

Committed on : 05/08/2023
Registered on : 09/08/2023
Decided on : 25/03/2026
Duration : 02 Y, 07 M, 16 D.

<u>Part-'A'</u> (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: 25/03/2026] [Sessions Case No. 57/2023] CNR No. MHWS010011112023	
	Exh. No.110	
Complainant		State of Maharashtra through Police Station, Washim-city Tq. and Dist. Washim. Crime No. 313/2023
Represented By		A.P.P. Smt. S. P. Kulkarni
Accused	1	Aakash @ Ganesh Tryambak Jirwankar Age 26 years, Occup. Labour
	2	Pawan Chintaman Jorewar Age 22 years, Occup. Labour
		Both r/o Panchshil Nagar, Washim, Tq. and Dist. Washim
Represented By		Adv. Mr. P. B. Phatak for accused No.1 Adv. Mr. C. R. Deshpande for accused No.2

<u>Part – 'B'</u> <i>(Para 44 (ii) of Chapter VI of Criminal Manual)</i>	
Date of Offence	08/05/2023
Date of FIR	08/05/2023
Date of Charge-sheet	01/08/2023
Date of Framing of Charges	16/06/2025

Date of commencement of evidence	16/10/2025
Date on which judgment is reserved	--
Date of the Judgment	25/03/2026
Date of the Sentencing Order, if any	--

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)	Aakash @ Ganesh Tryambak Jirwankar	09/05/23	UTP	Ss. 302 r/w 34 IPC	Acquitted	Nil	Not applicable .
2)	Pawan Chintaman Jorewar	09/05/23	31/10/24	--do--	Acquitted	Nil	Not applicable .

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	Arun Vasantrao Kothekar	Informant
PW-2	Kashiram Bansi Kuchekar	Other witness
PW-3	Ramdas Udebhan Mahale	Panch witness
PW-4	Ajay Gulab Landge	Other witness
PW-5	Santosh Kisan Jumabe	Panch witness
PW-6	Dr. Devanand Bhikaji Tayade	Medical witness
PW-7	Rafiq Chandsaheb Shaikh	Investigating Officer

PW-8	Amar Mansing Mohite	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.58/PW-1	Report
2.	Exh.59/PW-1	Printed FIR
3.	Exh.69/PW-3	Summons
4.	Exh.70/PW-3	Spot panchanama
5.	Exh.71/PW-3	Memorandum panchanama
6.	Exh.72/PW-3	Seizure panchanama of knife
7.	Exh.73, 74/PW-3	Seizure panchanama of clothes of accused
8.	Exh.75/PW-3	Seizure panchanama of clothes of deceased
9.	Exh.76/PW-3	Seizure panchanama of mobile of deceased
10.	Exh.86/PW-6	Postmortem report

11.	Exh.87/PW-6	Letter from I. O. to Medical Officer for query
12.	Exh.88/PW-6	Letter from I. O. to Medical Officer for inspection
13.	Exh.95/PW-7	Letter from I. O. to Range Forest Officer for obtaining panchas
14.	Exh.96/PW-7	Letter from I. O. to Chemical Analyser for sending of blood samples
15.	Exh.97/PW-7	Letter from I. O. to Chemical Analyser for sending of viscera
16.	Exh.98/PW-7	Letter from I. O. to Chemical Analywer for sending body organ of deceased
17.	Exh.99/PW-7	Contents of portion mark-A from the statement of witness Kashiram Kuchekar
18.	Exh.100 & 101/PW-7	Arrest panchanama
19.	Exh.102/PW-7	Logbook Extract

B. Defence :

Sr. No.	Exhibit Number	Description
1.	Exhibit	Nil

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
1.	Exh.91	Inquest panchanama

D. Material Objects :

Sr. No.	Exhibit Number	Description
1.	Article-A	Knife
2.	Article-B	Pant & Shirt of accused Pawan
3.	Article-C	White shirt and Jeans pant of accused Aakash

4.	Article-D	Green blue lining shirt & pant of deceased
5.	Article-E	Mobile of accused Aakash
6.	Article-F	Brown coloured Chappal pair
7.	Article-G	Simple soil and blood mixed soil
8.	Article-H	Cutter
9.	Article---	Motorcycle bearing registration No. MH37-AC-0339.
10.	Article---	Motorcycle bearing registration No. MH-37-P-6064.
11	Article---	Mobile phone

:: J U D G M E N T ::*(Delivered on this 25th day of March 2026)*

The accused are facing the trial for the offence punishable under Section 302 r/w 34 of the Indian Penal Code (*hereinafter referred for the sake of brevity as 'IPC' for short*).

The case of the prosecution in brief is as under :-

2] On 08/05/2023 in evening at about 5.30 to 6.00 p.m. informant Arun Kothekar i.e. father of the deceased namely Aakash Kothekar was in his Grocery shop. At that time, the friend of the deceased namely Shankar Shejul came to the shop and told the informant that some dispute is going on between deceased and accused Aakash and asked him to accompany to the spot. Immediately the informant sat on the motorcycle of Shankar and they went to Panchsheel Nagar near Motirambaba Temple. There the informant saw that the deceased was lying dead in the pool of blood. Thereafter Shankar had informed the informant that prior to half and hour he had

seen both the accused and deceased together. After sometime the deceased had called Shankar and had asked him to give him lift as his vehicle was near the school. When Shankar went to pick up the deceased he saw the deceased lying on the ground in injured condition and further told him that prior to some days the deceased had lend the amount of Rs.20,000/- to accused Aakash and the deceased was asking the accused Aakash to return the amount and accused was avoiding to pay the same on one pretext or other. There was dispute between the accused and the deceased on the ground of repayment on the said amount and due to the same accused had killed him by assaulting him with sharp weapon on his throat, cheek and face. Report of the said incident was given by the informant in police station, Washim-city.

3] On the basis of aforesaid report, crime No.313/2023 was registered and the matter was investigated by P. I. – Rafiq Chandsaheb Shaikh and SDPO - Amar Mansing Mohite. During investigation, the investigating officer went to the spot and had seized simple soil, soil mixed with blood, pair of slippers and two motorcycles from the spot prepared spot panchanama in presence of the panchas. He had seized the clothes and DNA samples of the accused and the deceased and had prepared seizure panchanamas. P. I. – Rafiq Chandsaheb Shaikh got recorded the statement of the witnesses as per their version. He had recorded the confessional statement of the accused Aakash and has discovered the weapon of the offence at his instance. He had seized the mobile of the deceased and CCTV footage during investigation. Due to transfer of P.I. Rafiq Shaikh, the matter was further investigated by SDPO – Amar Mohite. After completion of investigation as sufficient evidence was gathered against the accused, he had filed charge-sheet

against them for the offence punishable under Section 302 r/w 34 of IPC.

4] The cognizance of the offence was taken by the ld. Chief Judicial Magistrate, Washim for the aforesaid offence. As the offence punishable under Section 302 of IPC is exclusively triable by the Court of Sessions, the ld. C.J.M. after complying with the provisions of Section 207 of Cr.P.C. has committed the case for trial to this Court by order dtd.08/08/2023.

5] The charge Exh.44 was framed against the accused by my ld. Predecessor for the offences punishable under section 302 r/w 34 of IPC. It was read over and explained to the accused in vernacular. They pleaded not guilty vide Exh.45 and 46 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 eight witnesses referred in Part - C above and failed to secure presence of other witnesses. The prosecution has closed its side vide pursis Exh.106. Besides oral evidence, the prosecution has relied upon the documents referred in Part-C above. The statement under section 313 of Cr.P.C of the accused came to be recorded by Exh. 105 and 106. The defence of the accused is of total denial and false implication. The accused did not adduce any evidence in rebuttal.

7] Heard ld. A.P. P. Smt. M. T. Misar for the prosecution, ld. Adv. Mr. P. B. Phatak for accused No.1 and Adv. Mr. C. R. Deshpande for accused No.2, at length.

8] 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, the following points arise for determination. The said points along with findings and reasons thereon are as follows :-

Sr. No.	POINTS	DECISION
1)	Does the prosecution prove that deceased Aakash Kothekar died a homicidal death ?	Yes
2)	Does the prosecution prove that on 08/05/2023 in evening at about 5.30 to 6.00 p.m. at Panchshil Nagar Near Motiram Baba Temple Washim, both accused in furtherance of their common intention committed murder of Akash Arun Kothekar ?	No
3)	What order ?	As per final order

REASONS

As to point No. 1 :-

9] The informant who is father of the deceased has deposed that on 08/05/2023 in evening at about 5.30 to 6.00 p.m. the accused had assaulted the deceased with sharp weapon, he had inflicted injuries on the throat, face and other parts of the body of the deceased. Due to cut injury inflicted by the accused, deceased had expired on the spot itself.

10] Dr. Devanand Tayade PW-6 has conducted the autopsy of the dead body of the deceased. He has deposed that there were in all eight injuries on the body of the deceased. All the injuries were incised wounds on the anterior aspect and posterior aspect of the left side of the neck, left cheek, left mid arm and back of the deceased. The death

of the deceased was due to cut throat injury. This witness has further deposed that all the injuries mentioned in the postmortem report were antemortem and accordingly he had issued the postmortem report Exh.86. He has further deposed that the weapon i.e. cutter Article-H was sent to him for inspection along-with query Exh.87 and he has replied the said query vide report Exh.88 and had opined that the cut throat injury and other injuries on the person of the deceased can be caused with the said weapon. The defence has not seriously disputed the cause of death of the deceased. On the contrary, they have admitted the inquest panchanama Exh.91. Thus, from the evidence of Dr. Devanand Tayade PW-6, I have come to the conclusion that the deceased had died due to cut throat injury on the anterior aspect of the neck admeasuring 39 c.m. in length, 7 c.m. in width and 4 c.m. in depth, due to which the trachea of the deceased was cut at the 5th and 6th rings so also, carotid artery of right and left side were cut, right jugular vein was cut and anterior neck muscle was incised. Thus the deceased has died the homicidal death. Accordingly I **answer point No.1 in the affirmative.**

As to point No.2 :

11] From the report Exh.58, it appears that the informant has specifically stated that he was informed about the incidence by Shankar Shejul. He was friend of the deceased and he had informed the informant that prior to death of the deceased, there was quarrel between him and accused Aakash. Along with accused Aakash, accused Pawan was also present. The informant was also informed by Shankar that the deceased had lend the amount of Rs.20,000/- to the accused Aakash and on the ground of repayment of the amount, there were

quarrels between accused Aakash and deceased and for the said reason accused Aakash and Pawan had killed the deceased with the sharp weapon. From the contents of the report itself it is clear that the entire information received by the informant about the quarrel between the deceased and both the accused was from Shankar Shejul. He has not personally witnessed the incidence and he had not seen the accused on the spot of incidence. Thus, the informant has no personal knowledge either about the incidence or about the reason of quarrel between the informant and the deceased and the evidence of this witness on this aspect is hearsay.

12] It is the case of the prosecution that Shankar Shejul was the person who was having knowledge about the reason of quarrel between the deceased and accused Aakash. He is the witness to whom the deceased had made the last phone call and had called him on the spot and he had seen that soon before his death, the deceased was with both the accused. However, this witness has not supported the prosecution case and the prosecution had opted not to examine this witness by filing pursis vide Exh.60.

13] It is further the case of the prosecution that on the day of incidence Kashiram PW-2 had witnessed the incidence of accused No.1 killing the deceased. This witness is the eye witness and he is examined by the prosecution vide Exh.63. However, this witness has not supported the prosecution. He was cross-examined at length however no material admission has come on record in this cross-examination to disbelieve his version. Thus this witness has also not supported the prosecution case.

14] The prosecution has further examined Ajay PW4, who is

the Auto-rickshaw driver. This witness has categorically stated that he knows the accused as he is residing in the adjacent lane. On 08/05/2023 it was Monday and this witness was going in his Auto-rickshaw from the rough road near Shelu phata. At that time, accused Aakash had called me and he entered the Auto-rickshaw of this witness. This witness saw that there was blood on the hands of the accused and he asked this witness to drop him near Shelu phata. However, this witness informed him that he is going only up to Kalamb Shivar and not to Shelu phata. On this accused told him to drop him on the spot up to which this witness was going. Thereafter, when they reached at Kalamba accused called someone. This witness has identified the accused before the Court. This witness was cross-examined at length by ld. advocate for accused. During cross-examination, he has stated that on 08/05/2023 he was called by the police from Kalamba to police station and he went along-with Police Officer – Mahale from Kalamba to police station on same day. On that day he was in police station till 1.00 a.m. and again on 09/05/2023 he went to police station. This witness has stated that he himself has not stated the fact that accused has taken lift in his Auto-rickshaw to anyone nor he disclosed the said fact to police. On this ld. advocate for the accused has argued that if at all this witness had not deposed about the fact of accused taking lift in his Auto-rickshaw to anyone, then there is no question of police or anyone else knowing the said fact and it is very mysterious as to how police got information of this witness immediately on 08/05/2023. As argued by ld advocate for the accused no explanation has come on record, as to how the information of this witness giving lift to accused Aakash came to the knowledge of

the police on 08/05/2023. So also, if at all this witness has disclosed the said information to police on 08/05/2023 then what prevented the police from recording his statement on the same day. Thus the statement of this witness about giving lift to the accused in his Auto-rickshaw appears to be doubtful. For the sake of argument, even if the evidence of this witness is believed to be true, still from the evidence of this witness the only fact which emerges is that accused had taken lift in the Auto-rickshaw of this witness till Kalamba and there was blood on his hands. However, no inference can be drawn from the evidence of this witness that accused was involved in the crime or the blood on his hand was of the deceased. This witness has not stated that there were any blood stains on the clothes of the accused Akash. C.A. report is not filed by the prosecution on record and there is no evidence that there were blood stains of the blood group matching with the blood group of the deceased on the clothes of the accused or on his person. Thus the evidence of this witness giving lift to the accused in his Auto-rickshaw appears to be doubtful.

15] Other than this, the prosecution has not examined any witness who had seen the incidence and thus there is no direct evidence on record to connect the accused with the crime. In absence of any direct evidence on record, it needs to be ascertained whether the prosecution has succeeded to prove its case on the ground of circumstantial evidence. In this regard, ld. APP has argued that the prosecution has proved the entire chain of the circumstances for proving the guilt of the accused. The I.O. had specifically stated that mobile of the deceased was recovered at the instance of accused. In the said circumstances under Section 106 of the Evidence Act the burden

was on accused to explain as to how he was in possession of mobile of the deceased. In support of her submission he has placed reliance upon following authority :-

Bodh Raj @ Bodha and Ors. Vs. State of Jammu and Kashmir, Appeal (Crl.) 921/2000, dtd.03/09/2002, wherein it was held by the Hon'ble Bombay Supreme Court that, *"Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.*

It is well to remember that in cases where the evidence is of a circumstantial nature. The circumstances from which the conclusion of guilt is to be drawn 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. Again, the circumstances should be of a conclusive nature and tendency 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 far complete as not to leave any reasonable ground for a 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."

16] In rebuttal, the ld. advocate for the accused No.1 has argued that the prosecution has failed to prove that the deceased was in company of the accused prior to the incidence. So also, the motive of the murder of lending Rs.20,000/- by deceased to the accused is not

proved and there is no burden on accused under Section 106 of the Evidence Act to prove any fact as the prosecution has failed to prove the recovery of the mobile of the deceased at the instance of the accused or to prove that clothes of the accused were having blood stains. In support of his arguments he has placed reliance upon following authority :-

Manoj @ Munna Vs. The State of Chhattisgarh, 2026 SAR (Cri) 240, wherein it was held by the Hon'ble Supreme Court that, *"Adverse inference under Section 106 Evidence Act permissible only when prosecution establishes case beyond reasonable doubt. Does not shift primary burden."*

17] In the case in hand as discussed above, I have come to the conclusion that no evidence has come on record to ascertain that the deceased was company with accused lastly before his death. None of the witness examined by the prosecution has stated the said fact. Thus there is no evidence on record to support the contention of the prosecution that the deceased soon before his death was seen lastly in company of the accused. Thus, the prosecution has failed to bring on record the evidence in support of the last seen theory. As argued by Id. APP it can be said that in absence of direct evidence on record the guilt of the accused can be proved by circumstantial evidence. However, as is held in the authority of ***Bodh Raj @ Bodha Vs. State of Jammu and Kashmir***, the circumstances from which the conclusion of guilt of accused is to be drawn must be conclusively and fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In the case in hand, the prosecution has failed to establish the fact that the deceased was in company of the accused soon before his death. Thus the prosecution has failed to prove the first ring in the chain of the circumstances to

connect the accused with the crime. In the said circumstances the ratio in the aforesaid authority would not be helpful for the prosecution.

18] It is further the prosecution case that weapon of the offence was discovered at the instance of the accused. Memorandum of the confessional statement of the accused Exh.71 was recorded by the I. O. in presence of panchas and at the instance of the accused, weapon used of the commission of offence was seized and seizure panchanama Exh.72 was prepared. To prove the said fact the prosecution has examined the panch witnesses Ramdas PW3, Santosh PW5 and I. O. Rafiq Shaikh PW7. Out of these witness Ramdas PW3 has not supported the prosecution case initially. However, in his cross-examination by ld. APP, he has supported the prosecution case. All the aforesaid three witnesses have categorically stated that accused had given the confessional statement and has shown willingness to produce the weapon used for the commission of offence. Thereafter, the accused had guided the police as well as these panchas to one small pond near the spot of incidence and in the said pond the weapon was in the mud on the edge on the pond. The same was seized by the police and seizure panchanama Exh.72 was prepared.

19] On this ld. advocate for the accused No.1 has argued that the panch Santosh PW5 has admitted in his cross-examination that the accused was inside the bars of Jail, when he had given the confessional statement and the panchas and police were on the other side of the bars. Thus it can be said that the confessional statement given by the accused was not voluntarily. As argued by the ld advocate for the accused it appears that the witness Santosh PW5 has admitted in his cross-examination that accused was behind the bars, when he had

given the confessional statement and this witness and police were outside the bars. However, it is the case of the prosecution that accused was in custody when his confessional statement was recorded. Custody itself means that the movement of the accused was restricted. Hence, accused being behind bars implies that he was in custody of the police. It has not come on record that along-with accused some police were inside the Jail and they were pressuring the accused for giving statement. Thus only on the ground that accused was behind the bars when his confessional statement was recorded, it cannot be said that the statement of the accused was not voluntarily.

20] Further ld. advocate for the accused No.1 has argued that there are material contradictions in the evidence of the prosecution witnesses about spot from where the alleged weapon was seized. It is the prosecution case that the said spot was a small pond near the spot of incidence. However, Ramdas PW3 had admitted that the said pond was of about 15 x 20 feet and when they reached the spot the police were already present on the said spot and they were draining out water from the said pond with the help of motor pump. As argued by the ld. advocate for the accused, though panch Ramdas PW3 has given the aforesaid admission in his cross-examination, still the other panch Santosh PW5 as well as I.O. Rafiq Shaikh PW7 has denied the said fact. Panch Ramdas had initially not supported the prosecution case and when he was cross-examined by the ld. APP, he has supported the prosecution case. Further in cross-examination he has stated a completely new story. This witness has time and again changed his version and his evidence does not appears to be believable. The other panch Santosh PW5 as well as I.O. Rafiq Shaikh PW7 have stated that

the spot from the where the weapon was recovered was a small pond near the spot of incidence and there is nothing on record to disbelieve their version. Hence only on the basis of admission given by witness Ramdas PW3 it cannot be said that the spot from where the weapon was seized is not proved by the prosecution.

21] It is further argued by the ld. advocate for accused No.1 that the confessional statement of the accused Exh.71 appears to have been recorded between 17.20 to 17.35 hours on 09/05/2023. However from remand order of Court which is on record, it appears that both the accused were produced at 4.00 p.m. before the Court. After remand, the statement of the accused appears to have been recorded immediately and the said fact creates suspicion about the confessional statement of accused No.1 Exh.71. In the case in hand, from the confessional statement of the accused Exh.71, it appears that the same is recorded between 17.20 to 17.35 hours and the recovery at the instance of accused appears to be between 18.00 to 18.40 hours. As argued by the ld. advocate for the accused, so also from the remand order it appears that the accused was produced before the Court at 4.00 p.m. After remand he must have been taken to the police station. The ld. advocate for the accused had given suggestion to Santosh PW5, during his cross-examination and Santosh PW5 has admitted the said suggestion and has stated that accused was behinds the bars in police station when his confessional statement was recorded. From the said admission given by the panch witness it is clear that after remand accused was taken to police station and then his statement was recorded. Thus the recording of the statement of accused Exh.71 between 17.20 to 17.35 hours cannot be said to be suspicious.

22] It is the case of the prosecution that weapon i.e. Cutter Article-H is the weapon used for the commission of offence and same was seized at the instance of the accused. I.O. Rafiq Shaikh PW7 has stated that weapon discovered at the instance of the accused was Cutter Article-H and only one weapon was recovered from the said spot. However, the other I. O. Amar Mohite PW8 has stated that when the I.O. Rafiq Shaikh PW7 went with accused to the said spot two weapons i.e. knife Article-A and Cutter Article-H were lying on the spot and they were seized from the said spot. As accused did not state anything about knife Article-A only cutter Article-H was seized from the said spot. Thus there is contradictions in the evidence of both the I.O. about the number of weapons found on the said spot. Further it needs to be appreciated that both the panchas i.e. Ramdas PW3 and Santosh PW5 have stated before the Court that the weapon which was seized by the I.O. from the said spot was knife Article-A and not Cutter Article-H. Panch Ramdas PW3 has stated that accused had given the confessional statement to produce Cutter which was used in the commission of offence. However while identifying the weapon he has identified knife Article-A which was discovered and seized by the I.O. On the contrary, Santosh PW-5 have stated that accused had given the confessional statement to produce knife, which was used for the commission of offence and at his instance knife Article-A was recovered. Thus the evidence of the I.O. Rafiq Shaikh PW7 about seizure of cutter Article-H at the instance of accused is not corroborated by the panch witnesses.

23] Similarly, though I.O. Rafiq Shaikh PW7 has stated that only cutter was found on the spot of incidence and same was

recovered, still the other I.O. - Amar Mohite PW8 has stated that two weapons i.e. knife Article-A and Cutter Article-H were found on the spot, however only Cutter Article-H was seized. On the contrary, both the panchas have stated that knife Article-A was seized by the I.O. They have not stated that two weapons were found on the spot of incidence. Thus, there are material contradictions in the evidence of I.O. Rafiq Shaikh PW-7 and other witnesses about recovery of weapon i.e. cutter Article-H at the instance of accused and same contradictions are fatal for the prosecution case. From the contradictory statement of the witnesses about recovery of weapon i.e. Cutter Article-H at the instance of accused, the said recovery is not proved by the prosecution. Thus the prosecution has failed to prove the discovery of the weapon Article-H at the instance of accused.

24] Further though it is the prosecution case that the deceased has lend the amount of Rs.20,000/- to the accused Aakash and he was demanding the same and accused Aakash along-with other accused for the said reason had killed the deceased. However, to prove the said contention the prosecution has not examined even a single witness. The informant PW1 has deposed that he got the knowledge that deceased had lend amount of Rs.20,000/- to accused Aakash from one Shankar Shejul. As Shankar Shejul was not supporting the prosecution case, the prosecution has opted not to examine him by filing pursis Exh.60. No other witness has stated that deceased had lend the amount of Rs.20,000/- to accused. The I.O. also could not collect any evidence in this regard. Thus, the prosecution has failed to prove that accused had any motive or reason for commission of the crime.

25] It is further argued by ld. APP that the mobile of the

deceased was seized from the spot, which was at a distance of 1 k.m. from Kalamba at the instance of the accused. I.O. has deposed to have seized the said mobile from the said spot and to have prepared seizure panchanama Exh.76. Though the I.O. has stated that the spot from where the mobile of the deceased was record was shown to them by the accused, still the I.O. has not recorded the confessional statement of the accused in this regard and there is nothing on record to ascertain that accused had shown the willingness to show the said spot to the police and have guided the police and panchas to the said spot. Panchas Ramdas PW3 and Santosh PW5 have not stated that they went along-with the I.O. to the said spot and the mobile of the deceased was recovered from the said spot by the I.O. or accused have stated anything about the said mobile. Ajay PW-4, who has stated to have taken accused in his Auto-rickshaw till Kalamba has also not stated that accused was in possession of the mobile phone of the deceased and he had thrown on the said mobile on the spot from where it was recovered. There is absolutely no evidence on record to corroborate the evidence of I.O. that mobile of deceased was discovered at the instance of accused and was recovered from the said spot. There is no evidence on record to connect accused with the said mobile. In light of said discussion, I have come to the conclusion that the prosecution has failed to prove the mobile of the deceased was recovered at the instance of accused from spot at distance of 1 k.m. from Kalamba Mahali Shivar. Thus, as is held in the authority of ***Manoj @ Munna Vs. The State of Chhattisgarh***, no burden has shifted on the accused under Section 106 of the Indian Evidence Act to give explanation about the mobile of the deceased.

26] The I.O. Rafiq Shaikh PW7 have prepared spot panchanama Exh.70 in presence of panchas by going to the spot. He has further deposed to have seized clothes of the accused & deceased and to have prepared seizure panchanamas Exh.73 to 75. He further deposed to have sent all seized samples and clothes for chemical analysis. The said contention of the I.O. is corroborated the evidence of Ramdas PW3 and Santosh PW5. No material admission has come on record in the cross-examination of these witnesses to disbelieve the preparation of spot and seizure panchanamas. Accordingly the prosecution has succeeded to prove the preparation of spot and seizure panchanamas. From the seizure panchanama Exh.74 though it appears that the Shirt of accused Aakash was having blood stains on right sleeve was seized, still C.A. report of the alleged blood stains is not filed by the prosecution on record. Thus there is no evidence on record i.e. stains if any on the sleeve of the seized clothes of accused are of blood and that too of the blood of deceased.

27] The Id. APP has further argued that the I.O. has specifically deposed to have seized the CCTV footage of the incidence in the Pen-drive Article-A1. From the said footage the incidence could be seen and hence the same needs to be considered. As argued by Id. APP though it appears that the I.O. has stated to have seized the CCTV footage of the incidence in pen drive Article-A1 at the said footage was run before the Court, still the I.O. himself has admitted that from the said footage the faces of the persons cannot be seen clearly. As submitted by the I.O. it appears that the CCTV footage in the pen-drive is taken from considerably long distance and from the said footage neither the faces of the person nor the incidence is clearly visible. Further the CCTV

footage in the pen drive is secondary evidence and the same is not appended with certificate under Section 65-B of the Evidence Act. Hence CCTV footage cannot be considered.

28] Considering the evidence which has come on record the ld. advocate for the accused has argued that no direct evidence has come on record to prove the guilt of the accused. The eye witnesses had turned hostile and there is no evidence of the fact that deceased was lastly seen in the company of the accused. The prosecution also could not establish the motive behind the offence and hence the guilt of the accused is not proved by the prosecution. In support of his arguments he has placed reliance upon following authority :-

Govind Vs. State of Haryana, 2026 SAR (Cri) 13, wherein it was held by the Hon'ble Bombay Supreme Court that, When eyewitness turned hostile and no evidence of last seen adduced and alleged motive remains unproved, in a murder case, mere recovery and FSL report cannot be itself sustain conviction."

29] In view of all the aforesaid discussion, so also as is held in the authority of **Govind Vs. State of Haryana**, I have come to conclusion that the prosecution has failed to bring on record direct evidence to prove the guilt of the accused. As far as the circumstantial evidence which is brought on record by the prosecution is concerned, the prosecution has not brought on record evidence to prove that deceased was in company of the accused persons soon before his death. As far as accused No.2 is concerned no evidence has come on record that he was present on the spot or was involved in the commission of the offence. The prosecution has failed to prove that the weapon used for the commission of the offence was seized at the instance of accused No.1. Thus the prosecution has failed to prove the

complete chain of the circumstantial evidence and to conclusively prove each fact in the chain of the said evidence. Hence the guilt of the accused could not be proved by the prosecution beyond reasonable doubt. Therefore, both the accused deserve to be acquitted. Seized Muddemal i.e. clothes of the accused and deceased and weapons being worthless needs to be destroyed, after the appeal period is over. The seized muddemal i.e. two motorcycles bearing registration No. MH37-AC-0339 and MH-37-P-6064 needs to be returned to the registered owners, after the appeal period is over. The seized mobile of the deceased needs to be returned to the informant, after the appeal period is over. Accordingly, I **answer point No.2 in the negative** and in answer to point No.3, I proceed to pass the following order:-

ORDER

- 1] Accused namely **Aakash @ Ganesh Tryambak Jirwankar and Pawan Chintaman Jorewar** are acquitted for the offence punishable under Section 302 r/w 34 of IPC, vide Section 235 (1) of Cr. P. C.
- 2] Bail bonds of the accused stand cancelled and surety discharged.
- 3] Seized muddemal i.e. cutter and clothes of deceased & both accused persons being worthless be destroyed, after expiry of appeal period.
- 4] Seized muddemal two motorcycles bearing registration No. MH37-AC-0339 and MH-37-P-6064 be returned to the registered owners, after the appeal period is over.
- 5] Seized mobile phone of Vivo company be returned to the informant, after the appeal period is over.
- 6] The accused are directed to execute the bail bond of Rs.50,000/- (Rs. Fifty thousand only) each with surety in the like amount, in compliance with the provision of Section 437-A of Cr.P.C. to abide themselves to appear before the Higher Court as and when said Court issue notice in respect of any appeal or petition filed

Judgment

//24//

Sessions Case No.57/2023
State Vs. Akash Jirwankar + 1

against this judgment.

Judgment dictated, delivered and pronounced in open Court.

Place : Washim
Date : 25/03/2026

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

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	:- 25/03/2026
Order signed by the Presiding Officer on	:- 02/04/2026
Order uploaded on	:- 02/04/2026