reliable and trustworthy ocular evidence/the evidence connecting the accused with the injuries. There is no reliable and trustworthy evidence to prove that the accused is the author of the injuries sustained to the deceased, much less of the head injury. There is no evidence on record to show that the accused was subjecting cruelty to Varsha.

68) The circumstances proved by the prosecution may lead to hold that the prosecution story may be true. But it is not sufficient to held the accused guilty. The prosecution case must be proved beyond reasonable doubt. Between ‘may be true’ and ‘must be true’ there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence.

69) In view of the above discussion, I have no option, but to hold that the prosecution failed to prove beyond reasonable doubt that the accused committed

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murder of Varsha, caused death of quick unborn child by act amounting to culpable homicide, subjected cruelty to Varsha and committed disappearance of the evidence of the crime. Therefore, I record negative findings on point Nos. 1 to 5.

AS TO POINT NO. 6 :-

70) In view of the above discussion, this Court has already recorded negative findings on all other points by holding that the prosecution failed to prove the guilt of accused beyond reasonable doubt. Therefore, the accused is entitled to be acquitted.

71) For the compliance of the provisions of Section 437-A of the Code of Criminal Procedure, it is required to direct accused to furnish personal bond of Rs. 50,000/- and the surety in the like amount.

72) So far as the muddemal property is concerned, the soil, Pigeon pea stalks (*turaty*), wooden log, clothes of the accused, clothes of deceased, the clothes of the children and all other clothes, being worthless are liable to

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destroyed, whereas, the leg of the bed (*thava*) require to be returned to the accused.

73) In view of the above discussion, I record findings on these points and pass the following order :-

ORDER

1. Accused namely **Vishnu Atmaram Khaire** is hereby acquitted, under Section 235(1) of the Code of Criminal Procedure, of the offences punishable under Sections 302, 201, 498-A and 316 of the Indian Penal Code, 1860.
2. Accused shall furnish personal bond of Rs. 50,000/- (In words Rupees Fifty Thousand only) with surety in the like amount in compliance of Section 437-A of the Code of Criminal Procedure, 1973.
3. He shall be set at liberty.
4. The muddemal property namely the soil, Pigeon pea stalks (*turatyā*), wooden log, clothes of the accused, clothes of deceased, the clothes of the children and all other clothes, being worthless, shall be destroyed after

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the expiry of the period prescribed by Sub-clause (c) of Clause (1) of Para 73 of the Bombay High Court Criminal Manual.

5. All the parts of the iron bed shall be returned to the accused after the expiry of the period prescribed by Sub-clause (c) of Clause (1) of Para 73 of the Bombay High Court Criminal Manual.
6. The true copy of the Judgment shall be forwarded, under Section 365 of the Code of Criminal Procedure, to the Ld. District Magistrate, Buldhana.
7. Session Case No.37 of 2021 is disposed of accordingly.

Malkapur.
Date – 30/03/2026.

(Purushottam B. Jadhav)
Additional Sessions Judge,
Malkapur.

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Sessions Case No. 37/2021
State X Vishnu Khaire
JUDGMENT (EXH. 111)

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CERTIFICATE

I certify that this judgment's P.D.F. file uploaded is a true and correct copy as per original signed Judgment.

Name of Court : Additional Sessions Judge,
Malkapur.

Name of Stenographer : Miss H.D Chaudhari,
Stenographer Grade I.

Date of judgment : 30/03/2026

Date of Uploading : 01/04/2026