

MHJN010011192023



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Duration : 03Y 00M 12Ds

**IN THE COURT OF SESSIONS JUDGE, JALNA**  
(Presided over by : V. M. Mohite)

**Sessions Case No.114/2023**

**Exh.**

FORM NO.XXXII  
Part 'A'  
(Title Page of Judgment)  
[Para 44 (I) of Chapter VI of Criminal Manual]

Date of Judgment:	10/04/2026
Sessions Case No.	114/2023
FIR/Crime No.	465/2022
Police Station	Chandanzira,

Prosecution	State of Maharashtra Through Police Station Chandanzira, Taluka Jalna, District Jalna.
Represented by	Learned Addl.P.P. Shri S.R.Dhokrat,
Accused	1) Santosh Bhaurao Sarode, age 45 years, 2) Namdeo Bhaurao Sarode, age 40 years,

	Both R/o. Bhatkheda shivar, Shet Vasti, Pir Pimpalgaon, Taluka and District Jalna.
Represented by	Learned Advocate Shri.Mohammad Rafiq for both accused

## Part 'B'

Date of offence	13/12/2022
Date of FIR	14/12/2022
Date of Charge sheet	07/03/2023
Date of framing Charge	20/09/2023
Date of commencement of evidence	22/06/2024
Date of which judgment is reserved	31/03/2026
Date of the Judgment	10/04/2026
Date of the Sentencing order, if any	Nil

## Accused Detail

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 detention undergone during Trial for purpose of Sec.428
1.	Santosh Bhaurao Sarode,	14.12.22	Under trial prisoner	Under Sections	Accused is convicted	As per final	From 14.12.22 to till

				302, 201 r.w.34 of the Indian Penal Code.		order	today.
2.	Namdev Bhaurao Sarode,	14.12.22	Under trial prisoner	--do--	Accused is convicted	As per final order	From 14.12.2 2 to till today.

## 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 Witnesses, Police Witness, Medical Witness, Panch Witness)
PW-1	Balasaheb Gopinathrao Bavne	Police Patil
PW-2	Vitthal Jaywant Shinde	Police witness
PW-3	Rajendra Sukhdeo Kolhe	Witness
PW-4	Jitendra Shivaji Tagwale	Informant
PW-5	Anil Vasanttrao Chikate	Panch witness
PW-6	Rahul Satyakumar Katkam	Witness
PW-7	Rameshwar Vishnu Kolhe	Witness
PW-8	Rajendra Kashinath Bansode	Witness
PW-9	Feroz Khan Daud Khan	Panch witness
PW-10	Kasabai Ankush Shelke,	Witness

PW-11	Rekha Vitthal Shelke,	Witness
PW-12	Akshay Prakash Bhansile	Panch witness
PW-13	Ganesh Tarachand Zalwar	Investigating Officer

### B. DEFENCE WITNESS, IF ANY

Rank	Name	Nature of Evidence (Eye witnesses, Police witness, Medical witness, Panch witness)
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### C. COURT WITNESSES, IF ANY

Rank	Name	Nature of Evidence (Eye witnesses, Police witness, Medical witness, Panch witness)
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## LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

### A. PROSECUTION

Sr.No.	Exhibit	Description
1.	PW-1, Exh.P-1/PW-1	Written information
2.	PW-2, Exh.P-1/PW-2 Exh.P-2/PW-2 Exh.P-3/PW-2	Complaint Printed First Information Report Spot panchanama
3.	PW-3, Exh.P-1/PW-3	Statement recorded u/s. 164 of Code of Criminal Procedure
4.	PW-4, Exh.P-1/PW-4 Exh.P-2/PW-4 Exh.P-3/PW-4 Exh.P-4/PW-4 Exh.P-5/PW-4 Exh.P-6/PW-4 Exh.P-7/PW-4	Letter Photo Photo Photo Photo Photo Photo

	Exh.P-8/PW-4	7/12 extract
5.	PW-5, Exh.P-1/PW-5 Exh.P-2/PW-5	Seizure panchanama Seizure panchanama
6.	PW-6, Exh.P-1/PW-6 Exh.P-2/PW-6 Exh.P-3/PW-6 Exh.P-4/PW-6	Office copy of letter Office copy of letter Office copy of letter Office copy of letter
7.	PW-7, Exh.P-1/PW-7 Exh.P-2/PW-7 Exh.P-3/PW-7 Exh.P-4/PW-7 Exh.P-5/PW-7	Statement u/s. 164 of Cr.P.C. Photo Screen shot Screen shot Pendrive containing video
8.	PW-8, Exh.P-1/PW-8 Exh.P-2/PW-8 Exh.P-3/PW-8 Exh.P-4/PW-8 Exh.P-5/PW-8 Exh.P-6/PW-8 Exh.P-7/PW-8 Exh.P-8/PW-8 Exh.P-9/PW-8	Panchanama Statement Panchanama Screenshot Screenshot Screenshot Screenshot Certificate Pendrive
9.	PW-9 Exh.P-1/PW-9	Signature on the panchanama
10.	PW-13 Exh.P-1/PW-13 Exh.P-2/PW-13  Exh.P-3/PW-13  Exh.P-4/PW-13  Exh.P-5/PW-13  Exh.P-6/PW-13 Exh.P-7/PW-13 Exh.P-8/PW-13 Exh.P-9/PW-13 Exh.P-10/PW-13 Exh.P-11/PW-13 Exh.P-12/PW-13	Letter, Portion marked 'A' of statement of PW-10.  Portion marked 'B' of statement of PW-10.  Portion marked 'A' of statement of PW-11.  Portion marked 'B' of statement of PW-11.  Letter, 65-B certificate, Birth certificate, Letter, C.A. report, C.A. report, C.A. report,

	Exh.P-13/PW-13 Exh.P-14/PW-13 Exh.P-15/PW-13 Exh.P-16/PW-13 Exh.P-17/PW-13 Exh.P-18/PW-13	C.A. report, C.A. report, C.A. report, Letter, Arrest form, Arrest form,
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**B. DEFENCE**

Sr.No.	Exhibit	Description
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**C. Court Exhibits:**

Sr.No.	Exhibit	Description
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**D. Material Objects:**

Sr.No.	Material Object Number	Description
1.	MO-1	Pieces of bones,
2.	MO-2	Mixed ash
3.	MO-3	Sample of Ash
4.	MO-4	Plain soil
5.	MO-5	Black colour Shirt
6.	MO-6	Jeans pants
7.	MO-7	White colour Shirt
8.	MO-8	Black colour pants

**JUDGMENT**

(Delivered on this 10<sup>th</sup> day of April, 2026)

1. Accused have faced this trial for having committed the murder of deceased Surekha and then causing the evidence of the offence of

murder to disappear with the intention of screening themselves from legal punishment and therefore for the offences punishable under sections 302, 201 read with section 34 of the Indian Penal code.

2. The prosecution in this matter is set into motion on a complaint (Exh.P-1/PW-2) lodged by Police Head Constable Jitendra Shivaji Tagwale (PW-4), who was then attached to the Chandanzira police station and was the Beat Amaldar for the Bawane Pangari Beat. The sum and substance of his complaint is that on 14/12/2022, he along with Police Sub Inspector Zalwar and the other police staff were patrolling on the Rajur road, when they received an information that one Santosh Sarode has killed his daughter and has performed her funeral and disposed of the body. He and the above staff had therefore contacted the Police Patil of village Pirpimpalgaon Shri. Bawane (PW-1) and they all had gone to the Vasti in the fields of Santosh Sarode (accused no.1). They had enquired with accused no.1 and his brother Namdev Sarode (accused no.2) regarding the information. The accused had told them that deceased who was then 17 years of age had left home two to three days back and she had returned home the previous day i.e. on 13/12/2022. They had enquired with her and there was a quarrel between them. As she had left home they were defamed.

They had therefore hanged deceased to the Neem tree and hanged her till death. Thereafter, they had committed her funeral. The police had inspected the premises and they could see that the funeral was performed near the poultry farm. The ash was filled in two sacks. The police realised that it was a case of honour killing. Police Head Constable Tagwale (PW-4) had lodged a report about the incident.

3. On the report lodged by the informant, offence was registered at C.R.No.465/2022 of the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code. It was marked Police Sub Inspector Zalwar (PW-13) for investigation.

4. PW-4 had requisitioned two Medical officers to visit the spot. PW-4, PW-13, panchas, Medical officers and other staff had proceeded to the spot. The Medical Officers had removed teeth and bones from the ashes and had sealed them. The clothes of the accused were seized vide panchanama Exh.P-1/PW-5 and Exh.P-2/PW-5. The motorcycle alleged to be used in the offence was seized vide panchanama Exh.P-3/PW-2. The spot panchanama was prepared. Photographs were taken during the panchanama. Accused and the muddemal were taken to the police station.

5. On 14/12/2022, accused were arrested. They were medically

examined prior to their arrest. The Investigating Officer had informed the Medical Officer that the DNA samples of accused should be taken. Accordingly, the Medical Officer had taken DNA samples and handed over them to Police Sub-Inspector Zalwar. On 16/12/2022 the entire muddemal and DNA samples were forwarded for chemical analysis vide letter Exh.P-1/PW-6 to P-3/PW-6. The Investigating Officer had recorded the statements of witnesses. On 16/12/2022, he had written a letter to the Medical Officer to obtain the DNA samples of the mother of deceased. On 19/12/2022, Rajendra Bansode (PW-8) had produced his cell phone in which he had taken a video shooting pertaining to the incident. A pendrive was brought and the video shooting was copied in the pendrive in presence of panchas vide panchanama Exh.P-1/PW-8. The 65-B certificate was given by Police Sub-Inspector Zalwar. The Investigating Officer had written a letter to the Head Master and obtained the school leaving certificate of the deceased. He had forwarded the DNA sample for chemical analysis. The statements of witnesses were got recorded u/s. 164 of the Code of Criminal Procedure. The Pahani panchanama of the video recording in the pendrive was prepared. After completing investigation the Investigating Officer has filed the chargesheet against the accused in

the Court of Judicial Magistrate First Class, Court No.3, Jalna, who in turn committed the case to this Court, the offence being exclusively triable by the Court of Sessions.

6. Charge (Exh.23) of the offences punishable under sections 302, 201 r.w. 34 of the Indian Penal Code was read over and explained to the accused in Marathi by my learned predecessor. Accused pleaded not guilty and claimed to be tried (Exh.24). What can be discerned from the entire cross-examination and the answers given by the accused in their statement u/s. 313 of the Code of Criminal Procedure is that the defence of accused is that of total denial. Accused deny that deceased has died and claim that she is still alive. They claim that Rameshwar Kolhe (PW-7) has kidnapped deceased and has married her and has kept her at some unknown place. Accused have not stepped into the witness box nor examined any witness in support of their defence.

7. I have heard learned APP Shri.S.R.Dhokrat for the State and Adv.Mohammad Rafiq the learned Advocate for the accused.

8. Adv. Dhokrat has stated to me in short the prosecution's case. He submits that the prosecution has examined in all 13 witnesses in support of its case. The prosecution case is based on circumstantial

evidence. He submits that the dead body of deceased is not found and it is a case where corpus delicti is not recovered. The learned Advocate submits that PW-1 Balasaheb Gopinathrao Bawane is the Police Patil of the village. He had gone along with the police to the spot of incident. Police had enquired with the accused in his presence and accused had confessed their guilt. The learned APP submits that the confession made by the accused in presence of this witness can be said to be extra judicial confession. The learned Advocate submits that the confession given before a Police Patil is admissible and should be taken into consideration. The learned APP submits that this witness has remained un-shattered in his cross-examination. As far as PW-2 is concerned he states that PW-4 had come to the police station and given the information of the offence. PW-4 had narrated the incident and PW-2 had recorded his complaint. According to him, the signature of PW-4 could not be obtained immediately as the connectivity of C.C.T.N.S was discontinued. PW-4 had therefore proceeded towards the spot. As soon as the internet connectivity resumed after half an hour he has registered the offence at 04:51 p.m.

9. The learned APP submits that as soon as the Police who were on patrolling duty had received the information of the incident, they

had proceeded to the spot. They had found ashes in sacks at the spot. They had removed the teeth and bones from the said ashes. They had secured the spot and returned to the police station. The learned APP submits that as far as PW-3, 4, 7 and 8 are concerned they can be said to be the star witnesses. All these witnesses have stated that deceased and her family members including the accused and PW-7 and his family members had gathered in the village to perform the marriage of deceased with Rameshwar Kolhe. Deceased was last seen by the above witnesses at the time of marriage. The learned Advocate submits that PW-3 is a crucial witness. This witness is the person who had last seen the deceased along with the accused in front of their house. This witness has stated that deceased was in an unconscious position when he had seen her. The learned Advocate submits that police have recovered ash containing teeth and bones. The sample of soil mixed with ash, a motorcycle and the clothes of the accused when the spot panchanama was prepared. The learned Advocate submits that the evidence of PW-4 and the PW-5 and Anil Chikate establishes the seizure of these articles from the spot. The learned Advocate submits that the evidence of PW-4 and the other witnesses about their having gone to the spot and collected the samples is not disputed. The

prosecution has proved this fact. There is no explanation on behalf of the accused regarding the ash or the teeth or the bones. The learned APP submits that this is one of the circumstances which goes against the accused. The learned Advocate submits that there is no reason for PW-5 to depose falsely against the accused persons. He is an independent witness.

10. The learned Advocate submits that police have admittedly seized the clothes of the accused. PW-5 has stated about it. The clothes were seized is not disputed. The learned APP submits that the clothes are the same clothes which are seen in the video shooting wherein the accused are seen along with the deceased. The learned Advocate submits that the evidence of PW-4 and PW-5 is consistent.

11. The learned APP then submits that as far as PW-8 Rajendra Kashinath Bansod is concerned this witness has stated that he knows the accused and also Rameshwar and Datta Kolhe and their family members. This witness was present on the spot where the marriage is alleged to be performed. The learned Advocate draws my attention to the evidence of PW-7 Rameshwar Kolhe. He submits that he was having a love affair with the deceased. Deceased had eloped with him one day prior to the incident. They had gone to Aurangabad. However,

when accused had agreed to the marriage of PW-7 with the deceased he and deceased had returned home. This witness has stated that after there was an argument over transferring of land in the name of deceased, accused had taken away the deceased forcibly along with them. The learned APP submits that the very fact that deceased had eloped with PW-7 proves that accused had carried a grudge against the deceased. They have therefore killed the deceased. The learned APP submits that the evidence of PW-7 and PW-8 is corroborated by the video shooting produced on record.

12. The learned APP submits that the marriage between accused and deceased was suddenly arranged is proved in evidence through witness PW-12. He submits that there is video shooting of the entire incident.

13. The learned APP submits that if at all deceased is alive and she is kidnapped, deceased would be seen by somebody. The prosecution witnesses PW-7 and PW-8 and PW-3 have stated that they have never seen the deceased again. The learned Advocate submits that accused state that deceased was kidnapped and accused no.7 has married her. They have not proved this fact. He submits that now accused are in jail there is no reason to conceal the deceased any more.

14. Per contra, Shri.Mohammad Rafiq, the learned Advocate for the accused submits that both accused and deceased are from the same community. Admittedly, they both had agreed for the marriage between the deceased and PW-7. The learned Advocate therefore submits that there was no need for the accused to then kill the deceased or it be a case of honour killing. The learned Advocate submits that the First Information Report is based on baseless rumors. There is a delay of 6 to 7 hours in lodging the complaint and the delay is not explained satisfactorily. The reason for delay is not given.

15. As far as PW-3 Rajendra Kolhe is concerned it is submitted that his statement is recorded after about seven days. There is no reason assigned as to why statement is recorded after such a delay. The learned Advocate submits that this witness claims to have seen the deceased in unconscious state of mind from a distance of at least 2 kilometers. This cannot be believed. The learned Advocate draws my attention to the photograph Exh.P-2/PW-7. He submits that only the persons from the Kolhe family are present. The learned Advocate therefore submits that accused were nowhere in the picture. They had agreed for the marriage between deceased and PW-7. They all had gathered only to have talks of the terms and conditions of the

marriage. The marriage was not organized. The learned Advocate submits that after the talks of marriage had taken place PW-7 along with his family members had kidnapped the deceased. He has now performed a marriage with the deceased. PW-7 and his family members in collusion with the police officers have lodged this false complaint against accused persons. The learned Advocate has drawn my attention to the inconsistencies in the evidence of the prosecution witnesses and submits that they are relevant and material. The learned Advocate submits that no ornaments were found in the ash. As far as the allegations that there were burn marks in the field, the learned Advocate submits that fodder is daily burnt in the fields. As far as the teeth and bones are concerned, he submits that there is no evidence that they were human teeth or bones. There is nothing on record to show that the ash or the bones or the teeth are pertaining to the dead body of deceased. The learned Advocate submits that the prosecution has not established the fact that accused are the owners or that they had domain over the said property. The learned Advocate submits that prosecution has not proved its case beyond a reasonable doubt. The accused deserves to be acquitted.

16. Based on the foregoing the following points arise for my determination. My findings thereon for the reasons to follow are as under.

**POINTS**

**FINDINGS**

- |  |                               |
|--|-------------------------------|
| <p>1 Whether the prosecution proves that ... on 13/12/2022 at about 04:00 p.m. at village Pimpalgaon, Taluka and District Jalna, in furtherance of their common intention, accused committed murder of Surekha Santosh Sarode and thereby committed an offence punishable under Section 302 r.w. 34 of the Indian Penal Code ?</p>   | <p>In the affirmative.</p>    |
| <p>2 Whether the prosecution proves that ... on the aforesaid date, time and place, in furtherance of their common intention, accused knowing that the offence punishable u/s. 302 read with 34 has been committed completed funeral ceremony of deceased Surekha and caused evidence in regard to the offence of murder to disappear with intention to screen themselves from legal punishment and thereby committed an offence punishable under Section 201 r.w. 34 of the Indian Penal Code ?</p> | <p>In the affirmative.</p>    |
| <p>3 What order ?</p>  | <p>... As per final order</p> |

**REASONS**

**AS TO POINT NOS.1 TO 3 :**

17. As all these points require a discussion of same set of facts, they are taken up for discussion together.

18. Admittedly, this is a case of honour killing where the accused who are brothers are alleged to have murdered, deceased, the daughter of accused No.1.

19. It may be stated at the outset that the prosecution's case is entirely based on circumstantial evidence. There is no direct evidence adduced by prosecution to prove that deceased, whose corpus delicti has not been recovered, was done to death. There is no evidence to show that the dead body of deceased was disposed of by the accused.

20. The legal position regarding production of corpus delicti is well settled by long line of decisions of the Hon'ble Apex Court.

21. In Rama Nand Vs State of H.P (1981) 1 SCC 511 the Hon'ble Apex Court has summed up the legal position on the subject as:

“27.... In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand appellant ? It is true that one of the essential ingredients of the offence

of culpable homicide required to be proved by the prosecution is that the accused "caused the death" of the person alleged to have been killed.

28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead-body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open

the door wide open for many a heinous murderers to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of *corpus delicti*, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. The *corpus delicti* or the fact of homicidal death, therefore, can be proved by telling and

inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.”

22. In *Ram Chandra vs State of U.P AIR 1957 SC 381* the Hon’ble Apex Court observed,

“6...It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable.”

23. In *State of Karnataka vs M.V. Mahesh (2003) 3 SCC 353* , it is observed,

“3... It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court.”

24. In *Laksmi Vs State of UP (2002)7 SCC 198* it was observed,

“16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of

offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of body and cause of the death.”

25. In *Rishipal Vs State of Uttarakhand*, Criminal Appeal 928 of 2009 it was observed,

“13. In the absence of *corpus delicti* what the court looks for is clinching evidence that proves that the victim has been done to death. If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder. Failure of the prosecution to assemble such evidence will, however, result in failure of the most essential requirement in a case involving a charge of murder...”

26. Thus, the proposition of law is settled that it is not at all necessary for a conviction of murder that the *corpus delicti* be found.

There must however be direct or circumstantial evidence leading to inescapable conclusion that person has died and the accused are the persons who committed the murder. Therefore, the question now before me is, whether the prosecution establishes that deceased is murdered and the commission of crime is made out against the accused.

27. In the present case before us there is no direct evidence and the entire case of the prosecution rests on circumstantial evidence. The circumstances can be listed as under:

1. Deceased was last seen with the accused.
2. Deceased had a love affair with PW-7 and she had eloped with him two days prior to her death. The accused thought that she had defamed their family. They had therefore murdered the deceased. Thus they had Motive to kill deceased.
3. The accused have come up with a false defence that the deceased is till alive and is married to PW-7 and is staying alongwith him.
4. Accused had made an extra-judicial confession before the Police Patil PW-1 Balasaheb Gopinathrao Bavne.
5. Recovery of ash, teeth and bones from the property owned by accused.

28. It is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests :

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

29. These are some stated principles which have stood the test of time without variations and are applicable to the facts and circumstances of given case. It is necessary for the prosecution to prove the chain of events which leads to guilt of the accused. This

chain of events must be proved by direct and substantive evidence and some times may also permitted to be proved by the circumstantial evidence but in that event the circumstances forming part of chain must be established fully and must be compatible to the story of the prosecution.

30. The Hon'ble Punjab and Haryana High Court in the case of Sucha Singh, son of Chanan Singh, son of Fulla Singh v. State of Punjab (in Criminal Appeal No.472-DB of 2001), while dealing with the case of circumstantial evidence, held as under:-

“It is true that in the extended principles of criminal jurisprudence as approved by the Hon'ble Apex Court, a conviction can result even in case of circumstantial evidence. A case of circumstantial evidence must necessarily provide a complete link between the various factors controlling conviction of an accused. In other words, motive, intention, circumstances indicating a complete link in the participation of the accused in commission of the crime, the weapon or such other attending circumstances which would on the face of it indicate involvement of the accused in the commission of crime. Such circumstantial evidence must be corroborated as a whole by the other evidence adduced by the prosecution. If the basic ingredients in that

behalf are satisfied then an obligation is placed on an accused to render an explanation to the crime committed and not merely to deny the case of the prosecution in his statement under Section 313 Cr.P. C.

31. In the case of Vasa Chandrasekhar Rao Vs. Ponna Satyanarayana (2000) 6 SCC 286 as well as in Jagjit Singh Vs. State of H.P. 1993(supp) 3 SCC 469 case, the Hon' ble Apex Court has enunciated the principle that where the prosecution wants to prove the guilt of the accused by circumstantial evidence, it is necessary to establish that the circumstances from which a conclusion is drawn, should be fully proved; the circumstances should be conclusive in nature; all the facts so established, should be consistent only with the hypothesis of guilt and inconsistent with the innocence; and the circumstances should exclude the possibility of guilt of any person other than the accused. In order to justify an establishment of guilt, the circumstances from which such an inference is sought to be drawn, must be incompatible with the innocence of the accused. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence against the accused beyond any reasonable doubt.

32. Coming back to the present case before me one of the circumstances the prosecution is wanting to rely is the “last seen theory”. According to the prosecution deceased was last seen alongwith the accused.

33. Undoubtedly, “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is also well-settled that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. It is also a settled principle of law that the last seen theory really comes into play when the time-gap between the point in time the accused was last seen with the deceased is in close proximity to the body of the deceased being found. This is because when the time-gap is small, any other person, being the author of the crime, becomes an impossibility. This was held by the Hon’ble Supreme Court in the case of State of Uttar Pradesh Vs. Satish, (2005) 3 SCC 114, relied

upon by the Supreme Court subsequently in the case of Ramreddy Rajeshkhanna Reddy and another Vs State of Andhra Pradesh (2006) 10 SCC 172.

34. It is the prosecution story that deceased had a love affair with PW-7. They got acquainted in the year 2022 and fell in love. They would talk with each other. Deceased had told about their affair to her parents but they had not agreed to marry her to PW-7. They in fact started searching a groom for her. On 08/12/2022 deceased had phoned PW-7 and told him that her parents were bent upon to marry her to some third person and therefore they should elope. On 11.12.2022, deceased and PW-7 had eloped and they had gone to Aurangabad. They stayed at Aurangabad. On 13/12/2022, PW-7 had phoned one Vitthal Adhav and he had told them that their parents had agreed to their marriage. They had therefore returned to Garkheda. They had adorned themselves in the clothes of bride and bride groom. They had gone to the temple where the marriage was to be performed. The family members of PW-7, Accused and other persons were present at the temple where the marriage was to be performed by exchange of garlands. However at that time the accused had demanded that half acres of land should be transferred to the name of

deceased and it to be a condition which should be fulfilled prior to the marriage. Accused had then taken away the deceased alongwith them on the motorcycle. On the same day within a few hours, the news about deceased to be murdered by accused and the funeral to be conducted was widespread in the village. Deceased was not seen by anybody after that day.

35. In order to prove this story and the deceased was last seen alongwith the accused, the prosecution has examined PW-3 Rajendra Sukhdeo Kolhe, PW-7 Rameshwar Vishnu Kolhe and PW-8 Rajendra Kashinath Bansode.

36. PW-3 Rajendra Kolhe states that he knows both accused and the deceased. He also knows PW-7. On 12/12/2022 he had met accused No 1 in the village and accused No1 had told him that deceased was missing since the previous night and was not traced. On the next day he again met the accused No 1 and accused No 1 had told him that he had to arrange the marriage at 2.30 p.m at Gawalwadi, Garkheda Mandir, Pirpimpalgaon. He states further that he had gone for the marriage at 2.30 p.m. Accused, PW-7 his family members and other persons were present. The marriage was between PW-7 and deceased. They were dressed as a bride and bride groom. Accused had

demanded that half acres of land should be transferred to the name of deceased. A quarrel took place between accused and the family members of PW-7. PW-7 and his family members had acceded to the demand made by the accused. Accused had insisted that the condition should be fulfilled prior to the marriage. They had taken away the deceased on a motorcycle.

37. This witness further states that when he was going towards his house he had seen deceased lying in an unconscious state in front of the house of accused. She was still in the bride's attire. Accused were present there. He had gone home.

38. In cross examination he states that his agricultural land is adjoining the agricultural land of the accused. There are several houses adjoining the land of the accused. He admits that PW-7 is from his brother hood. He states that he had not gone to the police station and lodged any complaint. He states that his statement was recorded on 20.12.2022. He admits that when accused No 1 had told him about the marriage in the morning, he had not told him whose marriage was to be performed. He was asked how much land PW-7 owns and he has stated his ignorance. He was asked whether there was any discussion as to in whose name the land stands and he has answered in

the negative. He could not state the names of the other persons who were present. He has stated that the Garkheda temple is situated at the distance of two to two and a half kilometers from the village. He could not state the name of the priest. He has denied the suggestions that there was no marriage and he had not seen deceased in an unconscious state and that he has deposed falsely. It is suggested to him that he is deposing falsely on the say of the father of PW-7 and that deceased is still alive and is residing alongwith PW-7 and he has denied it.

39. PW-7 Rameshwar Kolhe has stated that he is a resident of Pir-Pimpalgaon. He had a love affair with the deceased. He states that he and deceased would talk on phone. Deceased had told about their love affair to her parents but they had refused to marry deceased to PW-7. Deceased had told him about it 7 to 8 days prior to the incident. He states that deceased had told him that her parents shall not agree for their marriage and shall instead marry her to some other person. She had suggested that they should elope. On 08/12/2022, deceased had phoned him and told him that they shall elope and marry or her parents shall marry her to some other person. He and deceased had therefore eloped on 11/12/2022 at 9.30 p.m. They had gone to

Aurangabad and stayed there for one day. On 13/12/2022 he had phoned one Vitthal Adhav and he had told him that their parents are ready to marry them to each other. PW-7, deceased and Vitthal Adhav had therefore reached Garkheda at about 1.00 to 1.30 pm. He and deceased were in the attire of bride groom and bride. He, deceased and the other relatives had gone to the temple at 2.30 p.m. His brother Datta Kolhe, Rajendra Kolhe, Rajendra Bansode, Haribhau Shelke, Vishnu Kolhe, Accused, Dhondiram Sarode, Gajamam Sarode and their other relatives were present. Accused No 2 had told him and his family members to transfer half acres of land to the name of deceased. His brother and father had agreed to it. Accused No2 insisted that the land should be transferred prior to the marriage and saying so he had dragged deceased and beaten her and took her away on a motor cycle. According to him one Dhondiram was riding the motorcycle and deceased was made to sit in the middle and Accused no 2 sat behind the deceased. Incident took place at 3.00 p.m. He had returned home. At about 6.00 p.m. he had learnt that deceased was burned to death by the accused. He had passed on the information to his family members. They thought that it could be a rumour. On 14/12/2022 police had come to the house of deceased as deceased was burnt to death. He has

stated that he has not seen the deceased thereafter. She has never phoned him. He has not heard about she to be alive from anybody.

40. In the cross examination he states that he had not lodged any complaint with the police when he learnt that deceased was burned to death. He admits that he and deceased were madly in love with each other. He has admitted that they could not live separately from each other. He admitted that deceased was 17 years old. He has denied the suggestion that the parents of deceased were ready for their marriage. It was suggested to him that their family members had agreed to perform their marriage after she attains majority and therefore his relatives have kidnapped deceased and performed her marriage at some unknown place and he has denied it. It was suggested to him that deceased's father had lodged a complaint against him about he to have kidnapped deceased and he has stated his ignorance. He has denied the suggestion that PHC Tagwale and PSI Zalwar were following him. He has denied the suggestion that he had conived with Tagwale and Zalwar and lodged a false complaint against accused. He has admitted that the fact that deceased was killed and burnt is his hearsay evidence.

41. The other witness on this point is PW-8 Rajendra Kasshinath Bansode. This witness knows PW-7 and his family members. He also knows accused. He was knowing deceased. According to him, they all belong to 'Dhangar' community and their caste is 'Dhangar'.

42. He states that on 13/12/2022 he had met Datta Kolhe, the brother of PW-7 and Datta had told him that deceased and PW-7 were to be married. He had therefore phoned accused no.2 and enquired whether they had agreed to the marriage of deceased with PW-7. Accused no.2 had answered in the affirmative and told him to make the arrangements for marriage. He had in turn told Datta Kolhe to make the arrangements. On the same day at 02:00 p.m. accused no.2 had phoned him and enquired about the preparations of marriage and PW-8 had told accused to come to the temple of goddess at Dawalwadi shivar at 02:30 p.m. Accordingly, Vitthal Aadhav, deceased, Rameshwar Kolhe and his family members, accused Dhondiram Sarode, Gajanan Sarode and other people came there. The relatives from both side came. The marriage was to be performed by exchanging garlands. Deceased and PW-7 were in the attire of marriage. At that time accused no.2 had caught hold of deceased and dragged her to a side. He then told the relatives of PW-7 to transfer

half acres of land to the name of deceased. The family members of PW-7 agreed to the same, but accused no.2 insisted that it should be done prior to the marriage. Accused No 2 had then dragged deceased and he and accused no.1 Dhondiram Sarode, Gajanan Sarode and Namdev Sarode went on the road. Accused no.2 slapped deceased and accused no.1 took out the motorcycle. Accused no.1 lifted deceased and kept her on the motorcycle. Dhondiram was riding the motorcycle. They went towards the house of deceased. On the same day evening he had learnt that deceased was murdered by accused. However, as he did not have a confirmed news he had not informed the police. On the next day, there was a news in the village that accused had set deceased on fire. The witness states that he had not seen deceased thereafter.

43. In the cross-examination he has admitted that he is treated as a Chief of their community. He has admitted the portion marked 'A' of his statement that Datta Kolhe had said to him that a meeting of marriage of Rameshwar and deceased is to be arranged. He admits that accused had agreed for the meeting and they had put a condition that the expenses of marriage shall be borne by PW-7. He admits that none of the relatives of either side had attended the marriage. He has

denied the suggestion that they had tried to perform the marriage of deceased in absence of accused. He has denied the suggestion that he has posed the meeting as a marriage in collusion with PW-7. He has denied the suggestion that PW-7 and Datta had kidnapped deceased and performed her marriage with PW-7. He has denied the suggestion that accused had lodged a complaint against him, PW-7 and Datta about they to have kidnapped deceased and they to have lodged a false complaint against accused about they having killed deceased in collusion with the police. He has denied the suggestion that deceased is still alive and is cohabiting with PW-7. He has denied the suggestion that they have spread a rumour in the village about accused to have killed deceased. He has denied the suggestion that he has falsely stated that accused had killed deceased and that he has not seen her since she was killed.

44. Thus, what can be said from the evidence of these three witnesses is that they all state to be present at the temple of Goddess at Dawalwadi, Garkheda Pirpimpalgaon at about 02:30 p.m. on 13/12/2022. They all state that deceased and her family members including accused as well as PW-7 and his family members and the other people from the village were present. They all state that they had

gathered for the marriage of deceased with PW-7 and they both to be dressed in a marriage attire. They all state that accused no.2 had then demanded that half acres of land should be transferred to the name of deceased as a precondition of the marriage and thereafter accused No 2 had dragged the deceased along with him. Accused had then taken away the deceased on motorcycle. Thus, they all state that deceased was seen going away along with the accused and the other family members and they have never seen her thereafter.

45. What can be gathered from the cross-examination on behalf of the accused is that, the accused admit their presence at the spot of incident at one place and at another place they deny their presence at the said spot. In the cross-examination of PW-3, they do not deny that all the above persons had gathered at the temple for the marriage ceremony of deceased with PW-7. Accused do not also deny the fact that they had demanded half acres of land to be transferred to the name of deceased as a precondition to the marriage. It is also not denied that accused had taken away deceased on a motorcycle.

46. Even when PW-7 was cross-examined it was suggested to him that it was decided that he and deceased will be married after she attains majority. The fact that all the persons stated in his chief

examination had gathered at the temple for the marriage and the land was demanded as a precondition for marriage and accused had left along with the deceased are not denied or challenged. It is only suggested that it was agreed that the marriage shall be performed later on.

47. In the cross-examination of PW-8 it was suggested to him that accused had only agreed for a meeting and they had put a condition that the expenses of marriage shall be borne by PW-7 and Datta (brother of PW-7) and the witness has admitted it. He has admitted that none of the relatives of either side had attended the marriage.

48. Therefore, what can be culled out from the entire evidence is that the fact that deceased and PW-7 had eloped and they had gone to Aurangabad on 11/12/2022 is a proved and a established fact. They were madly in love with each other is also an admitted fact. They were informed that they will be married and therefore they had returned to the village. They had directly gone to the temple where either the meeting or the marriage was fixed. They both were admittedly in the attire of marriage. The accused had then put a condition that deceased shall be married to PW-7 only if land is transferred to her name. Though PW-7 and his family members had

agreed to it, accused had dragged the deceased and slapped her, made her sit on the motorcycle and left on motorcycle. The only inference that can be drawn is that deceased was forcibly taken away by the accused no.2. Thus, the oral evidence is to the effect that deceased was last seen going along with accused no.2 and one more person.

49. It should be noted here that besides the oral evidence on record we have a video shooting on record as to what had taken place on the day of incidence near the temple. PW-8 states that he had taken a video shooting of the entire incidence of deceased being dragged by the accused in his cell phone . He had produced his cell phone before the police. Police had copied the video on a pendrive through computer. He had issued the certificate under section 65 B of the Evidence Act.

50. This video was played in the Court and in the video shooting the accused along with several other persons are seen to be taking the deceased along with them to a road. Deceased is in the wedding attire. One of the persons has removed the 'Odhani' from her head. Accused No 2 is seen slapping the deceased and accused No 1 is seen lifting the deceased and putting her on a motorcycle behind the rider.

51. PW-8 has identified accused no.2 to have caught hold of the hand of the deceased and slapped her and dragged her and took her away on a motorcycle. She was lifted by accused no.1 and kept on the motorcycle between two persons and was taken away. No doubt, there is some discrepancy regarding the persons on the motorcycle. In the Pahani Panchanama it is mentioned that Accused No 2 sat on the riders seat on the motorcycle. PW-8 has stated in his evidence that one Dhondiram Sarode sat on the riders seat. PW-8 has however explained that though he had stated to the police that Dhondiram sat on the riders seat they had written the name of accused No 2. In my opinion it is definitely a mistake. It is not a case where Accused No 2 or Dhondiram Sarode are strangers to PW-8. On the contrary, they all know each other very well. They all were admittedly present at the spot of incident at the time of incident. It is not a case of mistaken identity. Therefore this discrepancy does not create any doubt and does not help the accused in any manner. On the contrary relying upon the said video shooting it is argued that it is Dhondiram Sarode who has kidnapped the victim on behalf of PW-7. Therefore it does not lie in the mouth of the accused, that Dhondiram was not on the riders seat.

52. The video shooting clearly depicts that deceased was lifted by accused no.1 and was made to sit between Dhondiram Sarode and accused No 2 and was taken away on the motorcycle. Be it Dhondiram Sarode or be it Accused No.2, they both are the members of one family. The fact remains that the deceased was taken away by the accused forcibly.

53. We then have the further evidence of PW-3. This witness states that while he was returning home from the temple, he had seen deceased lying in an unconscious state in front of her house. She was in the attire of a bride. Accused were present there. The witness states that he had gone home.

54. This witness is cross-examined and besides denials there is no defence of the accused. It is suggested to this witness that he is stating falsely. It is also suggested to him that he had no reason to go by that road. But this witness has denied the suggestions.

55. Ld. Advocate for accused Shri. Mohd. Rafiq has tried to submit that this road stated by the witness is at a distance of 200 feet from the spot of incidence . He submits that it is highly impossible that PW-3 could witness the deceased from such a long distance. In support of his submissions that the road is at a distance of 200 feet the Ld.

Advocate has drawn my attention to the cross-examination of PW-1. PW-1 has stated in the cross—examination that the Pirpimpalgaon to Umraj road is a tar road. A road which runs in a North-South direction intersects this road. The farmers used this road. This road is at a distance of 200 feet from the spot of incidence. Thus, it is argued that PW-3 could not have seen the deceased lying unconscious.

56. I would disagree with the submissions of the Ld. Advocate. PW-3 was not asked the distance of the road from which he was passing when he saw the deceased lying unconscious. He was not even asked whether he was passing from the Pirpimpalgaon-Umraj tar road. Therefore, it cannot be said that PW-3 was passing from the Pirpimpalgaon-Umraj tar road which is at a distance of 200 feet from the spot of incidence. On the contrary, PW-3 has stated that he was passing from the boundary road when he saw the deceased lying unconscious. It is suggested to him that he had no reason to pass from the boundary road and he has denied it. He has denied the suggestion that he uses the Umraj-Pirpimpalgaon road. Thus, it becomes very clear that PW-3 was not passing from the road which is at a distance of 200 feet from the spot of incidence.

57. It is also submitted that this road is not mentioned in the spot

panchnama. Advocate Shri.Rafiq Mohd. Submits that if the road was near the spot of incidence it would be shown in the spot panchnama. I would again disagree with the Ld. Advocate. In the spot panchnama, Exh.P-3/PW-2 the exact spot of incidence is shown. The boundaries of the spot are also shown. It is not necessary that the boundary roads are required to be shown. That apart, the fact that there is a boundary road is not disputed. What is suggested to PW-3 is that he had no reason to go from the boundary road and he has denied it. Therefore, the fact remains that PW-3 was passing the boundary road when he had seen the deceased lying unconscious.

58. It is also argued that PW-3 is a resident of Pirpimpalgaon whereas accused are residents of Bhatkheda. It is not possible that this witness must have met the accused on 12.12.2022 and then again on 13.12.2022. I donot find any substance in this arguments. The accused are shown to be residents of Bhatkheda shiwar Shetwasti Pirpimpalgaon. PW-3 has also stated his address as Pirpimpalgaon. He has also stated that his agricultural land is at a distance of half kilometer from the land of the accused. Thus, what can be inferred is that Bhatkheda shiwar is a part and parcel of Pirmimpalgaon. Though we do not have the distance between the Bhatkheda shiwar

and Pirpimpalgaon it can be inferred that the distance must not be much. One cannot merely deny the probability of PW-3 meeting accused No.1 on 12.12.2022 and 13.12.2022. It is nowhere denied by PW-3 that has he met accused No.1 on the above dates. On the contrary, it was suggested to PW-3 that accused No.1 had not told him whose marriage was to be performed.

59. I find no reason to disbelieve this witness. There is nothing on record to suggest that he had any reason to depose falsely against the accused. On the contrary, he appears to be a natural witness. Admittedly, his land is situated near the land of the accused persons. His house also seems to be on the same road. He also seems to be knowing the accused well. Accused had disclosed to him that deceased has gone missing when she had eloped with the accused. On the next day, accused had invited him for the marriage. Thus, the relations of this witness with the accused seem to be cordial. He had no reason to depose falsely against the accused person. The evidence of this witness that deceased was last seen in front of the house of the accused requires to be believed. In other words, the prosecution has established the fact that deceased was last seen along with the accused persons. The evidence to that effect is direct and I find no reason to

disbelieve this evidence.

60. Further, immediately within a few hours after the deceased and accused had left the temple, a news had spread in the village that deceased was murdered by the accused persons. PW-7 states that the incident at the temple had ended at about 03:00 p.m. approximately. At about 6.00 p.m. he had learnt that deceased was murdered and burnt by the accused. PW-8 also states that he had learnt from the people that accused have murdered the deceased on the same day evening. Thus, the news of the fact that deceased has been murdered was wide spread in the village on the evening of the same day. In other words, the news that deceased has died had widespread in the village only within a few hours after the incident which took place in the temple. Considering the timing of the incidents one can safely infer that deceased has died within a few hours after she was seen with the accused.

61. It was suggested to the witnesses that they had not approached the police station when they had heard the news about deceased to be murdered by the accused. The witnesses have admitted that they had not lodged any complaint against the accused persons. Merely because the prosecution witnesses have not lodged any complaint, we cannot

disbelieve them. PW-8 has stated that as the news was not confirmed he had not lodged the complaint. PW-7 has stated that he had immediately told his brother and father about it and they had advised him that he should wait for sometime as it would also be a rumour. I do not find anything unnatural in the conduct of the witnesses if they have not gone to the police station and lodged any complaint immediately.

62. The very fact that none of the prosecution witnesses nor the accused have heard about the deceased nor anybody of them claims to have seen the deceased leads us to draw an inference that deceased has expired. The very fact that deceased was last seen in the company of the accused, the burden would lie upon the accused to establish how the deceased has died.

63. Accused have come up with a story that deceased is still alive. PW-7 has kidnapped the deceased and has married her and kept her at some unknown place. Here Section 106 of The Indian Evidence Act would come into play. I have already concluded that the prosecution has proved the fact that deceased was last seen in the company of the accused. What happened thereafter is especially within the knowledge of the accused. Accused will have to state and explain as to when and

how deceased was kidnapped from their custody. They will have to explain when was she married to PW-7. The accused have suggested their defence to all prosecution witnesses and all prosecution witnesses have denied this fact. Besides giving suggestions to the prosecution witnesses to that effect, there is absolutely no material on record to show that the deceased is yet alive. Even the prosecution witnesses, PW-10 Kasabai Shelke the sister of accused and PW-11 Rekha Vitthal Shelke the daughter of accused No.1 state that they have not seen the deceased after 13/12/2022. PW-7 has on the other hand stated that he is now married to a lady named Pallavi and she is residing along with him. All prosecution witnesses, and accused are residents of village Pirpimpalgaon. The statement of PW-7 that he is residing at Pirpimpalgaon along with his wife Pallavi is not disputed by the accused persons. It therefore falsifies the possibility that deceased is alive and she is married to PW-7 but she is residing at some unknown place not known to anybody.

64. As stated above, besides putting a suggestion to that effect no details are given as to when was she kidnapped and from where. Neither have the accused lodged any complaint regarding the same nor have they led any evidence in that regard. A mere suggestion to

that effect will not serve their purpose and on the contrary it can be said that this false case stated by them adds to a circumstance against them.

65. The other circumstance relied upon by the prosecution is that accused had a motive to kill the deceased. Deceased wanted to marry PW-7 and accused were opposing to it. Deceased had therefore eloped with PW-7 and was with him for one day. Accused were therefore angry and had done away with the deceased.

66. Advocate Mohammad Rafiq, the Ld Advocate for the accused submits that there is no evidence to that effect. He submits that on the contrary the evidence reveals that accused had given their consent to the marriage. They had only demanded half acre of land and PW-7 and his family members had also agreed to it. He submits that the marriage would be performed after PW-7 transfers the land. There was therefore no reason for the accused to kill the deceased.

67. Undoubtedly in cases of circumstantial evidence motive bears important significance, though failure to prove motive is not fatal in law in each and every case based on circumstantial evidence.

68. Motive always lock's up in the mind of the accused and sometime it is difficult to unlock. However in the facts of the present

case the 'motive' can be gathered from the conduct of the accused.

69. No doubt, the witnesses have admitted that accused had agreed for the marriage and therefore PW-7 and deceased had returned to the village. That by itself shall not be sufficient to say that accused had agreed for their marriage willingly. PW-7 has stated that deceased had eloped with him only because accused had refused to marry her to PW-7. They were fixing her marriage with some other boy and it is therefore that deceased had told PW-7 that they should elope and they had therefore eloped. The possibility that accused had shown their willingness for the marriage only to bring back the deceased cannot be denied. The conduct of accused in putting the condition of transferring the land to the name of the deceased suddenly at the time of marriage, and putting it as a pre-condition for the marriage shows their intention that they never wanted to marry the deceased to PW-7. Though there is no direct evidence about accused to be carrying a grudge in their minds as deceased had eloped with PW-7, their conduct shows that they were angry with the deceased as deceased had eloped with PW-7. The conduct of the Accused dragging the deceased and also slapping her and lifting her and putting her on the motorcycle, also point out the fact that the accused were angry and

were taking away the deceased forcibly alongwith them. They were not inclined to marry the deceased to the accused. They had a motive to murder the deceased.

70. The other circumstance wanting to rely upon by the prosecution is that the accused had confessed they to have murdered the deceased before PW-1 Balasaheb Gopinathrao Bawane, the Police Patil (PW-2) of village Pirpimpalgaon.

71. The law on the subject of extra-judicial confession is well crystalised. In Ramu Appa Mahapatar Vs. State of Maharashtra reported in (2025) 3 Supreme Court Cases 565 it has been held;

“19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan Vs. State of Tamil Nadu. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. An extra-judicial confession, if voluntary and true

and made in a fit state of mind can be relied upon by the court. However, the confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the veracity of the witness to whom it has been made.

19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows:-

14. It is a settled principle of criminal jurisprudence that  
extra-judicial confession is a weak piece of evidence.

Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the

prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

19.2. Upon an indepth analysis of judicial precedents, this Court in Sahadevan (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

72. In the present case, PW-1 Balasaheb Gopinathrao Bawane, the

Police Patil of village Pirpimpalgaon states that on 14/12/2022 at about 09:00 a.m. he had learnt that the daughter of Santosh Sarode was murdered and hanged and her funeral was also done. He states that he had immediately gone to the police station and informed the Chandanzira police station about it. He then states that he had returned to the village. The police from the Chandanzira police station had phoned him and told him to show the spot of incident. He had gone to the house of accused along with the police. Five to seven men and five to seven women were present. They had scattered when they saw the police and the witness. Police had enquired with accused and they had said that Suryakala @ Surekha (deceased) had eloped with Rameshwar Kolhe (PW-7) and both accused had gone to the house of Rameshwar Kolhe to perform their marriage and people from both sides had gathered at the temple for the marriage and there was a quarrel on the count of half acres of land and the Kolhe's had refused to fulfill the demand of half acre of land and therefore they had brought the deceased back home and beat her as she was insisting to marry Rameshwar Kolhe and because they thought that they were insulted. They had therefore beaten the girl and she had died. They had hanged her and burnt her.

73. In the cross-examination he was asked as to why he had not stated about the accused having confessed their guilt in the information given to the police and he has replied that he was not knowing about it until then. He was asked whether he had gone to the spot of incident immediately after he received the information to verify it and he has denied it. He has volunteered that as the girl was burnt he had not gone to the spot and instead went to the police station. It was suggested to the witness that the information about deceased being murdered is false and that he falsely stated that she had eloped and was brought back and was then murdered.

74. The evidence of this witness finds corroboration in the evidence of PW-4 Police Head Constable Jitendra Tagwale. He states that he had received the information of accused having murdered the deceased at about 09:30 a.m. on 14/12/2022 while he, PW-13 and other police were patrolling. He states that they had phoned Police Patil i.e. PW-1 and had gone to the house of accused. Accused had confessed their guilt before them.

75. PW-13 PSI Zalwar also states that when he and other police were patrolling at about 09:00 to 09:30 a.m. they had received the information about accused having killed the daughter of accused no.1

and disposed of the body by conducting the funeral. He states that they had gone to village Pirpimpalgaon and called the PW-1, the Police Patil. PW-1 had confirmed the information. They all went to the house of accused in Gat no.10 and 11 at village Bhatkheda. On enquiry, accused had confessed their guilt.

76. Thus, what can be gathered from the evidence of PW-1, PW-4 and PW-13 discussed above is that on receiving the information of the incident these three witnesses had gone to the spot of incident. When PW-13 had enquired with the accused they had voluntarily confessed their guilt before all these three witnesses and more particularly PW-1 who is the Police Patil. I have reproduced the cross-examination and what can be said is that there is no serious challenge to this extra-judicial confession made by the accused. There is nothing to suggest that it was not voluntary and that it was not made in a fit state of mind. On the contrary, the same inspires corroboration and finds corroboration by the other prosecution evidence.

77. This extra-judicial confession made by accused before PW-2 is admissible in evidence. In the case of *Sadashiv Dhondiba Patil vs the State of Maharashtra* (2025 INSC 93) the Hon'ble Apex Court held that a Police Patil of a village cannot be termed as a Police Officer for

the purpose of Section 25 of the Evidence Act. It proceeded to hold that extra-judicial confession alleged to have been made by accused before PW-2 (the Police Patil) is admissible in evidence and is not hit by Section 25 of the Evidence Act.

78. In my opinion, PW-1 is the Police Patil of the village Pirpimalgaon and the accused are the residents of the said village. As already stated above the news that deceased was murdered and burnt by the accused was wide spread in the village on 13/12/2022 itself. Therefore, there is no reason to disbelieve PW-1 when he states that he had also received the said information. As he is the Police Patil of the village he has immediately gone to the police station and informed the police. He being the Police Patil it is expected from him that he should inform the police about the information.

79. Even when PW-4 and PW-13 received the information, the first thing they had phoned PW-1, he being the Police Patil. PW-1 confirmed the news. The police had gone along with PW-1 to the spot of incident. It is at that time when the police have enquired accused have confessed the guilt. I find this evidence of these three witnesses natural and acceptable. Thus, the prosecution has proved this circumstance also.

80. After accused had confessed the guilt, PW-4 and PW-13 had inspected the premises. They had found the place where accused had performed the funeral. They had found two gunny bags containing ashes of burnt body. They found that the place of funeral was cleaned by water and a Rangoli was drawn on it. They had secured the place and returned to the police station. A letter was given requisitioning the Medical Officer to collect the samples of bones. The panchas were called. PHC Tagwale, PSI Zalwar and the Medical Officers had again gone to the spot of incident. The Medical Officers had collected teeth and bone samples from the ash. The spot panchanama was prepared. PW-13 had taken the pictures in the cell phone. PW-4 and PW-13 have deposed to that effect.

81. In the cross-examination of PW-4 he was shown the photos wherein the location Vanjar Umarad is mentioned and he has admitted it. He has admitted that the location Bhatkheda or Banvnepangari is not shown and he has admitted it. It was suggested to him that accused were not residing in the Bhatkheda Shivar and he has denied it. He has admitted that no help of the Talathi was taken to identify Gat no.11. He was asked, that the distance of village Wanjarumrad from the spot is 3 kms and he has stated that he cannot state. He had denied the

suggestion that he has lodged a false and imaginary complaint.

82. In the cross-examination of PW-13, he has stated that he cannot state the names of the medical officers who came to the spot. He admits that he had not obtained their signatures on the panchanama Exh.P-3/PW-2. He states that he had left the police station for patrolling at about 08:30 to 09:00 a.m. He had not taken any station diary entry about they leaving for patrolling. He has volunteered that there was no connectivity and therefore the entry could not be taken. He has stated that he has not taken any note about there to be no connectivity. He has admitted that he has himself not lodged any complaint regarding the incident. He has admitted that in the panchanama Exh.P-3/PW-2 there is no mention of Vasti. He had not taken any Revenue Officer along with him to verify whether the spot belongs to accused. He has admitted that in the arrest forms the address of accused are mentioned as Pirpimpalgaon. It is suggested to him that there is a confusion regarding the spot whether it is Pirpimpalgaon or Bhatkheda or Wanjarumrad and he has denied it. He has denied the suggestion that he had carried along with him the bags of ashes when he went to the spot the second time. He has denied the suggestion that accused were in his custody 09:30 a.m. onwards of

14/12/2022.

83. PW-5 is the panch to the spot panchanama. He states that the spot of incident is on the Wanjarumrad to Pirpimpalgaon road in the vicinity of Bhatkheda shivar. He states that a lady and a gents, medical officers and police were present. There was a neem tree and a poultry farm near the house. There were two sacks containing ash kept near the poultry farm. He states that the dead body was burnt there. That spot was black. The ash was removed from the sack on a tarpaulin. There were teeth and bones in the ash and the medical officers had collected them in separate boxes and sealed them. Police had also collected the sample of the ash and earth mixed ash. Police had also seized one motorcycle. Accused no.2 had produced clothes and police had seized them. Accused no.1 had also produced clothes and police had seized them. Panchnama was prepared and he had signed the panchanama. He has proved the panchanamas Exh.P-1/PW-5 and Exh.P-2/PW-5 and has identified the clothes and the muddemal.

84. He admits that in the panchanamas Exh.P-1/PW-5 and Exh.P-2/PW-5 the place of abode of accused is shown as Pirpimpalgaon. He states that police had not taken the measurement of accused. The word 'signature' is not mentioned below the signatures. He has denied the

suggestion that he was not present at the spot. He admits that he had not seen the property card extract of the land.

85. Thus, what can be gathered from the evidence of PW-4, PW-5 and PW-13 is that they had found two sacks of ashes of the burnt body at the spot of incident. According to them, they had also noticed the spot where the dead body was burnt and it had turned black. They have stated that the medical officers had also gone along with them and they had removed bones and teeth from the ashes.

86. As against this, it is only in the cross-examination of PW-13 that it is suggested to him that it was he who had carried the sacks of ashes to the spot. The witness has obviously denied it. The suggestion itself is absurd. Why would the police take along with them the two sacks of ashes and place them there. That apart, this defence seems to be an after thought. No suggestion to that effect is put to PW-1 or PW-4.

87. It is for the accused to explain how the ash containing bones and teeth were found in the property owned by them. The learned Advocate for the accused submits that it is normal to find ash in the fields. I would disagree with the learned Advocate for the simple reason that accused has not explained how this ash came into their

fields and how it was normal to find the ash in the fields. It should also be noted here that it was not only an ash, but some teeth and bones are also found in the ash. There is absolutely no explanation by the accused regarding the same. It should be noted here that the teeth and the partially burned bones were forwarded for chemical analysis. The DNA profile of the mother of deceased was also forwarded. However, the results were inconclusive as no DNA profile could be obtained from the teeth and the partially burnt bones of deceased. Whatever be it, the fact remains that human bones and teeth were found in the ash is an established fact. The prosecution witnesses have also stated that there were signs of the body being burnt. This is an important circumstance which supports the prosecution's case that the dead body of the deceased was burnt at the spot.

88. Much is argued on behalf of the accused by advocate Shri.Rafiq Mohd. about the complaint Exh.P-1/PW-2 and about the timing when it was lodged. The Ld. Advocate submits that PW-4 has stated that he had gone to the police station and lodged the complaint. He has stated that he had not signed the complaint as there was no internet connectivity to the CCTNS. He had told PW-2 P.S.I. Shinde that he shall sign the complaint after he returns from spot of incidence. The

Ld. Advocate submits that there was no evidence about there was no internet connectivity and the CCTNS was discontinued. He submits that the offence is registered at 4:51 p.m. i.e. it is registered after the delay. He submits that the delay is not explained by the prosecution.

89. Both PW-2 and PW-4 have stated that PW-4 had narrated the contents of the complaint and PW-2 had recorded the same. Both have stated that there was no internet connectivity and the CCTNS was discontinued and therefore complaint could not be signed immediately. PW-2 has stated that the internet connectivity had started after half an hour and he had registered the offence at about 4:51 p.m. There was no reason for these police officers to depose falsely.

90. Admittedly, PW-4 and PW-13 had gone to the spot of incidence soon after receiving information. They had then secured the spot of incidence and had returned to the police station. PW-4 had then lodged the complaint Exh.P-1/PW-2. They had again proceeded to the spot alongwith the panch and other persons and had prepared the panchnamas. In the meantime, as soon as the internet connectivity was resumed, PW-2 has registered the F.I.R.

91. That apart, assuming that there is a delay in lodging F.I.R., in the facts and circumstances of the case it could be immaterial. The

F.I.R. is lodged by PW-4 who was the Police Head Constable attached to the Chandanzira police station. Accused has not succeeded in establishing that PW-4 had any reason to lodge any false complaint against them. It is well settled that delay in lodging the complaint is not fatal in all cases. It is required to be shown that the delay has created a doubt about the prosecution case. It will have to be shown that the delay was deliberate and the complaint was lodged after giving it a thought. No such suggestions are given to PW-4. It is only suggested that he has lodged this false complaint to save PW-7. However, there is nothing to support this suggestion given on behalf of the accused persons.

92. To conclude, the prosecution has proved the incriminating circumstances against the accused beyond doubt. It has established the complete chain of circumstances to prove the guilt of the accused beyond reasonable doubt. I therefore answer the points in the affirmative.

93. I now proceed to hear the accused and the learned APP Shri. Dhokrat on the point of sentence. Learned APP Shri. Dhokrat submits that accused have committed the murder of their innocent daughter. They should be awarded maximum punishment and no mercy or

leniency should be shown. He prays for life imprisonment. The accused on the other hand submit that each of them has a one son and a daughter. The sons are taking education. They are the bread earners of their families. Their daughters are small. A leniency be shown while granting punishment.

94. Before proceeding to pass the sentence I shall be appropriate here to go through certain decisions.

95. In the decision in the Bhagwan Dass Vs. State (NCT) of Delhi, AIR 2011 SC 1863 which was a case of ‘honour’ killing, the Hon’ble Supreme Court was pleased to observe as under.

“In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate ‘honour’ killings should know that the gallows await them.”

96. In Digambar Vs. State of Maharashtra, Criminal Appeal No.280/2023 the Hon’ble lordship of the Hon’ble Supreme Court was dealing with another case of honour killing. The Hon’ble lordship has posed a question “as to whether the present case could be considered

as one to be rarest of rare so as to award death penalty”. The Hon’ble lordship observed in para Nos.21 to 28 as under.

“21. In the case of State of Uttar Pradesh v. Krishna Master and others, the accused had killed six persons and wiped of almost the whole family on the ground of saving the honour of the family. In the said case, though this Court found that the same would fall within the ‘rarest of the rare’ case, it commuted the capital sentence to the one to rigorous imprisonment for life and fine of Rs.25,000/- each.

22. This Court in the case of Gandhi Doddabasappa alias Gandhi Basavaraj v. State of Karnataka, wherein the accused had committed murder of his daughter, who was in the advanced stage of pregnancy, though upheld the conviction of the accused under Section 302 IPC, but commuted the sentence from capital punishment to imprisonment for life.

23. There are certain other precedents of this Court as to which cases would fall under the category of ‘rarest of rare’ case.

24. In the case of Prakash Dhawal Khairnar (Patil) V. State of Maharashtra, the appellant was a Senior Scientific Assistant. He wiped out his brother’s entire family. This Court found that this was done by him on account of frustration as his brother was not

partitioning the alleged joint property. Though this Court held that the crime was heinous and brutal, but it could not be considered to be 'rarest of rare' case. This Court held that, it is difficult to hold that appellant is a menace to the society and that there is no reason to believe that he cannot be reformed or rehabilitated.

25. In the case of Mohinder Singh Vs. State of Punjab, this Court observed thus:

“25. It is well-settled law that awarding of life sentence is a rule and death is an exception. The application of the “rarest of rare” cases principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fibre of the society, would call for imposition of the capital punishment in order to ensure that it acts as a deterrent. While we are convinced that the case of the prosecution based on the evidence adduced confirms the commission of offence by the appellant, however, we are of the considered opinion that still the case does not fall within the four corners of the “rarest of rare” cases.

26. In the said case, the accused had committed murder of his wife and daughter. However, this Court found that the said could not be considered to be 'rarest of rare' case.

27. Recently, this Court, in the case of Sundar @ Sundarrajan V State by Inspector of Police, held that 'rarest of rare' doctrine does not require that in such a case only death sentence has to be imposed. This Court held that, while considering as to whether the death sentence is to be inflicted or not, the Court will have to consider not only the grave nature of crime but also as to whether there was a possibility of reformation of a criminal.

28. In the present case, both the appellants do not have any criminal antecedents. The appellant-Digambar, who has been sentenced to capital punishment, was a young boy of about 25 years at the time of the incident. The medical evidence would further reveal that the appellants have not acted in a brutal manner, inasmuch as there is only single injury inflicted on both the deceased. As such, we find that the present case cannot be considered to be 'rarest of rare' case. In any case, the report of the Probation Officer, Nanded as well as the Superintendent, Nashik Road Central Prison would show that the appellant-Digambar has been found to be well-behaved, helping and a

person with leadership qualities. He is not a person with criminal mindset and criminal records.”

97. Coming back to the facts of the present case before me, the accused no.1 is 49 years of age and accused no.2 is 42 years of age. They both are the only earning male members in their families. They do not have any criminal antecedents. As already stated above deceased had eloped with PW-7 and had stayed with him one night. Accused had tried to convince the deceased to sever her relations but when she refused, they seem to have murdered her. The circumstances in which the offence is committed, it is difficult to hold that the accused may again repeat the offence or that they are a menace to the society and that there are no chances of their reformation or rehabilitation. Therefore in view of the observations in the decision in *Digambar Vs. State of Maharashtra* (supra). I am of the opinion that this is not a case where the accused should be awarded the extreme penalty of death penalty as held in *Bhagwan Dass Vs. State (NCT) of Delhi* (supra). I therefore hold that in the circumstances of the case, the sentence of life imprisonment should be imposed upon the accused. Hence, the order.

**ORDER**

1. Accused Nos.1) Santosh Bhaurao Sarode and 2) Namdeo Bhaurao Sarode, are convicted under section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 302 read with section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- each, in default to pay fine, suffer rigorous imprisonment for two years.
2. Accused Nos.1) Santosh Bhaurao Sarode and 2) Namdeo Bhaurao Sarode, are convicted under section 235(2) of the Code of the Criminal Procedure of the offence punishable under Section 201 read with 34 of the Indian Penal Code and sentenced to suffer the rigorous imprisonment for three years and to pay fine of Rs.5,000/- each, in default to pay fine, suffer rigorous imprisonment for one year.
3. Accused Nos.1) Santosh Bhaurao Sarode and 2) Namdeo Bhaurao Sarode, are entitled for the set off if any under Section 428 of the Code of Criminal Procedure for the

period which they had remained behind the bars as under trial prisoner.

4. Both sentences to run concurrently.
5. Muddemal property i.e. one black colour Honda Shine motorcycle bearing registration no.MH-21-BC-0478 be returned to its registered owner after expiry of appeal period.
6. The muddemal property i.e. Pieces of bones (MO-1), Mixed ash (MO-2), Sample of Ash (MO-3), Plain soil (MO-4), Black colour Shirt (MO-5), Jeans pants (MO-6), White colour Shirt (MO-7), Black colour pants (MO-8), burnt teeth of deceased, being worthless be destroyed after expiry of appeal period.
7. The muddemal property i.e. one Red and black colour San Disk company 16 GB Pendrive, be kept in the 'C' part.
8. Copy of this judgment be given to accused free of costs forthwith.

( V.M. Mohite )  
Sessions Judge,  
Jalna.

Date : 10.04.2026

**C E R T I F I C A T E**

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

Name of Steno - A. P. Deshmukh

Name of the Court - Principal District & Sessions Judge, Jalna.

Date :- 10/04/2026

Sd/-

Stenographer Grade-1