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	Duration	:	Ys.Ms.Ds. 03-03-20

Sessions case No.69/2022.**Exh. No. /A**

	IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, JAYSINGPUR, AT JAYSINGPUR, <u>DISTRICT KOLHAPUR.</u> Present : G. B. Gurao, Addln.Sessions Judge (12-03-2026) (SESSIONS CASE No.69/2022)	
	(FIR No.162/2022 Shirol police station, U/s. 302, 392, 394, 397, 323 read with 34 of the Indian Penal Code, 1860.	
Complainant		THE STATE OF MAHARASHTRA, Through Police Station, Shirol Tal.- Shirol, Dist.- Kolhapur.
REPRESENTED BY		Mr. U.M.Kulkarni, Learned A.PP. for the State.
ACCUSED	1	Prakash @ Munna Laxman Nandiwale Age-32 yrs. Occu: Labour, R/o.Nandiwale Vasahat Tal.Shirol
	2	Bजारंग @ Bajya Vasant Nandiwale, Age-33 yrs. Occu: labour, R/o. As above.
REPRESENTED BY		Mr. S.S.Ainapure & S.S.Mhalungekar, Advocate.

Date of Offence	30-07-2022
Date of FIR	31-07-2022
Date of Chargesheet	24-10-2022
Date of Framing of Charge	30-05-2025
Date of commencement of evidence	26-11-2025
Date on which judgment is reserved	---
Date of the Judgment	12-03-2026
Date of the Sentencing Order, if any	--

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.PC.
(1)	Prakash @ Munna Laxman Nandiwale	03-08-2022	--	Section 302, 392, 394, 397, 323 r/w.34 of the Indian Penal Code.	Acquitted	--	--
(2)	Bajrang @ Bajya Vasant Nandiwale	04-08-2022	--	--	--	--	--

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS,
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		EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
1.	Arihant @ Kiran Mahavir Chougule	Complainant
2.	Prakash Bhupal Kakade	Other witness
3.	Mangal Mahavir Chougule	Other witness
4.	Ramesh Babu Kumbhar	Other witness
5.	Bhupal Tatoba Kakade	Other witness
6.	Sagar Ananda Supalkar	Panch
7.	Sukumar Ramesh Salunkhe	Panch
8.	Archana Avinash Sankpal	Panch
9.	Dr.Rajesh Vasant Rao Jadhav	Medical witness
10	Ajit Bhuso Kurane	Panch
11.	Abhijit Ashok Koli	Police witness
12.	Sanjay Yallappa Rathod	Police witness
13	Dattatraya Shankar Borigidde	Investigating officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1	28	Complaint
2	35	Memorandum panchanama
3	36	Seizure panchanama
4	41	Inquest panchanama
5	42	seizure panchanama.
6	45	Requisition letter
7	46	Advance death certificate
8	47	PM notes
9	51	Memorandum panchanama
10	52	Seizure panchanama

B. Defence :

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

Sr. No.	Exhibit Number	Description
1.	68 & 69	Statements u/s.313 of Cr.P.C.

D. Material Objects :

Sr. No.	Material Object Number	Description
1	MO/1	Broken pieces of bangles
2	MO/2	Spectacle
3	MO/3	Gold beads
4	MO/4	Black beads
5	MO/5	Sari
6	MO/6	Blouse
7	MO/7	Pieces of bangles
8	MO/8	Mangalsutra

9	MO/9	Ear tops
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Accused No.1 and 2 have been chargesheeted for the offence punishable U/s. 302, 392, 394, 397, 323 read with 34 of the Indian Penal Code, 1860 (for short IPC).

2] Facts in brief are as under :-

Complainant Arihant @ Kiran Chougule is the resident of village Haroli Tal.Shirol and at present he resides with his maternal uncle Prakash Kakade at Hupari Tal.Hatkanagale. On 31-07-2022, complainant lodged report in the police station. It is stated that his maternal uncle Prakash Kakade runs shop by name "Ambai Jewelers" at Hupari. Deceased Champabai aged 65 years is his maternal grand mother. Bhupal Kakade is his maternal grand father. Bhupal had undergone leg surgery and his right leg could not bent from knee. Therefore, he could not walk. Champabai and Bhupal were residing at Kakade Mala, near Nandiwale vasahat, Chinchwad Tal.Shirol. On 30-07-2022, around 5.30 to 6.00 pm, he and his mother Mangal had been to meet Champabai at Chinchwad by motorcycle. They were at the house of Champabai till 6.30 pm. Thereafter, complainant and his mother went to Haroli.

3] According to complainant, at 9.15 pm, someone made phone call on his mothers mobile from the mobile of his grand mother and told that Champabai is lying unconscious in the house and Bhupal is shouting. Therefore, complainant and his mother Mangal reached at Chinchwad at 10.00 pm. Villagers were gathered. Her linen (पदर) was tied around her neck. Bhupal was shouting as "कुणीतरी या आम्हाला मदत करा". Complainant asked Bhupal as to what happened. Bhupal told to complainant that after dinner, he and Champabai were watching television. One unknown person came in the house and raised

quarrel with Champabai. The said person gave kick on his chest. That person started to beat Champabai. Due to this, Champabai fell on the floor.

4] The complainant contended that said person had stolen gold mangalsutra, bormal and ear tops of Champabai. Complainant's maternal aunt Suman and her son Appaso came there. Thereafter, they took Champabai in the hospital of Datta Sugar Mill. There they were advised to shift Champabai at Rural hospital, Shirol. At Rural hospital Shirol, medical officer declared Champabai as dead.

5] On the report crime No.162/2022 is registered against the accused and the then PI D.S.Borigidde took up the same for investigation. He proceeded to the spot. He seized pieces of bangles, spectacle of Champabai, gold beads, black beads and one black colour cap from the spot and prepared panchanama.

6] According to prosecution, on the day of incident, accused Prakash had wore the said cap and he had gone to fill petrol in M-80 motorcycle at Laxmi petrol pump on Jaysingpur to Shirol road. The CCTV footage were seized. Both the accused were arrested. Accused Prakash gave statement before the panchas. Memorandum panchanama was prepared. Thereafter, accused Prakash laid them near the electric pole in land on Chinchwad road. Accused untied the soil and produced gold mangalsutra and four gold beads. Thereafter, accused Prakash laid panchas and investigation officer at Bhumi jewelers, Shirol and stated that he mortgaged the ear tops in his shop. The owner of Bhumi jewelers produced the ear top. The muddemal was seized and panchanama was prepared. Accused Bajarang gave statement in presence of panchas that he is ready to

produce the amount which accused Prakash kept with him by mortgaging ear tops at Shirol. Accordingly, memorandum panchanama was prepared. Accused laid panchas and police at his house. Accused produced an amount of Rs.560/- from his pant pocket in bedroom. Police seized the same and prepared panchanama. Investigation officer recorded the statements of witnesses. Mobile phones of accused were seized. The muddemal was sent to FSL Kolhapur. The test identification parade was conducted and after completion of investigation, chargesheet is filed against accused.

7] The offence as charged is exclusively triable by the court of Sessions hence Ld Judicial Magistrate F.C. Jaysingpur committed the case to this court for trial.

8] Accused No.1 Prakash is under trial prisoner. Accused No.2 Bajrang is released on bail.

9] Charge is framed against accused at Exh.20. Accused denied the same and claimed to be tried. In support of its case, prosecution examined 13 witnesses. The statements of accused U/s.313 of Criminal Procedure Code are recorded. The defence of accused is that of total denial and false implication.

10] I have heard Mr. U.M.Kulkarni, learned APP for the State and Mr. S.S.Ainapure and Mr. S.S. Mhalungekar, advocate for accused. From the rival submissions and evidence on record, following points arise for my consideration, to which I record my findings against them for the reasons given below.

Sr. No.	Points	Findings.
1	Whether the death of Champabai is homicidal?	In the affirmative
2.	Whether the prosecution proved that on 30-07-2022 at about 18.30 hrs., at Nandiwale Vasahat, Kakde Mala, Chinchwad Tal.Shirol, accused in furtherance of their common intention committed murder of deceased Champabai Bhupal Kakde by throttling ?	In the negative.
3.	Whether prosecution proved that on aforesaid day, date, time and place, accused in furtherance of their common intention committed robbery?	In the negative.
4.	Whether the prosecution proved that on the aforesaid date, time and place, accused in furtherance of their common intention, voluntarily caused hurt to deceased and injured while committing robbery ?	In the negative.
5.	Whether prosecution proved that on the aforesaid date, time and place, accused in furtherance of their common intention, committed robbery with attempt to cause death to deceased?	In the negative.
6.	Whether prosecution proved that on the aforesaid date, time and place, accused in furtherance of their common intention, voluntarily caused hurt to deceased?	In the negative.
7.	What order ?	As per final order.

REASONS

As to point No.1 :-

11] Dr.Rajesh Jadhav PW9 (Exh.44) stated that he is MD (Gynec). On 31-07-2022, he was attached to Rural Hospital, Shirol as medical officer. On 31-07-2022, around 1.00 am dead body of female aged 60 to 65 years was referred by police station, Shirol for postmortem. He has received requisition letter (Exh.45) and inquest panchanama (Exh.41). Dead body was of Champabai Bhupal Kakade. He

conducted postmortem of the dead body between 1.30 am to 2.30 am. He found following injuries;

- 1] Small abrasion on middle of bone of neck region
- 2] Reddish brown ligature mark on middle 1/3rd of neck involving anterior half of the neck
- 3] Abrasion of 1x 1cm, 0.2 cm laceration on inner side of upper lip near first and second molar seen.
- 4] Sup abrasion of 0.3 x 0.2 on right dorsum of wrist region
- 5] Sup abrasion on middle of right palm

12] According to him, on internal examination, he found pinkish black coloured lungs with congested oozing of lot of congested blood on cutting the slice. The said injury was corresponding injury No.1 in column No.17. Injuries were ante mortem. Rigor mortis was present. Time of death since 6 to 12 hours. According to him, the cause of death was death due to asphyxia due to strangle or throttle. The said injury is sufficient to cause death in the ordinary course of nature. He issued advance certificate (Exh.46) and postmortem report (Exh.47). In his cross examination he admitted that it is mandatory to give description of ligature mark. According to him, the ligature mark was not visible.

13] Archana Sankpal PW8 (Exh.40) stated that on 31-07-2022, she was called at Rural hospital Shirol. She was called for inquest panchanama. Amol Jadhav was other panch. She saw mark on the neck of dead body. Police prepared inquest panchanama (Exh.41). She further did state that on the same day, police constable produced clothes of deceased i.e. white colour sari, saffron colour blouse and pieces of bangles. Police seized the same and prepared panchanama (Exh.42).

14] I have perused the inquest panchanama. In inquest panchanama, it is specifically written that below the neck of deceased one reddish colour mark was present. Also perused the advance certificate (Exh.46) and postmortem notes (Exh.47). It appears that death of Champabai was caused due to aphexia due to strangle or throttle. The evidence of autopsy surgeon Dr.Rajesh Jadhav is corroborated with the documentary evidence i.e. postmortem report. The prosecution proved the inquest panchanama. Hence, I find that the death of Champabai is homicidal. I answer the point in the affirmative.

As to point No.2 to 5:-

15] According to prosecution, the incident occurred in the evening time. After dinner Champabai and Bhupal were watching television. Bhupal had undergone leg and eye surgery. Therefore, his eye sight was not clear. Complainant Arihant (PW1) stated that, on the day of incident, he and his mother had come to Chinchwad. Thereafter, he and his mother left Chinchwad at 6.30 pm. When he was at Haroli, message was received on phone that his grand mother is lying unconscious and his grand father was shouting. Therefore, he and his mother went at Chinchwad. They saw that people were gathered. His grand father was shouting. His grand father told him that one unknown person had come in the house. He gave kick on his chest. He also beat Champabai. Thereafter, it was found that the said unknown person had taken gold mangalsutra, bormal and ear tops of Champabai. In his cross examination he admitted that the complaint was lodged against unknown person. He further admitted that his grand father executed sale deed of his land in the name of his son Prakash Kakade and therefore, their dispute arose in the family. His maternal aunt Sugandha Mehata was frequently quarreling with his

parents. He further admitted that Sugandha Mehata had filed RCS No.33/2020 in Jaysingpur court. He admitted that after the demise of Champabai, suit was settled. Thus, from the evidence of complainant Arihant, it appears that his grand father Bhupal Kakade told him that one unknown person had come and he gave kick on his chest. He also beat to Champabai.

16] At the relevant time, Mangal Chougule, mother of complainant was with him. Mangal Chougule PW3 (Exh.30) stated that on 30-07-2022, she was talking with her mother till 7.00 pm. Accused Prakash was cleaning the vegetables in front of Champabai's house. Champabai asked him from where he brought vegetables. Accused told that he cultivated vegetables for his family members only. Accused asked her whether she stay there. She told that after stopping the rain she will go. Accused gave leafy vegetable to her and her mother and he went from there. Then she and Arihant went at Haroli. The said witness is trying to show the presence of accused Prakash just before the incident and the intention of accused that whether she is staying at the house of Champabai. However, in her cross examination material omissions are brought on record. She stated that she had not stated to police that accused Prakash had come in front of her parents house. She does not know whether accused Prakash was knowing her that she is daughter of Bhupal. She further stated that Sugandha was giving trouble to her parents and she used to cause damage to the crops in the land. Thus, from the aforesaid material omissions, I discard the evidence of this witness on the reason that on the day of incident, in the evening Prakash had come in front of house of Champabai.

17] Prakash Kakade PW2 (Exh.29) stated that he came to know about the incident so he came near the stop at Datta Sugar Mill Shirol. They took his mother at rural hospital, Shirol and doctor declared her as brought dead. Thus, from the evidence of Arihant, Mangal and Prakash it nowhere appears the involvement of the accused in the present crime.

18] Bhupal Kakade PW5 (Exh.33) stated that around 8.00 pm, his wife was preparing food in the kitchen. He was watching TV in another room. He heard shouts and he went in the kitchen. Accused No.2 Baja gave kick on his chest. He shouted. After 15 minutes persons in the village came in his house. His wife was lying near toilet near kitchen. Her throat was tied by her linen. It is to be noted that in his cross examination he stated to police the name of accused Bajrang. However, same is missing in his statement under section 161 of Criminal Procedure Code. Thus, this is only one eye witness of the witness and he had no difficulty to state the police on the same day that accused No.2 assaulted him and his wife. On the contrary, initially police arrested accused No.1 Prakash and thereafter accused No.2. It is pertinent to note that, at the time of spot panchanama (Exh.35), police seized one black colour cap from the spot. According to prosecution, on the day of incident, accused Prakash had wore said cap. Accused filled petrol in his M-80 motorcycle at Laxmi petrol pump on Jaysingpur Shirol road.

19] Ramesh Kumbhar PW4 (Exh.32) stated that he is serving at Laxmi petrol pump since 1993. He was on duty from 6.00 pm of 30-07-2022 to 9.00 am of 31-07-2022. He stated that around 7.15 pm, one person had come to fill the petrol in M-80 motorcycle. The

age of that person was 30 to 35 years. However, he could not identify the accused Prakash. Further the evidence of Mangal shows different that at that time accused Prakash was in front of Champabai's house. It is to be noted that sniffer dog was called. Investigating officer in his cross examination stated that dog sniffed the blue colour cap. In fact, in the panchanama cap is black colour. Hence, this evidence falsifies the story of prosecution that cap was of accused Prakash.

20] Sagar Supalkar PW6 (Exh.34) stated that on 31-07-2022, he was called for panchanama. Police seized the broken pieces of bangles, cap, black beads, two gold beads and spectacle from there and prepared panchanama Exh.35.

21] Sukumar Salunkhe PW7 (Exh.38) stated that on 03-08-2022 he was going from road. Police stopped him. Police obtained his signature on panchanama. He denied that police seized one samsung mobile and Bajaj M-80 motorcycle from accused and prepared panchanama. Thus, he did not support to the prosecution story.

22] Abhijit Koli PW11 (Exh.57) stated that he is attached to police station Shirol as police constable. On 21-09-2022, PI Borigidde directed to deposit the muddemal in crime No.162/2022 to FSL Kolhapur. He deposited the muddemal at FSL Kolhapur and obtained acknowledgment Exh.58.

23] Here in the present case, as stated aforesaid there is no direct evidence against the accused. The prosecution case is based on circumstantial evidence. According to prosecution, accused Prakash

gave statement and produced gold mangalsutra and ear tops are seized the same from the shop of Bhumi jewelers Shirol. Accused are facing trial for the offence punishable under section 302 of the Indian Penal Code. Therefore, there must be stronger evidence against the accused to connect the chain of circumstances. In **Sharad Birdhi Chand Sarda vs. State of Maharashtra, 1984 AIR (SC) 1622**, Hon'ble Supreme Court has laid down the guidelines as,

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must and should and not may be established;

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

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

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

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

24] Amit Kurane PW10 (Exh.50) stated that In the year 2022, he was serving as Revenue assistant at Tahasil office, Shirol. On 06-08-2022, he was present in the office. His superior told him and Mandar Avale to go to police station. He and Mandar went to police station Shirol. Accused Prakash was in lockup. Accused gave statement that he is ready to show the place where he concealed mangalsutra. He also told that he mortgaged ear tops to goldsmith and he is ready to

show his shop. Police prepared memorandum panchanama Exh.51. According to him, then accused laid them at Chinchwad road. Accused asked to stop the vehicle at the square of Chinchwad. Then accused laid them by walk in the field. In that field there was electricity pole. Accused told that he concealed mangalsutra near the pole. Accused untied the soil and produced mangalsutra and four gold beads. Police sealed mangalsutra and beads. Then accused laid them at the shop of Bhumi jewelers, Shirol. There shop owner was present. Accused told him he mortgaged ear tops to him. Shop owner gave ear tops to police. Police seized the same. He identified the panchanama Exh.52.

25] Amit Kurane further stated that on 09-08-2022, he and Mandar Avale were called at police station Shirol. Accused Bajrang Nandiwale was in police custody. Bajrang gave statement that he is ready to produce the amount. Police prepared memorandum panchanama Exh.53. Then accused laid them at his house at Nandiwale vasahat. Accused's father was present in the house. Accused produced amount of Rs.560/- which was in pant pocket in bedroom. Police seized the amount and prepared panchanama Exh.53.

26] Investigating officer PI D.S.Borigidde PW13 (Exh.62) has stated what panch witness stated about recovery of ornaments and cash from the statement of accused. It is to be noted that in his cross examination witness Amit Kurane stated that in Government office the week is from Monday to Friday and there is holiday on every Saturday and Sunday. He denied that on 06-08-2022 there was Saturday. He further stated that his superior has not given him written letter to go to police station for panchanama. He admitted that he is acted as panch witness in many cases. According to him, on

06-08-2022 he had no personal talk with accused Prakash. He denied that panchanama was not prepared in his presence. He further admitted that in the year 2022, he was handling chapter cases (cases of preventive action under Cr.P.C.). He admitted that therefore he had concern with the police. According to him, on 08-08-2022, he was knowing that tomorrow the police will prepare memorandum panchanama. On 09-08-2022, he was in his office. He admitted that on 09-08-2022, there was holiday on occasion of Moharam. On 09-08-2022, he had no talk with accused Bajrang. Police has not noted the number of currency notes in the panchanama.

27] PI D.S.Borigidde in his cross examination admitted that on 06-08-2022 there was Saturday and the holiday to Government offices.

28] The conduct of witness Ajit Kurane shows that at the relevant time he was handling chapter cases and he had concern with police. The prosecution have not produced any written order of the Executive Magistrate or Tahsildar directing the said witness to go for panchanama. The judicial note is also taken that the week of Government offices is five days i.e. from Monday to Friday. It has come on record that on 06-08-2022 there was Saturday and on 09-08-2022 there was Moharam. Therefore, on both days, Government offices were closed due to holiday. Witness Ajit Kurane has not explained that why he had attended the office on that day. On the contrary, he stated that his superior was also present and he directed him to go for panchanama. Witness Ajit Kurane could not state the name of the land owner from where accused produced the gold mangalsutra and gold beads.

29] Further story is that accused Prakash mortgaged the ear tops to the owner of Bhumi jewelers of Shirol. Police seized the ear tops. The record shows that repeatedly summons were issued to the owner of Bhumi jewelers but he did not come in the court to give evidence. So far as recovery of Rs.560/-from accused No.2 is concern, the prosecution alleged that accused No.2 had produced Rs.560/- from the pant pocket in his bedroom. Admittedly family members of accused No.2 were present. Therefore, I find that the prosecution has failed to prove the link that ornaments and money are seized at the instance of accused. Therefore, said recovery cannot be said to be recovery under section 27 of the Indian Evidence Act.

30] The prosecution failed to prove that accused robbed Champabai and took her mangalsutra and ear tops. Prosecution failed to prove that accused committed the murder of Champabai. In given facts and circumstances and evidence on record, the benefit of doubt goes in favour of accused. Therefore, I answer the point accordingly and pass the following order.

::ORDER::

1. Accused No.1] Prakash @ Munna Laxman Nandiwale and 2] Bajarang @ Bajya Vasant Nandiwale, are hereby acquitted U/s.235(1) of Criminal Procedure Code for the offence punishable U/s. 302,392, 394, 397, 323 r/w.34 of the Indian Penal Code.
2. Accused No.1 is in jail. He be released forthwith, if not required in any other crime.
- 3] **After appeal period,**
 - i] Muddemal Bajaj motorcycle bearing No.MH-07-E-4282, and mobile phone of samsung company, if not returned, be returned to its original owner.
 - ii] The gold ornaments mentioned in column No.9 to 11 are

already returned to complainant. The custody of the same be retained with him.

iii] The cash amount of Rs.560/- be credited to Government.

iv] The other muddemal being worthless be destroyed as per law.

4. Accused are directed to furnish P.B. and S.B. of Rs.15,000/- each U/s.437-A of Cr.PC.

5. Inform the jail authority accordingly.

Jaysingpur.
Dt.:12-03-2026.

(G.B. Gurao)
Additional Sessions Judge,
Jaysingpur.