



Received on : 17/03/2022
Registered on : 24/03/2022
Decided on : 02/04/2026
Duration : 04 Y, 0M,16 D

**IN THE COURT OF DISTRICT JUDGE-2 AND
ADDITIONAL SESSIONS JUDGE, BARAMATI, DIST. PUNE**
[Presided over by **B.D.Shelke**]

FORM NO. XXXII
[Title page of Judgment]

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

Sessions Case No. 73/2022
[CNR No. : MHPU14-000820-2022]

Exh.No. 83

Crime No. 968/2021
Yawat Police Station, Dist. Pune

Complainant	:-	The State of Maharashtra Through, Yawat Police Station, Tal. Daund, Dist. Pune.
Represented by	:-	Shri. K. S. Navale Learned A.P.P. for State.
Accused	:-	Faujasinh @ Ajay Ratansinh Chitodiya Age- 25 years, Occ.:- Labour Presently R/o- Pargaon, Open land of Yashwant Shiram Shinde, Tal. Daund, Dist. Pune Originally inhabitant of : Jamner Road, Keshavnagar, Bhusawal, Tal. Bhusawal, Dist. Jalgaon.
Represented by	:-	Shri.V. N. More Learned advocate for accused

PART- 'B'**[Para 44(ii) of Chapter VI of Criminal Manual]**

Date of offence	:-	03/11/2021
Date of FIR	:-	03/11/2021
Date of charge-sheet	:-	27/01/2022
Date of framing charges	:-	02/01/2023
Date of commencement of evidence	:-	06/08/2025
Date of evidence closed	:-	17/02/2026
Date of arguments	:-	02/03/2026
Date on which judgment is reserved	:-	02/04/2026
Date of Judgment	:-	02/04/2026
Date of sentencing, if any	:-	--

Accused Details

Rank of the accused	Name of the accused	Date of Arrest	Date of release on bail	Offence charged under sections	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during the trial for purpose of Section 428 of Cr.P.C.
1.	Faujasinh @ Ajay Ratansinh Chitodiya	03/11/21	UTP	Sec. 302 of IPC	Acquitted	--	--

PART- 'C'**[Para 44(iii) of Chapter VI of Criminal Manual]****List of Prosecution / Defence / Court Witnesses****[A] Prosecution Witness :-**

Rank	Witness Name	Exh.No.	Nature of witness
1	Dnyandev Narayan Takavane	25	Witness
2	Nilesh Tarachand Dhumal	26	Witness

3	Balkrushna A. Gadekar	32	Police Head Constable
4	Tushar Jabaji Hake	40	Panch
5	Balasaheb Naryan Kasbe	49	Panch
6	Dr. Ramesh Chandu Jadhav	55	Medical Officer
7	Padamraj Ramrao Gample	60	Investigation Officer.

[B] Defence Witness, if any :-

<u>Rank</u>	<u>Witness Name</u>	<u>Exh.No.</u>	<u>Nature of witness</u>
—	—	—	—

[C] Court Witness, if any :-

<u>Rank</u>	<u>Witness Name</u>	<u>Exh.No.</u>	<u>Nature of witness</u>
—	—	—	—

List of Prosecution / Defence / Court Exhibits**[A] Prosecution Exhibits :-**

<u>Sr.No.</u>	<u>Description</u>	<u>Exhibit Number</u>
1.	FIR	61
2.	Occurrence Report	62
3.	Printed FIR	63
4.	Inquest Panchanama	64
5.	Receipt	65
6.	Letter to Medical Officer	66
7.	Arrest panchanama	67
8.	Letter to Village Development Officer	68
9.	Spot panchanama	69
10.	Muddemal Receipt	70 & 71
11.	Letter to Ld. J.M.F.C. to record	72

	Statement under Sec. 164 of Cr.P.C.	
12.	Statement under Section 164 of Cr.P.C.	73
13.	Letter to Director, FSL, Pune	74

Documents admitted by defence :-

<u>Sr.No.</u>	<u>Description</u>	<u>Exhibit Number</u>
1.	—	—

[B] Defence Exhibits :-

<u>Sr.No.</u>	<u>Description</u>	<u>Exhibit Number</u>
1.	—	—

[C] Court Exhibits :-

<u>Sr.No.</u>	<u>Description</u>	<u>Exhibit Number</u>
1.	—	—

[D] Material Objects :-

<u>Sr.No.</u>	<u>Description</u>	<u>Exhibit Number</u>
1.	Stick	M.O.No.1
2.	Jerkin	M.O.No.2
3.	Pink colour Full Shirt	M.O. No.3
4.	White colour Half Pant	M.O. No.4
5.	White Colour Full Shirt	M.O. No.5
6.	Black Colour Pant	M.O. No.6

J U D G M E N T

(Delivered on : 02/04/2026)

1. The accused stands prosecuted for the offence punishable under Section 302 of the Indian Penal Code.

The facts which can be summarized from FIR and documents filed along with charge-sheet are as follows:-

2. On 02/11/2021 at about 8.00 pm accused Ajay Ratansih Chitodiya, his wife, father took dinner. Thereafter, Ratansinh Chitodiya (deceased victim) started quarrel with accused on the ground that, he is not paying money for consuming liquor. Thereafter, the victim was slept and accused and his wife were also slept in the temporary hut erected at village Pargaon. Even thereafter, the victim was uttering words against the accused.

3. It is further alleged that, during intervening night of 02/11/2021 to 03/11/2021 at about 1.20 am victim was shouting loudly and was uttering abuses to accused. The accused was tried to convince the victim, however he assaulted the accused on his head by means of stick, due to which accused became annoyed, picked up stick and inflicted blow on head of victim, due to which he fell down on the ground. Accused feel that, he is became unconscious, therefore he was left on bedding. He noticed that, the blood was oozing from ear and nose of the victim. He feel that victim will regain consciousness after some time, however there were no movements of the body of victim, therefore the accused was became scared. He came to know that, his father is died. He could not understand what is to be done, therefore he along with his wife went

in the chowk at Pargaon. He was repented by his act, therefore he went to police station and narrated the incident to police in Kedgaon Police Chowky. Thereafter, the police along with accused reached to the spot, thereat accused shown dead body of his father to police. Some peoples were called by the police. The accused narrated entire incident to the police in presence of people gathered at the spot. The police recorded the statement made by accused and on that basis initially registered occurrence report no. 431/2021. Then registered FIR no. 968/2021 with Yawat Police Station for the offence punishable under Section 302 of Indian Penal Code.

3. Further investigation conducted by PW 7 PSI Gamble. During investigation, he visited the spot, drawn spot panchanama Exh.69. He drawn inquest panchanama of the dead body of victim as per Exh. 64. He collected advance death certificate Exh. 56, post mortem examination report Exh. 57. He has submitted report Exh. 66 for collecting blood samples of deceased. He arrested the accused under arrest panchanama Exh. 67. He has seized clothes of deceased under Seizure panchanama. He recorded the statement of witnesses. He recorded memorandum panchanama Exh. 41, he seized articles at the instance of accused. He also seized clothes of accused under seizure panchanama Exh. 51. He has deposited said clothes under list Exh. 71. He submitted application Exh. 72 for recording confession of accused. The confessional statement of accused was recorded at Exh. 73 by the Magistrate. He sent seized muddemal articles to Asst. Director, Forensic Science Laboratory, Pune for analysis along with letter Exh. 74. On completion of investigation filed charge-sheet against accused.

4. Offence under Section 302 of IPC is exclusively triable by Court of Sessions, therefore Ld. Magistrate committed the case for trial to this court.

5. Charge was framed at **Exh.10** for the offence punishable under Sections 302 of the Indian Penal Code against the accused. The contents of charge were read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed to be tried. During trial accused was enlarged on bail.

6. The defence of the accused transpired from cross-examination of the witnesses and his statement **Exh. 76** recorded under Section 313(1)(b) of Cr.P.C. is that of total denial.

7. Following points arises for my determination and I have recorded my finding thereon for the reasons given there under:-

Sr.No.	POINTS	FINDINGS
1	Whether prosecution proves that death of Ratansinh Chitodiya is homicidal ?	In the Affirmative.
2	Whether prosecution proves that, accused committed murder of victim Ratansinh Chitodiya, intentionally or knowingly causing death of victim by inflicting blow of stick on his head?	In the Negative.
3	What offence proved against the accused ?	No Offence has been proved.
4	What Order ?	As per final order.

REASONS

AS TO POINT NO. 1 and 2:

Ingredients of the offence under Section 302 of IPC :

8. In order to establish the guilt of accused for the offence of murder punishable under Section 302 of Indian penal Code, the prosecution is under obligation to prove that, (1) death of human being is caused by the accused, (2) the act by which the death was caused was (a) with intention to cause the death or (b) with the intention of causing such bodily injury as the accused knew to be likely to cause death of victim or (c) with the intention of causing bodily injury to the deceased and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause the death or (d) with the knowledge that the act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and the accused has committed such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Arguments :-

9. The learned APP Mr. Navale K. S. submitted that, FIR has been lodged by accused himself. Its contents have been proved by PW 7 investigation officer. The further evidence came on record from the mouth of PW 1 clearly shows that, the accused has made confessional statement in presence of this witness and admitted his guilt of committing murder of victim Ratansinh Chitodiya. Evidence of PW 2 shows that, on 03/11/2021 at about 12.30 am he has gone to switch on pump set installed at river, at that time he witnessed the incident of quarrel going on between victim Ratansinh Chitodiya and

accused. Subsequently he came to know in the morning that, father of accused is died. He further submitted that, accused also confessed his guilt before PW 3. This evidence has been corroborated by PW 1. PW 4 has proved memorandum statement of accused and recovery of muddemal stick M.O. No.1 and Jerkin M.O. no.2 at the instance of accused. PW 5 pancha witness of seizure panchanama proved the seizure of clothes of victim under panchanama Exh.50. He has identified those articles M.O. No.3 and M.O.No.4. He also proved seizure of clothes of accused under seizure panchanama Exh. 51. He identified those articles M.O.No. 5 and M.O. No.6. PW 6 Medical Officer has proved the recitals of death certificate Exh. 56, recitals of P.M. Report Exh. 57. Both these documents coupled with evidence of PW 6 shows that, death of victim Ratansinh Chitodiya has been caused due to cardio respiratory arrest, due to head injury. The investigation officer has narrated the details of investigation conducted by him. As per his submission, all these evidence came on record shows that, the prosecution has proved the guilt of accused beyond reasonable doubts.

10. The learned counsel for defence submitted that, the evidence of PW 1 shows that, accused made confessional statement in the presence of police and in his presence. Evidence of PW 3 and PW 7 also shows that, accused made confessional statement in their presence and in the presence of PW 1. However, this confessional statement is hit by Section 25 of Indian Evidence Act, therefore it cannot be relied upon to base the conviction. PW 2 appears to be a chance witness, however evidence came in his cross-examination shows that, he had no acquaintance with victim and accused before the incident, therefore it is highly impossible that, he has identified

the voices of victim and accused in alleged quarrel. He is not natural witness. Hence, no reliance can be placed on his evidence. PW 4 is a panch witness of memorandum panchanama and seizure panchanama in respect of seizure of stick and jerkin. However, the story put forth by the prosecution itself is self contradictory. According to the prosecution case accused himself reached to the police station, confessed his guilt, narrated the entire episode, on that basis FIR has been registered. In these set and facts of circumstances, it is highly impossible that the accused has concealed the muddemal stick and jerkin. Thus, no reliance can be placed on such self contradictory evidence of prosecution. Further he submitted that, the seizure panchanama of the clothe of victim shows that, there were no blood stains on his clothes, whereas blood stains were found on the clothes of accused. There was no bleeding injury to the victim, then how blood stains came on the person of accused has not been explained by the prosecution. Thus, these evidence is not free from doubts. PW 6 Medical Officer stated that, there was only one injury shown in the column no.17. PW 7 investigation officer himself recorded the FIR of accused and he himself conducted the investigation. It shows that, PW 7 interested person has conducted the investigation. Thus, there is no direct or circumstantial evidence on record showing the nexus of accused with death of victim. The prosecution has relied upon confession Exh. 73 of accused, however it is contradictory to the evidence of prosecution witnesses. Not only this but the prosecution has not bring on record evidence showing that, the said confession made by accused was voluntary, hence no reliance can be placed on said confessional statement. Thus, as per his submission, the prosecution has failed to prove the charge leveled on accused beyond reasonable doubts.

11. In support of his submission, the learned counsel for defence placed reliance on following case laws :

Sr. No.	Case Laws
1	Aghnoo Nagesia Vs. State of Bihar, MANU/SC/0079/1965, Supreme Court of India.
2	Mintu Hasda and Anr. Vs. The State of Assam & Anr., 2018 Supreme (Gau) 43, decided on 06.04.2018, High Court of Gauhati, at Assam, Nagaland, Mizoram and Arunachal Pradesh
3	Santosh Baburao Shinde Vs. State of Maharashtra, MANU/MH/2425/2015, High Court of Bombay
4	Narayan Yadav Vs. State of Chhattisgarh, MANU/SC/1018/2025, Supreme Court of India
5	Vasant Chandar Waghmare Vs. The state of maharashtra, MANU/mh/2734/2021, high court of bombay
6	Raju Kshatriya Vs. The State of Maharashtra, MANU/MH/3758/2025, High Court of Bombay

Assessment of Evidence and Conclusion :-

12. In the light of arguments advanced on behalf of both sides and case laws relied on behalf of defence, evidence came on record is required to be scrutinized and conclusion is required to be drawn whether or not the prosecution has proved essential ingredients of the offence punishable under Section 302 of Indian Penal Code referred herein above.

13. In present case so as to prove that, death of victim Ratansinh Chitodiya is homicidal death. The prosecution has placed reliance on inquest panchanama Exh. 64, advance death certificate Exh. 56, Postmortem report Exh. 57 and evidence of PW 6 Medical Officer. The recitals of inquest panchanama Exh. 64 have been

proved by the evidence of PW 7 investigation officer. The contents of inquest panchanama shows that, the probable cause of death might be head injury. Advance death certificate and PM report Exh. 56 and 57 have been duly proved by the evidence of PW 6 Dr. Ramesh Jadhav. He categorically testified that, he conducted postmortem examination on dead body of victim Ratansinh Chitodiya on 03/11/2021 between 5.35 pm to 6.35 pm. He found abrasion on left lateral side of left eye 2 cm x 1 cm. Fracture of right side parietal bone. He found Hematoma under left parieto frontal region of scalf 5 x 7 cm. Intra bleeding was present in brain. Cause of death was cardio respiratory arrest due to head injury. The learned counsel for the defence tried to point out that, there is only one injury shown in P.M. report Exh. 57 in column no. 17. Thus, the prosecution has not proved cause of death. However, I do not find much substance in this argument as though there was only one external injury as shown in the column no. 17 in the PM report Exh. 57, PW 6 Medical Officer has proved the internal injuries which are corresponding to the injury shown in column no. 17 in P.M. report. No reason came on record to discard evidence of PW 6 regarding cause of death of victim Ratansinh Chitodiya. PW 6 categorically confronted in his cross-examination that, he found only one external injury i.e. abrasion on left lateral side of eye, however he clearly opined that, if there is a fracture of skull and internal bleeding in the brain, then hematoma is not curable injury. He also opined that, hematoma and fracture of parietal bone are connected injuries to each other. He also testified that due to fracture of parietal bone there was internal bleeding and due to which hematoma was caused. Thus, this evidence came from the mouth of PW 6 coupled with advance death certificate Exh. 56 and post mortem examination report Exh. 57

clearly shows that, the death of victim Ratansinh Chitodiya is homicidal death due to cardio respiratory arrest, due to head injury.

14. Now, the next crucial point remain for determination before this court is that, whether or not the accused is having nexus with homicidal death of victim Ratansinh Chitodiya, in other words whether or not the accused is responsible for intentionally causing homicidal death of victim Ratansinh Chitodiya. In this regard the prosecution has placed much reliance on evidence of PW 1 to PW 3 and PW 7 Investigation officer and other circumstantial evidence.

15. In case of **Aghnoo Nagesia Vs. State of Bihar (cited supra)** the Hon'ble Apex Court observed that,

“If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confession statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of s. 25 is lifted by s. 27.”

16. In case of **Mintu Hasda and Anr. Vs. The State of Assam & Anr. (cited supra)**, the Hon'ble High Court observed that,

“ It is well settled law that Sections 25 and 26 of the Evidence Act must be construed strictly. Therefore, by operation of Section 26 of the Evidence Act, the confessions made by the appellants while they were in the custody of police cannot be proved against them. This being the legal position, the trial court ought not to have acted upon such extra judicial confessions of the appellants made in the presence of police at the Police Station. Hence, the confessions are apparently not admissible in evidence and could not have been acted upon.”

17. In case of **Narayan Yadav Vs. State of Chhattisgarh, (cited supra)**, the Hon'ble Apex Court observed that,

““FIR of a confessional nature made by an accused person is in-admissible in evidence against him, except to the extent that it shows

he made a statement soon after the offence, thereby identify him as the maker of the report, which is admissible as evidence of his conduct under Section 8 of the Act of 1872. Additionally any information furnished by him that leads to the discovery of a fact is admissible under Section 27 of the Act of 1872. However, a non confessional FIR is admissible against the accused as an admission under Section 21 of the Act of 1872 and is relevant.

Thus, the first error that the High Court committed was to read the contents of the FIR lodged by the appellant into evidence. As observed earlier, the FIR lodged by the appellant amounts to a confession and any confession made by an accused before the police is hit by Section 25 of the Act of 1872.”

18. In present case evidence came from the mouth of PW 3 and evidence of PW 7 shows that, accused had gone to Kedgaon Police Chowky and confessed that, he has inflicted blow of stick on head of his father, due to which his father is died. Thereafter, the police officers along with accused went to the spot and saw the dead body of victim Ratansinh Chitodiya. Many peoples were gathered at the spot. The accused once again confessed the offence. Evidence of PW 1 shows that, he came to know about the incident then he went to the spot of incident. Police Officers and other peoples were present there. In presence of police and those peoples present at the spot, accused narrated the incident of assaulting his father by means of stick. It is not case of prosecution that, the accused was in the custody of police, he gave memorandum statement and it was recorded in writing in compliance with Section 27 of Indian Evidence Act and thereafter the dead body of victim Ratansinh Chitodiya was discovered at his instance. It means it is a statement made by accused to the police. In view of the ratio laid down in case laws cited supra relied on behalf of accused. The statement made by accused to the police and proof of such confession is prohibited by Section 25 of the Evidence Act. Hence, no reliance can be placed on confession of accused in view of Section 25 of Indian Evidence Act.

19. Further evidence of PW 3 and PW 7 shows that, after statement made by accused at the spot of incident, he was taken back to the Kedgaon Police Chowky and then FIR Exh. 61 was recorded in view of the confession made by the accused. On that basis FIR no. 968/2021 for the offence under Section 302 of Indian Penal Code was registered against the accused. This FIR Exh. 61 also hit by Section 25 of the Indian Evidence Act, 1872.

20. Apart from above discussion, it is pertinent to note that, in cross-examination of PW 3, he testified that the offence confessed by accused at first, coming to Kedgaon Police Chowky was not recorded into writing. Even if, the information given by accused was cognizable offence, no entry was taken in station diary or in complaint register. Even PW 7 investigation officer also categorically testified that, confession made by accused firstly in Kedgaon Police Chowky was not recorded and no station diary entry was taken in that regard. Even he has not taken entry into the station diary in respect of the confession made by the accused at the spot of incident. The accused was having injuries on his head and this fact was revealed after medical examination of accused before his arrest. However, no explanation has been given by the prosecution why the evidence of sustaining injury by accused has not been brought on record.

21. It is pertinent to note that, evidence came on record in cross-examination of PW 7 shows that, Seema Chitodiya was the eye-witness of the incident in question, however the investigation officer

or any other officer has not recorded her statement in entire investigation of this case. It reveals from the record and evidence of PW 7 Investigation Officer that, the incident in question took place on 03/11/2021 at about 1.20 am. Accused was present in Kedgaon Police Chowky at about 8.00 am and alleged to have been made confessional statement, however FIR has been registered at about 17.56 hours i.e. 5.56 pm. Further it is pertinent to note that, it was possible to the investigation officer or any other police officer either to record FIR of Seema Chitodiya or any police officer, however instead of doing so, the police officer recorded FIR Exh. 61 of accused Ajay Chitodiya, for the reasons best known to them. As referred above the FIR Exh. 61 which is in the form of confessional statement of accused is hit by Section 25 of Indian Evidence Act and in view of the ratio laid down in case laws cited supra relied on behalf of defence, hence, no reliance can be placed on FIR Exh. 61 and also on the evidence of PW 3 and PW 7 and also on the evidence of PW 1.

22. In case of **Vasant Chandar Waghmare Vs. The State of Maharashtra (cited supra)**, Hon'ble High Court observed that,

“It is settled principle that the sanctity of extra-judicial confession would depend upon veracity and credibility of the witness to whom it was made. It is a weak piece of evidence and an accused can be convicted on the basis of the same provided that it is free from doubt and the conduct of the person to whom such confession was made, soon after the incident would inspire confidence of the Court. To make extra judicial confession reliable, it has to be necessarily clear, consistent and convincing. In this case, the extra-judicial confession does not pass this test and hence the prosecution has failed to prove its case beyond reasonable doubt.”

23. In present case according to the prosecution case

accused Ajay Chitodiya has made extra judicial confession before PW 1 and it is admissible in evidence. However, on perusal of evidence of PW 1 as well as evidence of PW 3 and PW 7 it appears that, there was no relationship of any nature between accused and PW 1 so as to make extra-judicial confession before him. Another most important aspect in present case is that, the accused has not made extra-judicial confession exclusively to PW 1. Evidence came from the mouth of PW 1 shows that, when he came to know about the incident, he was reached to the spot, already police officers and other villagers were present at the said spot. The accused was making confessional statement to the police. Evidence of PW 3 shows that, PW 1 was called by the Investigation Officer PW 7. Then in presence of witness and police accused made confession. Therefore, by stretch of imagination it cannot be gathered that, the statement made by accused in presence of police is an extra-judicial confession made before PW 1. Hence, no reliance can be placed on evidence of PW 1 in respect of alleged extra-judicial confession made by accused.

24. In above cited case **Vasant Waghmare Vs. State of Maharashtra**, Hon'ble Bombay High Court clearly observed that, sanctity of extra-judicial confession would depend upon veracity and credibility of the witness to whom it was made. It is a weak piece of evidence and an accused can be convicted on the basis of the same provided that it is free from doubt and the conduct of the person to whom such confession was made, soon after the incident would inspire confidence of the Court. To make extra judicial confession reliable, it has to be necessarily clear, consistent and convincing.

25. In present case as discussed herein above, there is no

clear extra-judicial confession to PW 1. Moreover PW 1 is a witness called by PW 7 investigation officer after visiting the spot and he is not independent witness. There is no any relationship between accused and PW 1, such as employer, employee or any fiduciary capacity or friendship etc. to make him an extra-judicial confession. Thus, the alleged extra-judicial confession made to PW 1 is not free from doubt and cannot be relied upon to base the conviction.

26. The prosecution also placed reliance on last seen evidence of PW 2, as he testified that, on 03/11/2021 at about 12.30 pm he had gone to switch on electric motor pump installed on river, at that time he noticed the incident of quarrel going on between Accused Ajay Chitodiya and his father victim Ratansinh Chitodiya. They were uttering abuses to each other. When he was returning back, there was silence at the place. On next day at about 10.00 am to 11.00 am he came to know that, death of father of accused has been caused. The said spot was in the land of one Mr. Shinde. However, in his cross-examination he categorically testified that, before this incident he was not acquainted with accused and his father. Then how he realized that, it was a quarrel between accused and his father, has not been explained by him. Moreover, this witness PW 2 never stated that, he saw the incident of assault going on between accused and his father. Hence, the evidence of this witness does not inspires confidence to infer that, really he has witnessed accused and victim in the company of each other while quarreling with each other. Hence, no reliance can be placed on the evidence of PW 2.

27. It is pertinent to note that, Seema Chitodiya the wife of

accused was present at the spot of incident. She might have witnessed the incident and she was the sole eye-witness of this incident. However, PW 7 investigation officer categorically testified that, during entire investigation of this case, he has not recorded statement of Seema Chitodiya. Even the prosecution has not taken steps to examine Seema Chitodiya as a witness of prosecution in present case. According to prosecution case the incident in question took place during intervening night of 02/11/2021 to 03/11/2021 at about 1.20 am. Further according to the prosecution case, accused, his wife Seema Chitodiya, Father Ratansinh Chitodiya were residing in temporary hut (पाल) erected in the land of one Mr. Shinde within jurisdiction of village Pargaon, Tal. Daund. In natural course at such midnight time of 1.20 am no presence of other independent witness at the alleged spot of incident is expected. The sole witness of this incident was Seema Chitodiya. However, as referred above the investigation officer PW 7 has not recorded her statement during investigation and prosecution also not examined her as a prosecution witness. Hence, this lacuna left by the prosecution is fatal to the case of prosecution.

28. The prosecution has also placed reliance on circumstantial evidence in respect of recovery of stick M.O. no.1 and recovery of jerkin M.O. No.2 in view of memorandum statement made by accused. PW 4 is a panch witness of memorandum and seizure panchanama Exh. 41 and PW 7 investigation officer has drawn the said recovery panchanama. PW 4 testified that he along with another pancha Machindra Vasant Randive were called by the police in Kedgaon Police Chowky. According they went to Kedgaon Police Chowky and met to PW 7. Accused gave memorandum

statement that, he will produce stick and jerkin kept secretly by him. Then police, pancha witnesses and accused went to village- Pargaon by police jeep. Near bridge on river the police jeep was stopped. Thereafter, accused, both panchas, police officers alighted from the jeep and proceeded by walk, following the accused. Accused took them in a agricultural land. He took out stick and jerkin M.O. no. 1 and M.O. no.2 from the sugarcane crop and produced before them. Thereat panchanama Exh. 41 was drawn. However, evidence came in his cross-examination categorically shows that, before proceeding to the spot, police told him that, stick and jerkin in offence of murder has to be seized. He also testified that, his signatures were obtained on seizure panchanama in Kedgaon Police Chowky. He further testified that, when he reached to Kedgaon Outpost Police Chowky, panchanama was written, his name was asked and his signature was obtained. This evidence came in his cross-examination goes to show that, the entire procedure was completed in Kedgaon Outpost Police Chowky without visiting the spot. Hence, no reliance can be placed on such evidence which is of a circumstantial nature.

29. Even the evidence of PW 7 investigation officer in respect of memorandum statement made by accused and recovery of stick and jerkin on the basis of said memorandum statement is not free from doubt, as he testified that, on 05/11/2021 memorandum statement made by accused was recorded as per his narration, then along with accused and two panchas and other police officers went to the spot by private vehicle. After reaching to the spot, they alighted from the vehicle. Accused took them by walk in a agricultural land. Accused went in sugarcane crop, produced stick and jerkin and those articles were seized under panchanama Exh.

41. However, this evidence of PW 7 does not disclose what memorandum statement was made by the accused. Even he has not testified that, by following procedure under Section 27 of Indian Evidence Act, memorandum statement of accused was recorded in the presence of pancha witnesses. His evidence does not disclose that, after completing procedure of memorandum panchanama they were proceeded as per the direction of accused. Moreover, according to the PW 4 police jeep was used for traveling from Kedgaon Police Chowky to the spot whereas evidence of PW 7 investigation officer shows that, they were proceeded by private vehicle. These controversies and discrepancies in the evidence of PW 7 investigation officer and pancha witness PW 4 creates shadow of doubt about genuineness of the memorandum panchanama and seizure panchanama in respect of recovery of stick and jerkin. Hence, no reliance can be placed on such evidence.

30. One more significant fact in present case is that, according to the prosecution case accused was repented, therefore he himself went to Kedgaon outpost Police Chowky and confessed his offence before police officer. In these set of facts and circumstances, it is highly impossible that, he has concealed stick M.O. no.1 and Jerkin M.O. no.2 in the field of sugarcane crop. Hence, no reliance can be placed on memorandum and recovery panchanama Exh. 41.

31. The prosecution has also placed reliance on seizure panchanama Exh. 50 in respect of seizure of clothes of victim, seizure panchanam Exh. 51 in respect of seizure of clothes of accused and evidence of PW 5 pancha witness. PW 5 testified that, he was called to act as a pancha on 04/11/2021 in Kedgaon Police

Chowky. Another pancha Ramdas Shankar Pawar was present. Clothes were shown to them. There was one pink colour design shirt and half pant of blue colour having greenish line on it. Those clothes were seized in their presence under seizure panchanam Exh. 50. He identified both articles M.O. no.3 Shirt and M.O. no. 4 Half pant. He also proved the seizure of clothes of accused under panchanama Exh. 51 and identified M.O. no. 5 shirt and M.O. no. 6 black colour pant. PW 7 also corroborated his evidence in respect of seizure of clothes under panchanama Exh. 50 and 51. He also proved the receipts of muddemal Exh. 70, Exh. 71. However, in absence of other substantial evidence, the recovery of clothes of victim and accused under panchanama Exh. 50 and under panchanama Exh. 51 has no much significance.

32. In case of **Raju Kshatriya Vs. The State of Maharashtra (cited supra)**, Hon'ble High Court observed that,

“Thus, we find that the prosecution has failed to prove each of these circumstances independently beyond reasonable doubt and even if taken together they do not form a reliable and complete chain of circumstances against the present Appellant. With the result, the Judgment and order of conviction and sentence is not sustainable. The Appellant deserves to be acquitted from all the charges.”

33. In case of **Santosh Baburao Shinde Vs. State of Maharashtra (cited supra)**, the Hon'ble High Court observed that,

“After keeping in mind the principles relating to a case based on circumstantial evidence which we have stated in paragraph 5 above, we have evaluated the evidence and in the present case, we find that it cannot be said that all the links in the chain of circumstances are complete. Every link in the chain of circumstances relied upon by the prosecution in the present case has some or other infirmity or lacuna and therefore, such evidence cannot be relied upon to base a conviction.”

34. In present case as discussed herein above it is not case

totally based on circumstantial evidence. Seema Chitodiya the wife of accused was eye witness of the incident, however the investigation officer PW 7 has not recorded her statement during investigation and the prosecution has not examined her as a witness during trial in this case. Further though it is accepted for sake of argument that, the case of prosecution is based on circumstantial evidence, it is well settled principle of law in view of the ratio laid down in case of **Santosh Baburao Shinde Vs. State of Maharashtra and Vasant Waghmare Vs. State of Maharashtra (cited supra)** relied on behalf of defence that, in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion, consistent with the innocence of the accused and it must be such as to show that, within all human probability the act must have been done by the accused. However, in present case, no complete chain of evidence bring on record indicating that in all the facts the accused might have done the act within all human probability and he has caused the death of victim. Thus, there is no circumstantial evidence indicating the fact that, the accused is guilty of the offence of committing murder.

35. The prosecution also placed reliance on confession statement Exh.73 of the accused recorded under Section 164 of Code of Criminal Procedure. This statement is admissible under Section 80

of Indian Evidence Act, therefore it has been exhibited and taken in evidence. On perusal of the statement alleged to have been made by accused before the Magistrate it reveals that, the contents in it are not consistent with the case of prosecution. It is not case of prosecution that, victim assaulted accused firstly by means of fist and kick blows on account that he has not paid money for consuming liquor. Even it is not case of prosecution that, victim assaulted accused by means of spear and caused injuries on head and forehead of accused. Even it is not case of prosecution that, in a morning accused made phone call to police and called them and then he confessed his offence before the police.

36. As per settled principle of law confessional statement of accused can be a sole basis for convicting the accused for the offence registered against him, however the condition precedent for accepting the confessional statement of accused and convicting him on that basis is that, confessional statement of accused must be voluntary and free from doubt. In present case no reliable evidence brought by the prosecution showing that, confessional statement Exh. 73 made by accused is voluntary and made by the accused by his free will, in free atmosphere. Moreover, there is no corroborative evidence consistent with contents of confessional statement Exh. 73. Hence, this court is of the view that, the prosecution has failed to prove that, confessional statement Exh. 73 is voluntary and it has been corroborated by other evidence. Hence, no reliance can be placed on such confessional statement of accused to base the conviction.

37. It is cardinal principle of Criminal Justice System that

the prosecution has to prove essential ingredients of the offences registered against the accused beyond reasonable doubts, else the benefit of doubt goes to the accused. In present case in view of above discussion this court comes to the conclusion that the prosecution has failed to establish all essential ingredients of the offences registered against accused much less beyond reasonable doubts. Therefore, the benefit of doubt goes to the accused. Ultimately accused is entitled for acquittal. In the result, I answered points no. 1 and 2 in the negative and proceed to pass following order.

ORDER

1. Accused **Faujasinh @ Ajay Ratansinh Chitodiya** is hereby acquitted vide Section 235(1) of the Code of Criminal Procedure, of the offences punishable under Sections 302 of the Indian Penal Code, 1860.
2. The bail-bonds of accused stands cancelled.
3. As per Criminal Manual, Chapter-VII, Para-73(d), the muddemal property Serial No. 1 to 6 shall be disposed of after one year from the date of decision of this case. If in the meanwhile, intimation of appeal having been filed in the Hon'ble High Court is received then the said muddemal shall not be disposed of until a period of one year expires from the date of the decision of appeal to the Hon'ble High Court.
4. Accused **Faujasinh @ Ajay Ratansinh Chitodiya** shall execute fresh P.R. bond of **Rs.50,000/- (Rupees Fifty Thousand only)** and furnish surety in like amount in compliance with Section **437(A)** of the Code of Criminal Procedure, 1973.
5. Interlocutory applications pending if any, stands disposed of.

6. The proceeding is disposed of accordingly.
[Pronounced in the open Court]

Baramati.
Date : 02/04/2026

[**B. D. Shelke**]
Additional Sessions Judge,
Baramati, Dist. Pune

