


Presented on : 07/02/2025
Registered on : 07/02/2025
Decided on : 23/03/2026
Duration : 01 Y, 01 M, 16 D.

Part-'A' (Title Page of Judgment) <i>(Para 44 (ii) of Chapter VI of Criminal Manual)</i>	
	<u>IN THE COURT OF SESSIONS JUDGE, WASHIM</u> Present: M. S. Sahastrabudhe, Additional Sessions Judge, Washim [Date of the Judgment: 23/03/2026] [Spl. Atro. Sessions Case No. 09/2025] CNR No. MHWS010001532025
Exh. No.	
Complainant	State of Maharashtra through Police Station, Malegaon, Tq. Malegaon Dist. Washim. Crime No. 567/2024
Represented By	A. P. P. Smt. M. T. Misar
Accused	Shubham Subhash Chavhan Age 24 years, Occup. Labour r/o Lahuji Nagar, Malegaon, Tq. Malegaon, Dist. Washim
Represented By	Adv. Mr. S. K. Undal & A. S. Undal for accused.

Part – 'B'
(Para 44 (ii) of Chapter VI of Criminal Manual)

Date of Offence	10/11/2024
Date of FIR	10/11/2024
Date of Charge-sheet	06/02/2025
Date of Framing of Charges	24/02/2025
Date of commencement of evidence	27/03/2025
Date on which judgment is reserved	--
Date of the Judgment	23/03/2026

Date of the Sentencing Order, if any	24/03/2026
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Accused Details

Rank of 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	Shubham Subhash Chavhan	10/11/24	UTP	Ss. 103 (1) of BNS and Ss. 3 (2)(v) of the SC & ST (Prev. of Atro.) Act.	Convicted in offence p.u.s. 103 (1) of BNS	Imprisonment for life and with fine of Rs.10,000/-	10/11/24

Part- 'C'

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

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Akshay Sunil Gaikwad	Eye witness
PW-2	Aakash Kailas Pawar	Informant
PW-3	Gaurav Kaduba Nikalje	Eye witness
PW-4	Aditya Chandu Jadhav	Eye witness
PW-5	Dr. Narendra Sahebrao Mundale	Medical witness
PW-6	Vijay Ganpatrao Jadhav	Police witness
PW-7	Dr. Saurabh Shilal Bhutada	Medical witness
PW-8	Dr. Sachin Shivaji Sanap	Medical witness
PW-9	Shankar Dagadu Ingole	Panch witness
PW-10	Govind Suresh Ahir	Eye witness

PW-11	Shriram Govindrao Surve	Panch witness
PW-12	Vishnu Uttam Jadhav	Eye witness
PW-13	Navdeep Agrawal	Investigating Officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	Nil.	Nil.

C. Court witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW-1	Nil.	Nil.

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

Sr. No.	Exhibit Number	Description
1	Exh.9/PW-1	Statement of witness Akshay Sunil Gaikwad
2	Exh.18/PW-2	Report
3	Exh.19/PW-2	Printed FIR
4	Exh.24/PW-3	Statement u/s 164 of Cr.P.C. of witness Gaurav
5	Exh.29/PW-5	Postmortem report
6	Exh.30/PW-5	Letter to M.O. from I. O.
7	Exh.31/PW-5	Report about weapon examination
8	Exh.34/PW-6	Summons
9	Exh.35/PW-6	Inquest panchanama

10	Exh.36/PW-6	Request letter
11	Exh.37/PW-6	Duty pass
12	Exh.38/PW-6	Advance report
13	Exh.43/PW-7	CT scan report of thorax
14	Exh.44/PW-7	CT scan report of brain dtd. 10/11/24
15	Exh.45/PW-7	CT scan report of brain dtd.12/11/24
16	Exh.46/PW-7	Letter from police to doctor for condition of patient
17	Exh.47/PW-7	Letter to police from M. O.
18	Exh.51/PW-8	Intimation letter to police by M. O.
19	Exh.52/PW-8	Treatment papers of deceased
20	Exh.53/PW-8	Referral card
21	Exh.54/PW-8	Letter from SDPO to M. O.
22	Exh.67/PW-9	Spot panchanama
23	Exh.68/PW-9	Summons
24	Exh.71/PW-9	Confessional statement
25	Exh.72/PW-9	Seizure panchanama of iron rod
26	Exh.75/PW-11	Seizure panchanama of clothes of accused
27	Exh.76/PW-11	Seizure panchanama of pant of Ahir
28	Exh.79/PW-12	Statement of witness Vishnu Jadhav
29	Exh.83/PW-13	Letter from I. O. to Nagar Panchyat Malegaon for arranging panchas
30	Exh.84/PW-13	Letter from Nagar Panchyat Malegaon to I. O. for arranging panchas
31	Exh.85/PW-13	Letter from I. O. to informant for providing caste certificate
32	Exh.86/PW-13	Physical Medical Examination Report
33	Exh.87/PW-13	Letter from I. O. to P.I. Malegaon for providing protection to informant and witnesses
34	Exh.88/PW-13	Letter from I. O. to P.I. Malegaon for

		previous history of accused
35	Exh.89 & 90/PW-13	Copy of Station diary entry
36	Exh.91/PW-13	Letter to court for increasing section
37	Exh.92/PW-13	Copy of Station diary entry
38	Exh.93 & 94/PW-13	Seizure panchanama of DNA and blood samples
39	Exh.95/PW-13	Letter to M. O. by I.O. for providing medical document
40	Exh.96/PW-13	Letter to Lifeline Hospital
41	Exh.97/PW-13	Letter to M.O. by I.O. for providing PM Report
42	Exh.98/PW-13	Letter to SDM, Washim by I.O.
43	Exh.99/PW-13	Letter from SDM to I. O.
44	Exh.100/PW-13	Letter from I.O. to Social Welfare Dept.
45	Exh.101/PW-13	Letter from I.O. to Forensic Lab. Amravati
46	Exh.102/PW-13	Duty pass
47	Exh.103/PW-13	Written report issued by Forensic Lab.
48	Exh.104/PW-13	Letter to court for recording statement of informant and witnesses
49	Exh.105/PW-13	Letter from court to I.O. for copies of statement
50	Exh.106/PW-13	Letter from I.O. to Forensic Lab. for sent of remaining samples
51	Exh.107/PW-13	Duty pass
52	Exh.108/PW-13	Written report after submitting the sample

B. Defence :

Sr. No.	Exhibit Number	Description
1	Exhibit	Nil

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1	Article-A	Caste Certificate

D. Material Objects :

Sr. No.	Exhibit Number	Description
1	Article-A	Iron rod
2	Article-B	Black Gray coloured Shirt & Pant
3	Article-C	Carbon Jeans pant
4	Article-D	Simple soil and blood mixed soil

:: J U D G M E N T ::

(Delivered on this 23st day of March 2026)

The accused is facing the trial for the offences punishable under Section 103 (1) of the Bharatiya Nyaya Sanhita, 2023 (*BNS for short*) and Section 3 (2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*Atrocities Act for short*).

The prosecution projected its case is as under :-

2] In brief, the prosecution case is that informant Aakash Pawar is brother of deceased Rohit Kailas Pawar. On 10/11/2024 informant Aakash Pawar lodged report with Malegaon police station contending that on 10/11/2024 at about 1.45 p.m., when he was having lunch with his mother in his house, friend of the deceased namely Aditya Jadhav came running and informed him that near Krishna Dairy quarrel had taken place between accused and the deceased. He further informed him that in the said quarrel accused

had assaulted the deceased Rohit with iron rod on his head and the deceased is injured. After getting the said information the informant immediately rushed to the spot and saw that the deceased was injured and was unconscious. Blood was oozing from the injury on his head. Immediately, the deceased was taken to Rural Hospital Malegaon by Govind Ahir, Akshay Gaikwad, Vishnu Jadhav and Gaurav Nikalje. However, as the condition of the injured was serious he was referred to Government Hospital, Washim and from there he was shifted to Lifeline Hospital, Washim. During the entire treatment the condition of the injured was serious and he was unconscious. The deceased belongs to SC community. On the basis of report given by the informant, offence was registered against the accused for the offences punishable under Section 109 of BNS r/w Section 3 (2) (v) of Atrocities Act.

3] Based on this report, police have registered crime No. 567/2024 for the offence punishable under Section 109 of BNS and 3 (2)(v) of Atrocities Act. During treatment, the injured Rohit had expired on 14/11/2024 at about 5.00 a.m. As such additional offence under Section 103 (1) of BNS was added in the crime registered against the accused. During investigation, the Investigating Officer visited the spot and from the said spot he had seized the plain soil and soil mixed with blood and had drawn spot panchanama and he had seized the clothes of the accused and the deceased and had collected their blood and other DNA samples and had prepared seizure panchanamas. He had sent the seized sample for chemical analysis. He had obtained the Caste Certificate of the deceased and got the same verified from the competent authority. The accused was arrested on the

day of the commission of the offence. During the investigation, the accused shown readiness to produce the iron rod used by him for assaulting the deceased. Iron rod is seized at the behest of the accused. Seized muddemal was sent to the Forensic Lab. The seized iron rod was referred to the Medical Officer for opinion. Postmortem report was collected. After investigation, I. O. submitted charge-sheet against the accused in the Court of J.M.F.C., Malegaon.

4] Since the offences under Sections 103 (1), 109 of BNS and 3 (2)(v) of Atrocities Act are exclusively triable by the Court of Session, the charge-sheet was filed in this Court. Since the date of arrest i.e. since 10/11/2024, the accused is in jail.

5] The charge Exh.03 was framed against the accused by my ld. Predecessor for the offences punishable under section 103 (1) of BNS and section 3 (2)(v) of Atrocities Act. It was read over and explained to the accused in vernacular. He pleaded not guilty vide Exh.04 and claimed to be tried. Hence, the Court proceeded to try the case.

6] In order to prove the charge, the prosecution has examined in all 13 witnesses referred in Part - C above and the prosecution has closed its side vide pursis Exh.110. Besides oral evidence, the prosecution has relied upon the documents referred in Part-C above. The statement of the accused under section 313 of Cr.PC came to be recorded vide Exh.111. His defence is of total denial. It is his specific defence that the deceased was under the influence of liquor and was

going on motorcycle. His motorcycle had slipped and he was injured. One Tushar Bali had given report against the deceased and two others and on the basis of same, offence was registered against the deceased Rohit Pawar and other two under section 307 of IPC and the deceased was in Jail for the said offence. The accused had hospitalised Tushar Bali and hence he is being implicated in false case by the informant. The accused did not adduce any evidence in rebuttal.

7] Heard ld. A.P.P Smt. M. T. Misar for the prosecution and ld. Adv. Mr. A. S. Undal for accused at length. The Ld. APP has argued that all the witness examined by the prosecution have supported the prosecution case. The prosecution has examined four eye witnesses and all of them have corroborated the version of each other in material particulars. The I. O. has collected medical evidence which shows that the deceased had succumbed to the injuries inflicted by the informant. The panchas and I. O. have proved the spot panchanama. So also they have proved that confessional statement of the accused recorded as per his version and recovery of the weapon used for the commission of offence at his instance. She has further argued that the I.O. has thoroughly investigated the matter. Thus, the prosecution has proved its case beyond reasonable doubt. Minor contradictions if any in the evidence of the witnesses are bound to appear due to lapse of time and the same should be discarded. In support of his submission she has placed reliance upon following authority.

Leela Ram Vs. State of Haryana, 1999 AIR (SCW) 3756, wherein it was held by the Hon'ble Supreme Court of India that, "*Discrepancies or Variations in ocular account of witnesses cannot*

effect the credibility of evidence if at all they are not so vital. Such discrepancies should not render the evidence of eye witnesses unbelievable.

8] On the other hand, ld. advocate for the accused has argued the case in total six parts. He has firstly submitted that the informant is not the eye witness and there are contradictions in his evidence recorded before the Court. His statement recorded under section 164 of Cr.P.C. and report. The prosecution has not recorded statement of any independent witness or mother of the deceased. He has time and again improved his version and his evidence should be discarded. Secondly he has argued that though the eye witnesses have stated that they have witnessed the incidence still, none of them have reported the incidence to police nor they have stated in the hospital that accused had assaulted the deceased. Further some of the prosecution witnesses have stated that accused had assaulted the deceased with iron pipe and others have stated that the assault was by iron rod. There is difference between iron pipe and iron rod. Thus the prosecution has failed to prove which weapon was used for the commission of the offence.

9] Thirdly he has argued that none of the eye witnesses have corroborated the version of each other. All the eye witnesses were admittedly friends of the deceased and their presence on the spot of incident is doubtful. All these witnesses are interested witnesses. Though all the eye witnesses have stated to have witnessed the incidence and to have hospitalised to accused, still none of them have stated either to the doctor or police after the incidence that accused

had assaulted the deceased. The I.O. has not seized their blood stained clothes or vehicle from the possession of the witnesses. Thus the conduct of the witnesses is not natural and their evidence does not inspire confidence. In support of his submission he has placed reliance upon following authorities :-

(i) ***Chunthuram Vs. State of Chhatisgarh, AIR 2020 Supreme Court 5495***, wherein it was held by the Hon'ble Supreme Court of India that, *"Appreciation of evidence – Accused along-with co-accused allegedly assaulted deceased with axe and sticks resulting into his death on spot. Though alleged weapons of offence recovered on basis of statement of accused but were not linked to crime. Eye witness who knew deceased, allegedly saw fatal assault on deceased and yet kept quiet about incident. His conduct in neither reporting matter to police nor informing any of his family members is unnatural. Testimony of eyewitness, unreliable, particularly because of his poor vision and hearing capacity. No material to show any proximate and immediate motive for crime."*

(ii) ***Din Dayal Vs. Raj Kumar @ Raju, 1998 AIR SCW 3847***, wherein it was held by the Hon'ble Supreme Court of India that, *"Eye witnesses closely connected with deceased. Did not accompany deceased to hospital nor had informed police about incidence. Their conduct is unnatural. One of eye witnesses who was close relative of deceased and who had accompanied deceased to hospital also did not disclose name of accused to police. Creates serious doubt regarding truthfulness of evidence of eye witnesses."*

(iii) ***State of Rajasthan Vs. Mani Ram, 2001 AIR SCW 2409***, wherein it was held by the Hon'ble Supreme Court of India that, *"Version of eye witnesses about number and nature of injuries received by deceased not supported by medical evidence. Conduct of one of eye witnesses in not making any attempt to save deceased who was his grand-mother and with whom he was*

living, not natural. His explanation that he was frightened due to sudden attack also not normal and natural as he was healthier than accused. Order of acquittal of accused. Upheld.”

(iv) ***Kuldip Yadav Vs. State of Bihar, 2011 Cri. L. J. 2640***, wherein it was held by the Hon'ble Supreme Court of India that, “*Evidence of eye witnesses. Credibility – Eye witnesses were also interested witnesses on account of their relationship with deceased. Being inimically deposed against accused persons their version is highly exaggerated, contrary to each other and not fully corroborated with medical evidence. There are discrepancies about number of accused persons, weapons and ammunition carried by them and they are not in tune with what informant has stated in his deposition. Their evidence is not credible.*

(v) ***Alladin Vs. State of Assam, AIR 2024 Supreme Court 2283***, wherein it was held by the Hon'ble Supreme Court of India that, “*Accused persons picked up deceased from his residence and assaulted and killed him with sharp weapon, dao. There were material contradictions and omissions in testimonies of witnesses. Trial Court did not follow correct procedure while recording contradictions. Trial Court did not mark witnesses prior statement based on which they were sought to be contradicted in cross-examination. There was no reliable evidence to show involvement of accused persons. Further, last seen theory was not proved against accused persons. Conviction was set aside.”*

10] The ld. advocate for the accused has further argued that the medical witnesses examined by the prosecution have admitted that the injuries sustained by the deceased can be caused if a person falls down violently from the motorcycle. Further the prosecution has failed to prove the recovery of the weapon at the instance of the accused. The panchas examined by the prosecution have admitted that the accused had confessed to produce iron rod however, the seized weapon was a

iron pipe. The place from where the weapon was seized was a open space accessible to all. The cloth in which the weapon was wrapped was not seized by the I.O. Further panch witness Shankar PW9 has admitted that the accused was handcuff, when he was taken for recovery of the weapon. This shows that the accused was forcefully taken to the spot from the where the weapon was recovered. In support of his argument he has placed reliance upon following authorities :-

- (i) ***D. Thamodaran Vs. Kandasamy, AIR 2016 SC (SUPP) 707,*** wherein it was held by the Hon'ble Supreme Court of India that, "Evidence as to recovery of weapon. Prosecution witnesses specifically stated that weapon used was an iron pipe, however, alleged recovery was made of one iron rod. There is difference between an iron pipe and an iron rod. Thus prosecution failed to connect alleged recovered weapon with weapon used in incident."
- (ii) ***Shankar Raju Banglorkar Vs. State of Goa, 1992 Cri.L.J. 3034,*** wherein it was held by the Hon'ble Bombay High Court that, "Disclosure by accused in police station while he was handcuffed. Disclosure, held was made under duress, pressure or threats given by police and hence not admissible in view of Art. 20 of Constitution."

11] Lastly the ld. advocate for the accused has argued that the I.O. has not carried out the investigation properly and it suffers from lacuna. From the date of seizure till depositing the property in the muddemal room, it was in custody of the I.O. and hence there is every possibility of tampering with the seized property. Thus he has argued that there are material contradictions and omissions in the evidence of the witnesses. Thus the prosecution has failed to prove the

foundational facts and the guilt of the accused beyond reasonable and the accused needs to be acquitted.

12] On perusal of charge, evidence on record, statement of accused under Section 313 of Cr.P.C. and after considering oral submissions of prosecution and defence side, following points arise for my determination. The said points along-with the reasons and findings thereon are as follows :-

Sr. No.	Points	Findings
1)	Does the prosecution prove that Rohit Kailas Pawar has expired on 14/11/2024 by homicidal death ?	Yes
2)	Does the prosecution prove that on 10/11/2024 at about 1.30 p.m. near Krushana Dairy, Malegaon Tq. Malegaon, accused committed murder of Rohit Kailas Pawar ?	Yes
3)	Does the prosecution prove that on the above date time and place and during the course of same transaction the accused not being the member of Scheduled Caste and Scheduled Tribe and knowing that deceased Rohit Kailas Pawar, was member of Scheduled Caste committed his murder which is punishable up to death sentence ?	No
4)	What order ?	As per final order.

:: REASONS ::

As to point No. 1 :

13] To substantiate charge against the accused, prosecution has

examined in all thirteen witnesses and also relied on certain documents. I will refer and discuss material document at the relevant place.

14] The prosecution has examined Akshay PW1, Gaurav PW3, Govind PW10 and Vishnu PW12, who are the eye witnesses of the incident. All these witnesses have deposed that accused gave blow by iron-pipe on the head and on the body of deceased. The deceased sustained bleeding injuries and succumbed to them. I. O. - Navdeep Agrawal PW13 has deposed that in the investigation, it was revealed that accused has committed murder of the deceased.

15] Adv. Shri. A. S. Undal for the accused has submitted that the deceased was driving motorcycle under influence of liquor and his motorcycle had slipped due to which he fell on the ground and has sustained injury mentioned in the postmortem report and injury certificate. As such, the prosecution has failed to prove beyond reasonable doubt that the deceased is died by homicidal death. On the other hand, ld. APP Smt. M. T. Misar had argued that all the witnesses examined by the prosecution have stated that accused had assaulted the deceased with iron pipe on his head and body. The direct evidence of the witnesses is corroborated by the medical evidence. No evidence is brought on record by the defence to conclude that deceased was under influence of liquor and his motorcycle had slipped and he was injured. Thus the death of the deceased is homicidal.

16] As argued by Ld. APP it appears that almost all the prosecution witnesses have deposed that the deceased was assaulted on his head and was seriously injured and he succumbed to those

injuries. Dr. Sachin Sanap PW8 is the Medical Officer attached to Rural Hospital Malegaon. He is the first doctor who attended the deceased. He has deposed that on 10/11/2024, the deceased was brought to the hospital at about 1.50 p.m. by Akshay Gaikwad, Govind Ahir and some other people. On examination this witness found that the deceased had two lacerations of size 2 X 2 c.m. over right ear and 6 X 2 c.m. over right parietal region. He has given primary treatment to the patient and had referred him for CT scan to District Hospital Washim. Immediately he had sent the intimation letter Exh.51 to police station Malegaon. The treatment papers of the treatment given by this witness to the deceased are filed at Exh.52. Similarly the referral card issued by this witness is filed on record vide Exh.53. During cross-examination, this witness had denied that the lacerated wound on the person of the deceased were possible, if a person forcefully falls down in a vehicular accident or if he falls on some projected object.

17] The informant Aakash Pawar has specifically deposed that as per the medical opinion, the deceased was taken from Rural Hospital Malegaon to Government Hospital Washim and then to Lifeline Hospital Washim. The prosecution has also examined the treating doctor namely Dr. Saurabh Bhutada PW7. This witness has specifically deposed that on 10/11/2024 the deceased was hospitalised in their Lifeline Hospital Washim. The patient was unconscious and was having saturation of 55%. As such he was taken on ventilator. The said deceased was having lacerated wound on his scalp. As such emergency saturation was done and 20 sutures were taken. The deceased was having heavy bleeding all over the body. He was sent for

CT scan of the brain on 10/11/2024. In the said CT scan multiple hemorrhagic contusion were seen in the brain of the deceased. The said injury was covering the left frontal, left parietal, right thalamus and mid brain. The CT scan of thorax was also done on the same day and it was showing that the patient was having four ribs fracture, out of which two were displaced fracture of ribs Nos.6 and 7. On 12/11/2024 the CT scan of the brain of the deceased was again done. However, it was showing consistent previous report and midline shift and on 14/11/2024 the deceased had succumbed to the injuries. The CT scan reports of the thorax dtd.10/11/2024 is proved by the prosecution vide Exh.43. Similarly the CT scan report of the brain of the deceased dtd.10/11/2024 and 12/11/2024 are proved by the prosecution vide Exh.44 and 45. This witness has further deposed that after death of the patient his body was handed over to police for postmortem. During cross-examination this witness has admitted that if a person violently falls during motor accident then the injury sustained by the patient can be caused. However, this witness has denied that the patient has not given the history of assault.

18] Dr. Narendra Mundale PW5 was attached to the Government Hospital at Washim and on 14/11/2024, he has conducted postmortem on the dead body of the deceased. He has deposed that three laceration were found on right parietal region, right ear pinna and right distal forearm of the deceased. He deposed that corresponding to the aforesaid injuries, there were under scalp hematoma, fracture of right parietal and temporal bone, meninges were torn on right parietal and temporal lobe. Subdural hematoma

was present on right parieto-temporal lobe. Subarachnoid hemorrhages were seen in right parieto – temporo occipital lobe. Hematoma was seen in the mid brain and ribs were fractured on the left side. He deposed that these injuries were the consequences of the lacerations found on the body of the deceased. He has deposed that all the injuries found on the person of the deceased were antemortem. The cause of death was due to head injury and accordingly, he had issued postmortem report Exh.29. During cross examination this witness has stated that even the injuries on the left side of the ribs were also fatal. He has further deposed that weapon query along-with the iron rod Article-A was sent to him and he had given opinion that injuries on the person of the deceased can be caused with iron rod Article-A. The said report is on the record at Exh. 31. He has admitted that the injuries found on the person the deceased are possible if a person violently falls from the motorcycle and motorcycle hits his body.

19] It is important to note that iron rod Article-A was shown to the Medical Officers Dr. Narendra PW5 and Dr. Saurabh PW7, when they were in the witness box and they have opined that the injuries found to the deceased are possible by the iron rod Article-A. Their evidence further shows that the injuries found to the deceased were sufficient to cause death in the ordinary course of nature. The medical evidence corroborates the ocular evidence of the witnesses. It is the defence that the deceased was under the influence of liquor had violently fallen down from the motorcycle and was injured. Dr. Narendra PW5 and Dr. Saurabh PW7 have admitted in their cross examination the injuries on the person of the deceased were possible if

a person violently falls in a motor accident. However no evidence is brought on record by the defence to conclude that on the day of incident the deceased was under the influence of liquor or he has met with an accident or he had violently fallen down from the vehicle. Further it needs to be appreciated that except head injury and injury to the ribs no other injury was found on the person of the deceased. For the sake of argument even if it is presumed that the deceased had violently fallen down from the motorcycle on the ground, then in that case, in the ordinary course of nature, other than the injuries referred above, the deceased should have sustained some abrasions or other injuries on those parts of his body which had come in contact with the land.

20] The ld. advocate for the accused has further argued that there were CCTV camera of some of the shops situated at the spot of incidence. The incident of deceased falling from the motorcycle was captured in the CCTV camera as such I.O. Had deliberately not seize the CCTV footage. As argued by the ld. advocate for the accused it appears that some of the eye witnesses have admitted that there were CCTV cameras on some of the shops situated near the spot of incidence. However, no evidence has come on record that ll the said CCTV camera were in working condition and footage was captured in any of those cameras. The accused had not produced any CCTV footage in support of his submission. Further the I.O. has admitted that there were CCTV camera some of the shops. However he was clarified that the angle of the CCTV camera was such that the incidence was not captured. Hence he has not seized the same. As the accused has not

produced any CCTV footage in the defence the said contention of the I.O. Appears to be trustworthy and hence the non seizure of CCTV footage is not fatal for the prosecution case. So, the defence taken by the accused that the deceased might have fallen violently from the motorcycle and sustained injuries is not acceptable. Considering the evidence of Medical Officers, there remains no doubt to say that the deceased has died by homicidal death. **Accordingly, I answer point No.1 in the affirmative.**

As to point No. 2 :

21] In the case in hand, the criminal law is set in motion on the basis of FIR given by Aakash PW2 who is brother of the deceased. This witness has specifically deposed that on 10th of November 2024 at about 1.45 pm. He was in his house and was having lunch with his mother. At that time Aditya Jadhav PW4 came running to their house and told them that there was quarrel between the accused and the deceased near Krishna Dairy. Immediately this witness rushed to the spot and saw that the deceased was lying on the ground. He has further deposed that he was informed about the incident and about the fact of accused assaulting his brother with iron pipe by Aditya Jadhav. After reaching the spot of incident this witness along with Govind PW 10, Aakash PW1 Gaurav PW3 and Vishnu PW 12 took the accused to Rural Hospital Malegaon and then he was referred to Government Hospital Washim and then shifted to Lifeline Hospital Washim. This witness has further deposed that his statement under section 164 of Cr.P.C. was recorded and the same is on record vide Exh. 20.

22] Ld. advocate for the accused has argued that the informant

is not the eye witness. He has not witnessed the incident and there are contradictions in the evidence of this witness and in his statement recorded under section 164 of Cr.P.C. In his statement recorded under section 164 of Cr.P.C., this witness has stated that the information about the incident was given to him by one small boy aged about 12 to 13 years and when he went to the spot, no one was there and the deceased was already taken to the hospital. He has further submitted that the informant has admitted in his cross examination that one Abhishek Bali had given a report against the deceased and two others for the offense punishable under section 307 of IPC and crime No.181/2024 was registered against deceased and he was in jail in the said crime. He further argued that accused had hospitalised Abhishek Bali after the incident and hence that deceased was having any inimical terms with the accused. Due to inimical terms of deceased with the accused, false report is given against him by the informant. It is his submission that considering these material contradictions in the evidence of this witness, his evidence is not reliable and cannot be relied upon.

23] As argued by ld. advocate for the accused it appears that there are variations in the evidence of Aakash PW2 recorded before the court and in his statement recorded under section 164 of Cr.P.C. Exh.20. However, it needs to be appreciated that the evidence of this witness before the court is fully consistent with the FIR. In his evidence recorded before the court as well as in the FIR this witness has specifically stated that he was informed about the incident by Aditya PW4 and immediately he rushed to the spot and then with the help of

other witnesses he had hospitalised the deceased who was then injured in Rural Hospital Malegaon. Thus, there is consistent and substantive evidence of this witness before the court that at the time of incident he was in his house and he was informed about the incident by Aditya PW4. The said version of the informant is also corroborated by evidence of Aditya PW4 who has specifically stated that he went to the house of informant and told him about the incident. It is settled legal principle that statement of the witness recorded under section 164 of Cr.P.C. is not a substantive piece of evidence. FIR was given by the informant immediately after the incident and his evidence before the court is consistent with the contentions in the FIR hence the evidence of this witness before the court, which is corroborated by the contentions in a FIR and evidence of the witness Aditya PW4 needs to be considered.

24] As far as the argument of ld. advocate for the accused that the deceased were having inimical terms with the accused and false report is given against him. For the sake of argument even if it is presumed that the deceased was having inimical terms with the accused still the report is not given by the deceased. Also, the informant who had given the report has not himself witnessed the incident. The same was witnessed by other persons and he was informed about the same. No evidence has come on record that all the other witnesses were also having inimical terms with the accused. The informant has consistently stated in all the statements that at the time of incidence he was at his home, he was informed about the assault to the deceased and then he went to the spot and then to the hospital.

Even otherwise, it cannot be disregarded that enmity is a double edged weapon. Thus in spite of variance in the statement of this witness recorded before the court and in his statement under section 164 of Cr.PC the evidence of this witness appears to be truthful and it inspires confidence and is believable. Thus, from the evidence of this witness the prosecution has succeeded to prove that the informant was informed about the incidents, he went to the spot and thereafter he had given FIR.

25] The ld. advocate for the accused has further argued that there is a substantial delay in filing FIR. The incidence is alleged to have occurred between 1.30 to 2.00 p.m and FIR appears to have been launched at 19.20 hours. Thus, there is substantial delay in filing FIR and the same is not explained by the prosecution. On the other hand ld. APP Smt. Misar had argued that there is no delay in lodging FIR. The informant had first rushed tot he hospital to provide medical aid to the deceased who was then injured and then he proceeded to launch the FIR. Considering the arguments of both the sides it appears that as argued by ld. advocate for the accused, the FIR appears to have been lodged at 19.20 hours and the incident is alleged to have occurred between 1.30 to 2.00 p.m. As argued by ld. APP it cannot be disregarded that the informant is real brother of the deceased. As per the prosecution case after the assault the deceased was seriously injured and was taken to Rural Hospital Malegaon. After giving primary treatment he was referred to Government Hospital Washim and again considering the seriousness of the injuries he was hospitalised at Lifeline Hospital Washim. The conduct of the informant

of first hospitalizing and providing necessary treatment to the injured and then lodging FIR is very natural and it is justifiable. Thus it cannot be said that there is delay in lodging FIR.

26] In order to prove the allegations against the accused the prosecution has further examined the eye witnesses. It is the prosecution case that Akshay PW1, Gaurav PW3, Aditya PW4, Govind PW10 and Vishnu PW12 have witnessed the incident. Akshay PW1 has specifically deposed that on 10/11/2024 between 1.45 to 2.00 p.m. he was present in his shop and he heard some noise so he went out to see what is happening. He saw that accused was assaulting the deceased with iron pipe on his head. Thereafter this witness along-with other witnesses Gaurav PW3, Vishnu PW12, Govind PW10 rushed towards the deceased at that time accused ran away along-with his father on motorcycle. Thereafter these witnesses alongwith others took the injured Rohit to Rural Hospital Malegaon. During cross-examination, this witness had admitted that the distance between his shop and the spot of incidence is approximately 600 meters.

27. The ld. advocate for the accused had argued that at the time of incidence this witness was in his shop and it was not possible for him to witness the incidence form the distance of about 600 meters. It needs to be appreciated that though this witness has admitted in his cross-examination that the distance between his shop and the spot of incidence is 600 meters, still he has stated that after hearing the noises of shouting, he came out of his shop and he went in that direction. Thus, the witness has not seen the incidence from inside his shop but he had come near the spot of incidence. It also needs to be

appreciated that the spot of incidence is situated in a square and thus it is possible to witness the incidence from some distance. Further suggestion was given to this witness in his cross-examination and he has admitted that when he went to the spot and he saw the deceased was lying on the ground on one side with right hand touching the ground. This admission given by the witness clarifies that he was present on the spot of incidence and had seen the incidence. So also Dr. Sanap has stated that this witness had brought the deceased to the hospital. Thus, the evidence of this witness to have witnessed the incidence inspires confidence.

28. Gaurav PW3 has deposed that the incidence took place on 10/11/2024 in between 1.30 to 1.45 pm. On that day, he was returning home on his motorcycle. The deceased asked him to give him lift on his motorcycle and he sat on the motorcycle of this witness. At that time accused came from behind and he started abusing the deceased. On hearing the abuses the deceased stepped down from the motorcycle and thereafter accused came near the deceased and he assaulted the deceased with iron pipe on his head. Thereafter, witnesses Vishnu, Akshay, Govind came running to the spot and on seeing them the accused ran away with his father on motorcycle and thereafter, these witnesses had taken the injured Rohit to Rural Hospital Malegaon. During cross-examination, of this witness no material contradictions have come on record to disbelieve his version that he was present on the spot and had witnessed the incidence. Thus the evidence of this witness on the point that he was present on the spot and had witnessed the incidence appears to be trustworthy.

29. Aditya PW4 has deposed that on 10/11/2024 when he was returning home after 1.30 pm. he saw that near Sri Krishna dairy and near the photo of Shivaji Maharaj, the deceased was lying and accused was assaulting him with iron rod on his head, hand, back etc. On seeing this, this witness was frightened and he did not dare to intervene and he immediately he rushed to inform about the incident to the informant. The informant has also stated in FIR which was lodged immediately after the incidence that this witness has informed him about the incidence. No admission has come in the cross-examination of the witness to disbelieve his version that he has witnessed the incidence.

30. Govind PW10 has deposed that the incident took place on 10/11/2024 between 1.30 pm to 2.00 pm. On that day he was playing carom near the gate of old Panchayat Samiti Malegaon and on hearing the noise of shouting, he saw in that direction and observed that accused Shubham was assaulting the deceased with iron pipe on his head. At that time witness Vishnu was trying to stop the accused and thereafter when this witness along with Akshay stated going towards the spot of incidence, on seeing them the accused fled away with his father on motorcycle. The spot of incidence is visible from the place where this witness was present. During cross-examination of this witness no material admission has come on record to disbelieve his version that he was present on the spot of incidence and had witnessed the incidence.

31. Similarly, Vishnu PW 12 has deposed that incident took place on the 10/11/2024 in afternoon at about 2 to 2:30 pm. At that

time he was having tea with the deceased near Gunwant Tea stall, at that time witness Gaurav was passing by the road on his motorcycle. The deceased called Gaurav and asked him for lift. At that time accused came there and he was abusing the deceased. He was possessing iron pipe and as soon as he came to the spot he started assaulting the deceased with iron pipe on his legs and head. This witness went to rescue deceased. However, as accused had threatened to assault him with iron pipe he could not intervene thereafter witness Govind and Akshay came to the spot and on seeing them accused fled away with his father on the motorcycle. Witness Govind had also corroborated the evidence of this witness by stating that he had seen this witness on the spot attempting to rescue the deceased. Even this witness was cross-examined at length. Ld Adv. For the accused has argued that this witness in his statement recorded under section 164 has stated that the weapon of the offence was a square shaped pipe. Thus, it is doubtful that he might have witnessed the incident. It has come in the evidence of this witness that when the accused was assaulting the deceased this witness was attempting to save the deceased. In the said circumstances, like a prudent man it is most probable that this witness must be focusing on the deceased, accused and the injuries caused to the deceased and he might have missed the details of the weapon. Thus, only on this ground, this witness does not become unbelievable. Other than this there are no material admission or contradictions have come on record to disbelieve that he was not present on the spot and had witnessed the incidence.

32. It also needs to be appreciated that all these witnesses have

consistently stated that the presence of other witness on the spot of incidence and to have witnessed the incidence and they have corroborated the evidence of each other. As is held in the authority of ***Leela Ram Vs. State of Haryana***, minor discrepancies in the ocular evidence of the eye witnesses which is not very material should be discarded and only on the basis of such discrepancies the entire evidence of the eye witnesses should not be considered as unbelievable. They have also consistently stated that accused had come to the spot and he stated assaulting the deceased with iron pipe on his head and other parts of the body and when these witnesses went towards the deceased the accused fled away with his father from the spot of incidence. All these witnesses have corroborated the version of each other in all material particulars. Similarly Dr. Sachin Sanap PW8 has also deposed that the deceased was brought to the hospital by witnesses Akshay, Govind and others. Thus even the evidence of Dr. Sachin Sanap PW8 corroborates the evidence of these witnesses on the fact that they took the deceased to the hospital. Thus the evidence of these witnesses appears to be trustworthy.

33. The ld. advocate for the accused has argued that all the eye witnesses are the friends of the deceased and the informant and are interested witnesses. Evidence has come on record that many people had gathered on the spot of incident. The spot of incident is situated on the square and several shops, dairy etc. are situated near the spot of incidence. However, the I.O. has not recorded the statement of the independent witnesses and no independent witness is examined by the prosecution. There are several contradictions in the evidence of the

eyewitnesses. The I.O. has not seized the blood stained clothes of the witnesses or their vehicles. Though the witnesses have deposed to have witnessed the incident still none of them had informed the fact that accused had assaulted the deceased immediately after incidence either to the medical officer nor they have given report in police station. The conduct of the witnesses is not natural and hence the evidence of the eye witnesses suffer from material irregularities and needs to be discarded.

34. In the cross-examination all most all the witnesses who were alleged to be present on the spot of incidence have admitted that several people had gathered on the spot at the time of incidence. As per the prosecution case, the spot of incidence is situated on the square in the heart of the city and it is not disputed that several shops are situated on the said spot. The time of incidence is between 1.30 to 2.00 p.m., naturally many person was bound to be there on the time of incidence. However, the name of the bystanders is not revealed before the I.O. nor their identity was disclosed. Out of the eye witnesses alleged to be present on the spot of incidence were having their shops in the vicinity and other witnesses were present by chance. Nothing has come on record in the cross-examination of the eye witnesses to infer that they were not present on the spot of incidence. In the said circumstances, the presence of witnesses on the spot cannot be doubted.

35. It is further argued by the ld. advocate for the accused that the prosecution has not examined any independent witnesses and the witnesses are examined interest witnesses. As argued by the ld.

advocate for the accused though it appears that all most all the eye witnesses have admitted that they knew the deceased, still most of them have stated in the chief examination that they also know the accused. Nothing has come in the cross-examination of these witnesses to gather that they did not know the accused. The accused has also not disputed that the witnesses knew him.

36. Further it needs to be appreciated that as per the version of Aditya PW4 and Vishnu PW12, the conduct of the accused on the spot of incidence was such that even these witnesses got frightened and did not intervene to rescue the deceased. As deposed by the eye witnesses the conduct of the accused of coming to the spot and assaulting the deceased was such that the eye witnesses were deterred from intervening in the quarrel. If this is the fate of the witnesses, who knew the deceased as well as accused then it is but natural that the people who did not knew the deceased, did not intervene nor they had come forward and disclose to the police about the incidence. The name of the bystanders was not revealed to the I.O. by any of the witnesses. It is not the defence of the accused that any witness knew the name of the bystanders.

37. As far as the adjoining shop owners are concerned, they might be busy carrying out their business and it needs to be appreciated that the deceased as well as the accused were known in that locality and there is general tendency of the people not to involve themselves in dispute between two persons. Though the accused had taken the defence the statement of independent witnesses is not record, still the accused have not brought on record the name of any single witness

who was knowing about the incidence but his statement was not recorded by the police. Further more even if the incidence is witnessed by numerous persons, still it is not necessary for the I.O. to record statement of all those persons. So also it is not necessary for the prosecution to examine all those persons as witnesses. The quality and not the quantity of the evidence is important. Thus the argument of the ld. advocate for the accused that the prosecution has not examined any independent witness basis without merits.

38. In the authorities of *Chunthuram Vs. State of Chhatisgarh*, *Din Dayal Vs. Raj Kumar* , *State of Rajasthan Vs. Mani Ram*, *Kuldip Yadav Vs. State of Bihar* and *Alladin Vs. State of Assam* relied upon by Ld. Adv. for the accused it is specifically held that the conduct of the witnesses of not taking the deceased who was their close relative or friend to the hospital, of not disclosing about the incidence to anybody for a substantial deceased of not making any attempt to save the deceased at the time of incidence makes their conduct unnatural and their testimony is unbelievable. However in the case in hand, as discussed above the eyewitnesses Akshay PW1, Gaurav PW3, Aditya PW4, Govind PW10 and Vishnu PW 12 have stated that initially witnesses Gaurav and Vishnu had attempted to save the deceased however due to the ruthless conduct of the accused they got afraid.

39. Further though these witnesses have admitted in their cross examination that they have not informed about the incident to the medical officer or to the police still, it needs to be appreciated that these witnesses have specifically deposed that immediately after the accident they have taken the deceased to the hospital and Aditya PW4

has deposed to have stated about the incidence to Aakash i.e. informant. The conduct of the eye witnesses of taking the deceased to the hospital immediately and attempting to save his life instead of giving a report in police station cannot be said to be unnatural. Further, as Aakash PW2 who is brother of the deceased was already informed about the incident, it is quite natural for these witnesses to believe that Aakash would lodge the report. Further Dr. Sachin PW8 has specifically deposed that the deceased who was in injured condition was brought to the hospital by witnesses Akshay PW1, Govind PW 10 and others. From the medical case record exhibit 52 it also appears that the history of assault to the deceased was communicated to the medical officer. The injuries stated by these witness correspond with the evidence in the PM report of the deceased and in the treatment papers. Further the ocular evidence of the eye witnesses is corroborated by the medical evidence. Thus, with all the respect to the ratio in the aforesaid authority, in my humble opinion the ratio in the said aforesaid authorities are not helpful for the defence and the testimonies of the eye witnesses are reliable. However when witnesses Govind and Akshay stated coming to the spot, the accused fled away with his father on motorcycle.

40. As far as argument of ld. advocate for the accused that the fact of assault specifically by the accused was not communicated to the doctor is concerned, it needs to be appreciated that there was no possibility for the doctor to have personal acquaintance with the accused and to know his name. In the said circumstances there was no point for the witnesses to communicate the name of the accused to the doctor.

The fact that the deceased was assaulted was already communicated to the medical officer by these witnesses. Hence their conduct appears to be natural and there are no circumstances to doubt their credibility.

Spot and seizure panchanamas :

41] Witness Shankar PW-9 and witness Shriram PW-11 are the panch witnesses of spot panchanama. Both these witnesses have specifically deposed that spot panchanama Exh.67 was prepared in their presence. On the spot I.O. Navdeep Agrawal was present on the said spot along-with forensic team and from the said spot, police had seized the plain soil and soil mixed with blood. The I. O. Navdeep Agrawal PW-13 has also deposed to have prepared spot panchanama in presence of these witnesses on 11/11/2024. The prosecution has produced the simple soil and soil mixed with blood on record vide Article-D on the record. The same was identified by the panch witness Shriram PW11, as well as I.O. PW13 and the same was also sent for chemical analysis. No admission has come on record in the cross-examination of any of these witnesses to disbelieve their version about preparation of spot panchanama. Thus the prosecution has succeeded to prove that spot panchanama Exh.67 was prepared by the I.O. in presence of the panchas and from the said spot simple soil and soil mixed with blood were seized.

42] Shriram PW11 has further deposed that pant of the deceased Article-C was seized from the possession of person namely Govind Ahir and seizure panchanama Exh.76 was prepared. Similarly, clothes of the accused i.e. black gray coloured shirt and gray pant on which splash is written i.e. Article-B was seized in presence of these

witnesses and seizure panchanama Exh.75 was prepared. From the evidence of the I.O. Navdeep Agrawal PW13 it also appears that on 14/11/2024 at about 16.00 hours hair, nail, blood, viscera etc. samples of the deceased were seized in the police station vide seizure memo Exh.93 and 94. Though these witnesses were thoroughly cross-examined still their evidence about seizure of the clothes of the deceased, accused and seizure of the blood samples and other samples has remained unshattered. So also the seizure of all these articles is not seriously disputed by the defence.

43] From the evidence of the I.O. Navdeep Agrawal PW13 it further appears that all the seized samples were sent for chemical analysis. Id. Advocate for the accused has argued that the the I.O. in his cross-examination has admitted that the seized muddemal was deposited in the muddemal room vide receipt Exh.109. The said receipt is dtd.01/02/2025. Thus it is clear that the I.O. was in possession of the seized muddemal till 01/02/2025 and there was sufficient scope for tampering with the samples. On perusal of Exh.109 it appears that the same is the extract of the muddemal and not the muddemal receipt. In the same document Exh.109 there is mention of deposit of the muddemal on 09/12/2024, 10/12/2024 and 11/12/2024 vide muddemal receipts Exh.718 to 722 and 460 to 465. Thus the muddemal appears to have been deposited in muddemal room on 09/12/2024 to 11/12/2024 vide aforesaid receipts.

44] It is specifically deposed by the I.O. so also it is clear from the seizure panchanama that the seized articles were sealed. The defence has not brought any doubtful circumstances on record to

presume that the I.O. has opportunity to break open the seal and tamper the seized muddemal or there was any reason for tampering the muddemal. In the said circumstances the evidence of I.O. and panchas appears to be truthful and there is no reason to believe that I.O. had tampered the seized property. The C.A. reports are filed on record vide Exh.114 to 116. From the C. A report Exh.114, it appears that the blood group of the deceased was 'A'. Similarly from C.A. report Exh.115, it appears that the blood group of the accused is 'B'. From C.A. report Exh.116 it is clear that the seized clothes of the accused as well as deceased were having blood group of 'A' which matches blood group of the deceased. The accused has not given any explanation as to how the blood of group 'A' i.e. blood group of the deceased was found on his clothes.

45] From over all discussion I have come to the conclusion that the prosecution has succeeded to prove the preparation of spot panchanama Exh.67 by the I.O. in presence of panchas. So also they have succeeded to prove the seizure of the clothes of the deceased and accused and seizure of other samples and preparation of panchanamas Exh.75, 76, 93 and 94. The prosecution has also succeeded to prove the seized samples and clothes for sent for chemical analysis along-with letter Exh.106 and C.A. reports Exh.114 to 116 are also proved.

46] As far as the spot of incidence is considered, the ld. advocate for the accused has argued that there is contradiction in the evidence of the I.O. and witnesses about spot of incidence. All the witnesses have stated different spot and hence the exact spot on which incident took place is doubtful. It is the prosecution case that spot of

incidence is situated near Krushna Diary, Court Road, Malegaon. From the spot panchanama Exh.53, it appears that the spot is situated on the road going towards ward No.8. On one side of the spot of incidence there is Krushna Diary and opposite side there is statue of Shivaji Maharaj.

47] As argued by the Ld. advocate for the accused, if at all the evidence of the eye witnesses is considered, then it appears that Akshay PW1 has stated that spot of incidence is situated at the distance of 600 meter from his shop and many shops are situated in between the spot of incidence and shop of this witness. However, he has not described where his shop is situated. Gaurav PW3 has described that the spot is situated at the distance of 10 to 15 feet on the road going on the inner side from Shivaji Maharaj Chowk. Aditya PW4 has described that the spot of incidence is situated near Shrikrushna Diary and near photo of Shivaji Maharaj. Govind has stated that he was playing carom near gate of Old Panchayat Samiti and from there he had seen the incidence. Thus, according to this witness the spot of incidence is situated opposite to the gate of Old Panchayat Samiti. Vishnu PW12 has stated that the incidence took place near photo of Shivaji Maharaj. If at all the evidence of all these witnesses and spot panchanama are considered together then it is clear that the spot of incidence is situated on a square and all the witnesses have described the same spot by different angles. On side of the spot of incidence there is Krushan Diary. On the other side there is statue of Shivaji Maharaj and on the opposite side of the spot there is Old Panchayat Samiti. Thus all the witnesses have described one and the same spot

and there is no variation in their evidence about the spot of incidence. Thus the argument of the ld. advocate for the accused that spot of incidence is doubtful, cannot be considered.

48] Witness H.C. - Vijay Jadhav PW-6 has deposed that on 14/11/2024 in the Government Hospital at Washim, he had received intimation about death of the deceased, thereafter he had issued summons to two panchas and relatives of the deceased and in their presence he has prepared inquest panchanama Exh.35 of the dead body of deceased Rohit Pawar. He has deposed that the deceased had injury to his head. The evidence of this witness also corroborates to the evidence of witnesses that the deceased was assaulted on his head.

Weapon used for commission of the offence :-

49] Evidence of panch Shankar PW-9 and Shrirram PW11 further shows that on 12/11/2024 they were present in the police station and in their presence, the accused had confessed to have kept the weapon used for the commission of the offence i.e. rod in the bathroom of his house. The accused shown readiness to produce iron rod used by him for assaulting the deceased. Accordingly, the memorandum panchanama Exh.71 of the statement of the accused was prepared in the police station. Their evidence further shows that thereafter, the accused had led the police and panch to his house situated near Lahuji Statue. Thereafter, the accused had led them to the bathroom situated near his house. In the said bathroom, the accused had produced iron pipe which was concealed under the cloth. The iron rod Article-A was seized by the police and accordingly panchanama Exh.72 was prepared. Their evidence further shows that

memorandum panchanama Exh.71 and seizure panchanama Exh.72 are signed by the accused also.

50] In the case in hand, the witnesses Akshay PW1, Gaurav PW3, Govind PW10 and Vishnu PW12 have deposed that accused had assaulted the deceased with iron pipe. On the other hand, Aditya PW4 has stated that the accused had assaulted the deceased with iron rod. Similarly Dr. Narendra PW5 has stated that he has given query report of iron rod and in the memorandum panchanama Exh.71, it is mentioned that accused had shown willingness to produce iron rod and the weapon recovered vide panchanama Exh.72 is iron pipe. On this Adv. Shri. Undal has submitted that prosecution is not firm whether accused assaulted the deceased by iron pipe or iron rod. There is drastic difference between iron rod and iron pipe. Iron rod is opaque while iron pipe is hollow from within. Thus the prosecution has failed to prove the recovery of the weapon.

51] As argued by ld. advocate for the accused though it appears that some witnesses have describe the weapon as iron rod and some have described it as iron pipe. Still I.O. Navdeep Agrawal PW13 has categorically stated that in the locality of Malegaon people interchanged used the word iron rod and iron pipe. Dr. Narendra PW5 has also deposed that in query Exh.30, the weapon sent for examination is described as iron pipe. However he has given report about iron rod. This witness has explained that the iron pipe is rod shaped and he has given his opinion on the basis of shape of the weapon. Though this witness has opportunity to inspect the weapon by holding the same, still he has described iron pipe as iron rod.

During cross-examination, he has not expressed any opinion that the said weapon was not iron rod. Thus even the expert has used the word iron rod for iron pipe. Thus there appears merits in the submission of I.O. that in Malegaon people interchangeably used the words iron rod and iron pipe. Even otherwise it needs to be appreciated that all the eye witnesses except Aditya PW-4 have stated that the weapon used was iron pipe. Aditya had seen the incidence from some distance and as stated by Dr. Narendra the shape of iron pipe is rod shape. In the said circumstances, minor variations in the description by the witnesses cannot be said to be material. Even otherwise the seized weapon is iron-pipe as described by the eye witnesses. In this backdrop with all respect to the ratio in the authority of *D. Thamodaran Vs. Kandasamy*, I am of the humble opinion that it is not helpful for the defence. Thus I have come to the conclusion that merely because the seized weapon is described as some places as iron rod, the entire prosecution case cannot be doubted.

Recovery of the weapon at the instance of the accused :-

52] Panch witness Shankar PW-9 has admitted that when accused was being taken to the spot, he was handcuffed and one rope was tied to the said handcuff. Adv. Shri. Undal has submitted that since the accused was handcuffed at the time of alleged recovery of iron pipe, the alleged recovery of iron pipe at the instance of accused is not voluntarily. He further submitted that the place from where the rod is allegedly recovered is open place accessible by all. He submitted that all these aspects clearly show that the I. O. had pressurized the accused for giving confessional statement and the so called recovery at the

instance of accused is doubtful. He submitted that in fact the accused had never led the I. O. and panch to the spot. To support these submissions, he relied on the authority of ***Shankar Raju Banglorkar Vs. State of Goa*** cited supra.

53] No doubt, panch Shankar PW-9 has admitted that when the accused was taken to the spot where alleged recovery of the iron pipe was done, accused was handcuffed and rope of tied to the said handcuff still it is not case of the accused that when he gave memorandum statement Exh.71, he was handcuffed. The said facts differ from the facts in the authority of ***Shankar Raju Banglorkar Vs. State of Goa*** relied upon by the ld. advocate for the accused. Hence with due respect in the said authority I am of the considered view that the said ratio is not helpful to the accused. Thus it cannot be said that the disclosure statement given by the accused under pressure nor it can be said that disclosure statement given by the accused is not voluntarily. It was improper on the part of I. O. to handcuff the accused at the time of recovery of iron pipe. But, merely because at the time of recovery of the iron pipe at the instance of accused, he was handcuffed, the entire recovery will not be vitiated. The panch witnesses have admitted that the bathroom from where the iron pipe was seized was not locked and it was accessible to all. In spite of the same it cannot be disregarded that the bathroom was near the house of the accused. It is not defence of the accused that the said bathroom of the common bathroom and a public place. The knowledge of the accused that an iron rod is concealed in the said bathroom near his house is the fact disclosed by him and based on this knowledge of the

accused, iron pipe is recovered at his instance. As discussed above, use of this iron pipe by the accused for assaulting the deceased is proved by the prosecution beyond any doubt. Considering the entire evidence on record, I have no doubt in mind to hold that the prosecution has duly proved that the recovery of iron pipe Article-A at the instance of the accused.

54] From the overall evidence I have come to the conclusion that the evidence of the eye witnesses namely Akashay PW1, Gaurav PW3, Aditya PW4, Govind PW10 and Vishnu PW12 about their presence on the spot of incidence and to have witnessed the incidence of accused assaulting the deceased appears to be trustworthy. From the evidence of these witnesses the prosecution has succeeded to prove that on 10/11/2024 between 1.30 to 2.00 p.m. near statue of Shivaji Maharaj Malegaon, the accused has assaulted the deceased with iron pipe Article-A. Due to the said assault the deceased had sustained injuries on his head and he was hospitalised at Rural Hospital Malegaon, then at Government Hospital Washim and subsequently Lifeline Hospital Washim. While undergoing treatment the deceased has succumbed to the injuries. The medical evidence corroborates the ocular evidence of these witnesses. So also from the medical evidence the prosecution has succeeded to prove that accused had succumbed to the injures sustained by him due to assault by the accused on 14/11/2024 at 16.00 hours. Recovery of iron pipe by which the accused has assaulted the deceased is duly proved by the prosecution. So, it stands proved beyond any doubt that accused caused homicidal death of the deceased.

55] No evidence has come on record that there was previous enmity between accused and the deceased. Adv. Shri. Undal for the accused has submitted that prosecution has not proved motive or intention on the part of the accused to commit murder of the deceased. However, during cross-examination the suggestion were given on behalf of the accused to the informant and other prosecution witnesses that one Abhishek Bali had filed criminal case against the deceased and he was in jail in the said crime. Suggestions are also given that it is accused who had hospitalised Abhisehek Bali. It is also come on record from the evidence of the prosecution witnesses that as soon as the accused came to the spot and met the deceased he immediately started assaulting him with iron pipe on his head and other parts of the body. From the postmortem report it appears that severe blows were given with iron pipe on the head and the scalp of the deceased, due to which there were subdural hematoma below the entire scalp and there was midline shift. There was fracture of the ribs out of which who were displaced fractures which is also the cause of death. Giving forceful assaults by iron pipe on the head and chest of the deceased clearly shows intention on the part of the accused to commit murder of the deceased. So, considering the entire evidence on record, I am of the firm opinion that the accused has committed murder of the deceased and thereby committed an offence punishable under Section 103 (1) of BNS. **Accordingly, I answer point No.2 in the affirmative.**

As to point No.3 :

56] The accused is also facing the trial for the offences punishable under Section 3 (2)(v) of the Atrocities Act. It is the case of

the prosecution that the deceased belongs to the Scheduled Caste and knowing the said fact the accused had murdered him. The I.O. Navdeep Agrawal PW13 has deposed that he had issued letter to the informant for producing caste certificate of the deceased and had obtained caste certificate Article-E from him. He had further issued letter Exh.98 to SDM Washim for verifying the caste certificate of the deceased. The said letter was replied by the concerned office and after due verification they have issued letter Exh.99 informing the I.O. that the caste certificate of the deceased was issued by their office and the deceased belongs to Scheduled Caste. Thus the prosecution has succeeded to prove that the deceased belongs to Scheduled Caste. It is not the case of the accused that he belongs to Scheduled Caste or Scheduled Tribe.

57] The accused is charged with the offence under Section 3 (2) (v) of the Atrocities Act. Hence it was essential the prosecution to prove that the accused is assaulted the deceased as he belongs to Scheduled Caste. However no such evidence has come on record. None of the witnesses has stated that the accused either knew the caste of the deceased or he was having grudge against the accused as he belongs to Scheduled Caste. On the other hand, the motive behind the commission of the crime appears to be previous enmity between accused and deceased on some political issues. Thus the charge against the accused of committing murder of deceased knowing that he was member of Scheduled Caste is not proved by the prosecution. **Accordingly, I answer point No.3 in the negative.**

As to point No.4

58] As discussed above I have come to the conclusion that the accused is held guilty for the offence of murder punishable under Section 103 (1) of BNS. Hence, I stop here to hear the parties on the point of sentence.

sd/-

Date : 23/03/2026

(M. S. Sahastrabudhe)
Addl. Sessions Judge, Washim

Resumed on 24/03/2026

59] Adv. Shri. A. S. Undal for the accused has submitted that case is not rarest in rare. So, he prayed for minimum punishment.

60] The accused in person also prayed for leniency submitting that he only earning member of his family. His financial condition is poor.

61] Per contra, APP Smt. Misar for the prosecution has submitted that accused has murdered the deceased brutally and it is the cold blooded murder. So, she prayed for awarding capital punishment to the accused.

62] The accused by coming the spot had assaulted the deceased with iron pipe and had caused head injuries and injuries to the chest of the deceased due to which there were fractures of the ribs. The cause of death of the deceased is due to head injury and displaced fracture of

the ribs. However, the murder is not a brutal one. Therefore, the case does not fall in rarest of rare case warranting capital punishment. Therefore, accused is liable for imprisonment for life. Financial position of the accused is not on record. So, considering his submission and the nature of offence, I think that fine of Rs.10,000/- will be just and proper. Seized muddemal being worthless it needs to be destroyed after appeal period is over. During trial accused was in Jail. He is entitled for set off U/Sec.428 of Cr.P.C. for the period already undergone by him in Jail. **Point No.4 is answered accordingly.**

ORDER

- i] Accused **Shubham Subhash Chavhan** is hereby held guilty under Section 258 (2) of BNSS for the offence punishable under Sections 103 (1) of the Bharatiya Nyaya Sanhita, 2023.
- ii] Accused is sentenced to undergo life imprisonment and with fine of Rs.10,000/- (Rs. Ten Thousand only) and in default, to undergo rigorous imprisonment for a period of 6 (six) months.
- iii] Accused is acquitted under section 258(1) of BNSS for offences punishable under sections Section 3 (2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- iv] Copy of this judgment and order be sent to the District Legal Services Authority, Washim for determining and payment of adequate compensation to the victim under Section 396 of BNSS.
- v] Set off under section 428 of Cr.P.C. for the period already undergone in jail be given to the accused.
- vi] Seized Muddemal i.e. iron rod, clothes of deceased & accused being worthless be destroyed, after appeal period is over.

Judgment

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- vii] Accused is informed about his right to appeal.
- viii] The true copy of this judgment be given to the accused free of cost.

Place : Washim
Date : 24/03/2026

(M. S. Sahastrabudhe)
Addl. Sessions Judge, Washim.

Judgment

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Spl. Atro. Sess. Case No.09/2025
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CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original order :-

Name of the Stenographer	:- Nitin B. Khandare, Stenographer (Grade-1)
Court Name	:- District Judge-3 & Additional Sessions Judge, Washim
Date	:- 23 and 24/03/2026
Order signed by the Presiding Officer on	:- 27/03/2026
Order uploaded on	:- 27/03/2026