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Sessions Case No.92/2025

Exh. 76

Form No.XXXII
Part 'A'
(Title page of Judgment)
(Para 44(i) of Chapter VI of Criminal Manual)

	IN THE COURT OF SESSIONS JUDGE, YAVATMAL, DISTT. YAVATMAL <i>(Presided over by S. C. Munghate)</i>	
	Sessions Case No. : 92/2025 FIR No. 0127/2025 Under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 (Further in short BNS) Police Station, Wadgaon Jungle, District: Yavatmal	
COMPLAINANT	:	State of Maharashtra, Police Station, Wadgaon Jungle, Tq. and Distt Yavatmal
PRESENTED BY	:	APP Sau. S. V. Darne
ACCUSED	:	Daluram Gulab Rathod, Aged 59 Years, Occu. Agriculturist, R/o. Yavali, Tq. & Distt. Yavatmal,
PRESENTED BY	:	Adv. Shri Harshwardhan Deshmukh

Part – 'B'

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

Date of offence	03.06.2025
Date of FIR	03.06.2025
Date of charge Sheet	26.08.2025
Date of framing Charge	21.02.2026
Date of commencement of evidence	29.04.2026
Date on which judgment is reserved	21.05.2026
Date of Judgment	22.05.2026
Date of the sentencing order, if any	22.05.2026

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428 Cr.PC.
1	Daluram Gulab Rathod	17.06.2025	Jail	Section 103(1) BNS	Convicted	R.I. 6 years and fine of Rs.500/- I/d further R.I. for 3 months.	17.06.2025 to till date

Part – 'C'

(Para 44(i) 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)
PW1- Exh.15	Sandip Daluram Rathod	Informant

PW2- Exh.18	Pankaj Diwan Jadhao	Panch Witness
PW3- Exh.29	Govardhan @ Dhanraj Daluram Rathod	Eye witness
PW4- Exh.34	Dr. Harshlata Ishwar Chavhan	Medical Officer
PW5- Exh.46	Vikas Datta Dande	Investigation Officer

B. Defence witnesses if any.

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
—	—	Nil

C. Court witnesses if any.

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

A. Prosecution

Sr.No.	Exh. No.	Description
1	16	Report
2	17	First Information Report
3	19	Suchanapatra to panch
4	20	Spot Panchanama
5	21	Inquest panchanama
6	22	Seizure panchanama of samples of samples and clothes of deceased
7	23	Seizure panchanama clothes of accused
8	24	Letter to panchas
9	35	Letter for postmortem
10	36	Question Answer Form
11	37	14 column Form
12	38	Postmortem Examination Report
13	39	Letter for opinion of injuries and weapon

14	40	Weapon examination report
15	41	Postmortem Report
16	42 to 44	Letter about handing over the viscera and other samples
17	47	Letter to panchas
18	48	House Tax Receipt
19	49	Death Report
20	50	Receipt of dead body
21	51	Duty Pass
22	52	Letter for samples of accused
23	53	Discharge Card of accused
24	54	Duty Pass
25	55	Letter to RFSL, Amravati for Chemical Analysis
26	55	Letter to RFSL for viscera
27	56 to 59	Receipt of muddemal from RFSL
28	60	Letter to Medical Officer
29	61	Report of medical Officer
30	62	Letter to JMFC for recording statement
31	63	Letter to MSEB
32	64	Report of MSEB
33	65	NC report of Babybai
34	66	Letter for sketch map
35	67	Sketch Map
36	68 to 72	C. A. Report
37	73	Portion mark A of PW No. 3 Govardhan

B. Defence

Sr.No.	Exh.No.	Description
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C. Court Exhibits

Sr.No.	Exh.No.	Description
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D. Material Objects.

Sr.No.	Art. No.	Description
1	MO-1	Sword
2	MO-2	Pieces of bangles

3	MO-3	Saree of deceased
4	MO-4	Peticote of deceased
5	MO-5	Blouse of deceased
6	MO-6	Shirt of accused
7	MO-7	Sando Baniyan of accused
8	MO-8	Full Pant of deceased

JUDGMENT

(Delivered on this 22nd day of May, 2026)

1. Accused is charged with the offences punishable under Sections 103(1) BNS.

The prosecution facts, in brief, are as under :

2. On 03/06/2025 P.W. No. 5 Vikas Dande API of Police Station Wadgaon Jungle received a phone call at about 5.30 a.m. from the police patil of village Yavali that in the house of Daluram Rathod quarrel is going on. Therefore, he went to the spot of the incident alongwith the police staff.
3. After reaching to the house of Daluram Rathod, on the wooden cot, the dead body of Babybai Daluram Rathod was seen in the pool of blood and accused was tied with rope in the said room in pool of blood. Thereafter, he unfasten him and sent to medical college and hospital, Yavatmal.
4. Thereafter, he conducted inquiry about the incident. In the meantime, on the same day, the son of deceased Sandip Rathod filed a report at police station Wadgaon Jungle vide Exh. 16 alleging that the accused had committed murder of deceased mother Babaybai by assaulting with sword like weapon. On the basis of said report crime was registered under Section 103(1) of BNS vide crime No. 127/2025 and

investigation was taken by PW No. 5 Vikas Dande.

5. P.W. No. 5 Vikas Dande conducted the investigation and during investigation he has seized the weapon, clothes of accused and deceased. Further, send the body for postmortem examination and after completion of investigation, he filed charge-sheet against accused before the learned Chief Judicial Magistrate, Yavatmal. The learned Chief Judicial Magistrate made over the matter to Judicial Magistrate First Class (Court No. 3), Yavatmal.
6. The learned Judicial Magistrate First Class (Court No.3), Yavatmal after compliance as per Section 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, BNSS), intimating accused and the Public Prosecutor, by passing order below Exh.1 dated 18/08/2025 and committed the matter to Sessions Court, Yavatmal as exclusively triable by the sessions Court. Thereafter, this matter is assigned to this Court for final disposal according to law.
7. I have framed charge under Section 103(1) BNS against accused at Exh. 10. The contents of charge were read over and explained to him in vernacular. He denied the charges and claimed to be tried. The prosecution examined in all five witnesses. The defence of accused is of false implication and contended that both his son complainant Sandip and Govardhan have quarreled with him and assaulted him at that time, his wife intervened in the quarrel and she received injury. The quarrel had taken place due to partition of agricultural land owned by him.
8. The statement of accused under Section 351 of BNSS is recorded at Exh.75.

9. Heard the submissions advanced by learned APP for State and learned advocate for accused. I have carefully gone through the entire oral and documentary evidence available on record.
10. On the basis of facts and circumstances emerging on record, the following points do arise for my determination and my findings thereon are as follows for the following reasons :

<u>Points</u>	<u>Findings</u>
01) Whether the prosecution prove that the deceased Babybai Daluram Rathod died homicidal death.	... Yes.
02) Whether prosecution proved that on 30.06.2025 at 4.00 to 4.30 a.m. at the house at village Yavali, Tq. and Distt. Yavatmal, accused committed murder by intentionally or knowingly causing the death of Babybai and thereby committed an offence punishable under section 103(1) BNSS ?	... No.
03) What offence has been made by the prosecution against the accused ?	... Offence u/s 105-II of BNS
04) What Order ?	... As per final order.

REASONS

11. In order to prove the charges leveled against accused person, the prosecution has examined P.W. No.1 Sandip Daluram Rathod (Exh.15) the informant and eye witness (In Short PW-1 Sandip), P.W. No. 2 Pankaj Diwan Jadhao (Exh.18) the panch witness (In short PW-2 Pankaj), PW. 3 Govardhan

Daluram Rathod (Exh.29) the eye witnesses and son of accused (In short PW-4 Govardhan), P.W. No. 4 Dr. Harshalata Ishwar Chavhan, Medical Officer (Exh.34) (In short PW-4 Dr. Harshalata) and P.W. No.5 Vikas Datta Dande (Exh.46) the First Investigating Officer (In short PW-5 Vikas).

12. The charge leveled against the present accused by the prosecution can be summarized as on 30/06/2025, at about 4.00 to 4.30 a.m., accused committed murder of Babybai Daluram Rathod by means of sword by intentionally or knowingly causing death of Babybai Rathod on the pretext of taking suspicion of her chastity with his younger son and the adjacent neighbor. Let us now evaluate the testimony of the witnesses to whom the prosecution has examined.

As to point Nos.1 :

13. The prosecution to prove the fact that deceased Babybai Rathod died homicidal death, is mainly adducing the evidence of the medical officer, inquest panchanqma and post-mortem examination report. They have examined P.W. No. 4 Dr. Harshalata. Further, they have proved the inquest panchanama through PW No. 2 Pankaj and PW No. 5 Vikas at Exh. 21.
14. P.W. No. 4 Dr. Harshalata stated in her evidence that on 30/06/2025 he was on post-mortem duty in the Medical College and Hospital, Yavatmal. On that day, the dead body of Babybai was sent for post-mortem examination brought by ASI PC Dongare B. No.2507 with inquest panchanama and 16 columns question answer form. She had started post-mortem of the dead body fo the Babybai on same day at about 13.50 p.m. and completed on the same day at about 14.50 p.m.

During external examination of deceased Babybai she found following injuries on the body of deceased.

- i. Contusion of size 3 x 2 cm, muscle deep, present over right lower quadrant of right breast, reddish.
- ii. Stab injury of size 2x1cm, cavity deep, present over left side chest, 5cm below and lateral to left nipple, 18 cm lateral to midline, upper angle acute, lower angle shows fish tailing, margins clean cut, infiltrate with blood.
- iii. Stab injury of size 2x1cm x cavity deep, over right lumbar region, situated 20 cm lateral to midline, 16 cm above anterior superior iliac spine, margins clean cut, infiltrate with blood, lower angles acute, upper angle blunt, vertically, oblique.
- iv. Incised wound of size 3.5x2cm, muscle deep, present over ventral aspect of left little finger, proximal phalynx, margins clean cut, infiltrate with blood.
- v. Incised wound of size 3x1cm, muscle deep, present over ventral aspect of left palm margins clean cut, infiltrate with blood.
- vi. Incised wound of size 2.5x0.1cm x muscle deep, over sacral region, margins clean cut, infiltrate with blood.

15. During internal examination she found following injuries:-

20. Thorax :-

(a) Walls, Ribs, Cartilages – 1. Hematoma of size 7x5cm, muscle deep, seen over right side of chest.

2. 5th left rib, clean cut, anterior surface, margins infiltrate

with blood, (Refer to column No.02, of column No.17).

(f) **Pericardium** – Perforating stab injury passes from left to right, inwards, backwards, downwards through 5th left intercostal space, by cutting 5th left rib. The track pierces pericardium, anterior wall of left ventricle producing though and though perforation, with corresponding posterior wall of left ventricle, margins are clean cut, infiltrated with blood. About 150-200cc blood with blood clots present in pericardial sac.

16. She further stated that the injuries received by the deceased as stated in column 17 at Sr. No. 2 with corresponding injury mention in column No. 20 is sufficient in ordinary course of nature to cause death.

17. Considering the evidence of the Medical Officer PW. No. 4 Dr. Harshalata and the fact that accused in his statement under Section 313 of the Cr. P.C. recorded at Exh. 75 have admitted the infliction of injuries during the scuffle and the inquest panchanama at Exh. 21, goes to show that the deceased died homicidal death. Therefore, I answer point No. 1 in the affirmative.

As to Point No. 2 to 4

18. The learned A.P.P. for the State submits that P.W. No.1 Sandip is the complainant and the eye witness of the incident, PW-2 Govardha is also the eye witness. The evidence of both these witnesses goes to show that the accused has assaulted the deceased by sword on the chest of the deceased Babybai. During cross examination their evidence is not shattered by the defence, the presence of both these witnesses is natural and

therefore, considering the evidence of both these eye witnesses and considering the other evidence on record which is supporting to the prosecution is not also shattered during cross examination, therefore, the testimony of both the eye witnesses got corroboration on the material points. The prosecution has proved the fact that the accused has committed murder of deceased Babybai.

19. The learned counsel for the accused contended that the prosecution has failed to prove the commission of homicidal death at the hands of accused. P.W. No. 1 Sandip and P.W. 3 Govardha are the sons of deceased and accused, there were disputes between both these sons on the point of partition of agricultural land, it is not disputed fact that accused has received grievous injuries as both the sons have assaulted accused and at that time, the deceased came to intervened and during that she received the injury and the deceased died, there is no knowledge or intention on the part of accused to commit homicidal death. Therefore, he prayed firstly to acquit the accused or alternatively the matter needs to be converted punishment 105 of the BNS.

20. Before examining the factual matrix of the case in hand, it is apposite to take note of the law laid down by the Hon'ble Apex Court on the question as to when culpable homicide is a murder under Section 300 "thirdly" and what are the elements which the prosecution should establish. The Hon'ble Apex Court in **Virsa Singh v. State of Punjab, 1958 SCR 1495**, examined this issue in detail.

Para 13 In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

21. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

22. Once these four elements are established by the prosecution and, of course, the burden is on the prosecution throughout the offence is murder under Section 300 "thirdly".

It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature. It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

23. Relying on the aforesaid principle of law, recently the Hon'ble Apex Court in **Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh (2006)11 SCC 444**, again examined the issue as to what relevant factors should be kept in consideration while deciding the question as to whether case in hand falls under Section 302 or 304 Part-I or Part-II. Justice Raveendran speaking for the Court held in para 29 as under:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters —plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to

altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

- (i) nature of the weapon used;*
- (ii) whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) whether the blow is aimed at a vital part of the body;*
- (iv) the amount of force employed in causing injury;*
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) whether the incident occurs by chance or whether there was any premeditation;*
- (vii) whether there was any prior enmity or whether the deceased was a stranger;*
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;*
- (ix) whether it was in the heat of passion;*
- (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;*
- (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special*

circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

24. Applying the aforesaid principle of law to the facts of the case in hand and keeping the same in consideration turning towards the aspect of commission of murder by the accused. Apparently the prosecution is based on direct evidence. Let us now evaluate the direct evidence brought by the prosecution on record to prove the guilt of the accused. The prosecution has examined two witnesses, PW. No. 1 Sandip and PW. No. 3 Govardhan. PW No. 1 Sandip in his testimony has contended that deceased is his mother. On the day of incident, he had returned to the house at about 1.00 a.m. and went to sleep. At about 4.00 to 4.30 a.m. he heard the voice of his mother, therefore, he woke up and went to the room of his mother and father. He had seen that accused had assaulted deceased by sword therefore, he pushed his father accused and called his brother PW. No. 3 Govardhan. Thereafter, as his father accused was trying to fled on the spot and he caught hold and tied with rope. Thereafter, he went to police Patil and further went to police station to file report.

25. PW. No. 3 Govardhan in his evidence stated that in the night at about 4.30 a.m. his brother PW No. 1 Sandip had called him therefore, he went to the room of his mother at that time he had seen that accused had inflicted injury on the person of deceased as accused was trying fled, he alongwith with his brother tied his father accused with rope and his brother PW No. 1 Sandip went to Police Patil.

26. Considering evidence of both these witness they have stated that accused used to take suspicion on the chastity of deceased mother that she is having relationship with his younger brother and on this count she was beaten by accused and therefore, they have sent deceased to her brother's house and she was brought back prior to two months of the incident. After came to reside the accused was taking suspicion on her chastity and was abusing and assaulting deceased.
27. Considering the cross-examination of these both witnesses, the defence has tried to cullout that there were cordial relations between deceased and accused but considering cross-examination of these both witnesses. Nothing is brought up on record to show that there were cordial relationship.
28. During cross-examination of PW No. 1 Sandip he has admitted that accused has received injury on his head and face. Further, this witness has admitted that after receiving injury by accused and deceased they have not taken them to hospital. He further admitted that accused has not given share in the agricultural field. Further considering cross-examination of PW No. 3 Govardhan, he has also admitted that he had not given information of receiving injury to accused. He admitted that during incident accused had received injuries on head and face. He also admitted that father had not partition the land.
29. Now considering the evidence of PW No. 1 Sandip and PW No. 3 Govardhan alongwith cross-examination, it is crystal clear that the deceased was assaulted by accused and the death was caused.

30. Considering the evidence of PW No. 4 Harshalata, she has admitted that the injury received to deceased at Sr. No. 4 and 5 at column No. 17 might be defensive wound.
31. P.W. No. 2 Pankaj is the panch witness and as per his evidence police have inspected the spot of incident and prepared spot panchanama (Exh.19). Thereafter, police took them to the house of the Daluram Rathod at village Yavali. The spot of incident was shown to the police by Govardhan Rathod PW.No. 3. He further deposed that police has seized weapon like sword, rope of nylon, broken pieces of bangle and blood lying on the floor. Police prepared seizure panchanama vide Exh. 20 in his presence.
32. Thereafter, it has also came on record during the testimony of P.W. No. 2 Pankaj that he was taken to Government medical Hospital Yavatmal. The dead body of the deceased Baby Rathod was inspected by police, the injuries body over seen and accordingly, inquest panchanama was prepared in his presence vide Exh. 21.
33. In search of his cross-examination, nothing is brought on record to show that he was not on the spot of incident and he has only signed on panchanamas on the say of police. Further nothing is there to disbelieve the testimony of this witness.
34. P.W. No. 5 Vikas, investigation officer, deposed in his evidence that on 03/06/2025 he received a phone call at about 5.30 a.m. from the police patil of village Yavali that in the house of Daluram Rathod quarrel is going on. Therefore, he went to the spot of the incident alongwith the police staff. After

reaching to the house of Daluram Rathod, on the wooden cot, the dead body of Babybai Daluram Rathod was seen in the pool of blood and accused was tied with rope in the said room in pool of blood. Thereafter, he unfasten him and sent to medical college and hospital, Yavatmal. Thereafter, he called panchas and seized sword like weapon, alongwith other articles from the spot of the incident, prepared seizure panchanama Exh. 20. Thereafter, he sent dead body of deceased Babybai to the Medical Officer, Government Hospital, Yavatmal for conducting postmortem examination. Thereafter, in the hospital, he inspected the dead body of deceased and prepared inquest panchanama vide Exh.21. He collected the medical samples of deceased and accused brought from the hospital through police constable. He has arrested accused after he was discharge from hospital. He has proved the sana entry at Exh. 65 given by the deceased against accused about giving threat to kill her. Further during investigation, he has sent the seized the sword like weapon to medical for his opinion. He sent all the seized muddemal to RFSL, Amravati for analysis. After completion of investigation he has filed charge-sheet.

35. During cross-examination, nothing is brought on record to show that he has falsely involved the accused in the crime or he has not conducted investigation in a proper manner and have falsely implicated accused.
36. Considering the evidence as discussed above, the prosecution is silent in the entire investigation about injuries caused to accused. From the discharge card proved at Exh. 53 of accused Daluram. It is evident that he was admitted in the

hospital on 03/06/2025 and was discharged on 17/06/2025. As per the discharge card there is alleged history of assault. Further, at the time of admission, it appears that he was under influence of liquor. There was fracture on right temporal lobe.

37. It appears from the discharge card that accused was having grievous injuries and was admitted for 15 days in the hospital. Both the eye witnesses PW No. 1 Sandip and PW No 3 Govardhan are not coming with any explanation about the injuries. During cross-examination, they both have stated that due to pushing by PW No. 1 Sandip accused received injuries. I am of the view that the explanation about injuries caused to accused given by both these witnesses appears to be after thought as the investigating officer PW No. 5 Vikas and both these eye witnesses are nowhere explaining injuries in a proper manner. This in my considered view, is fatal to the prosecution to hold that the accused had committed homicidal death of deceased.
38. Considering the defence of accused that there was a quarrel and during the said quarrel with both the sons, the deceased tried to intervene she received injury and she died. If we go through the evidence of PW No. 4 Dr. Harshalata, it is apparent that she received injury No. 4 and 5 in a defensive mode. Therefore, in my view, the injury received by the deceased can be termed as while there was a quarrel and at that time she received the said injury.
39. The prosecution further failed to bring on record that accused has brought sword with intention to cause death of deceased. From the evidence as discussed above, it reflects that

there was scuffling. As discussed above, the injury over accused are not explained. It appears that both the eye witnesses are not giving true picture of the incident, still the evidence of both the witnesses can not be thrown out in toto. In my view, when the defence has proved the possibility of scuffling and quarrel by preponderance of probabilities, therefore, benefit of doubt needs to the accused on the count that accused had inflicted injury with knowledge and intention to cause death.

40. So far as the ingredients of culpable homicide amount to murder is lacking from the evidence as discussed above. The benefit arising out of such doubtful position obviously go to the accused in the circumstances of the case. The offence under section 103(1) of BNS, for which accused can be held responsible would be on the basis of the minimum intention actuating his act and thereby giving rise his liability for the same. The question of intention to cause death, besides, can be easily ruled out in the circumstances of this case.

41. Considering the above aspect after going through the entire evidence on record, I do not found any intention on the part of the accused to eliminate the deceased. Further from the evidence on record and going to the acquisition of assaulting the deceased by sword and the prosecution has not brought any incriminating material on record nor it cannot be gathered from the record that the deceased was having any aliment and the accused knew the aliment of the deceased by which he knew the fact that by beating on certain part the accused would die. It did not appear any intention on the part of the accused to kill the deceased so also from the material placed on record, by mere stabbing once by the accused once in my

considered view was having no intention to kill deceased Babybai. Therefore, in my considered view the prosecution has failed to prove the fact that the accused was having intention to commit death of Babybai.

42. The prosecution has not proved its case for the charge leveled against the accused for the offence punishable under section 103(1) of BNS. Considering the guidelines of the cases referred supra, I am of the considered view that the prosecution has proved the case against the accused for the offence punishable under Section 105-II of BNS. Therefore, I hold the accused is guilty of the offence under Section 105-II of the BNS instead of offence punishable under section 103(1) of the BNS and I answer point nos. 2 and 3 accordingly. Here, I stop to hear the accused on the point of sentence.

Dated :22/05/2026.

(Shekhar C. Munghate)
Sessions Judge,
Yavatmal.

43. I heard learned APP for the State and accused on the point of sentence. The Learned APP Mrs. S. V. Darne submits that maximum punishment be awarded looking to the circumstances of the case. I heard the accused in person. The accused submits that looking to his age, and no one is there to look after his family, therefore, lenient view may be taken. I have heard learned counsel Shri Harshwardhan Deshmukh on the point of sentence for accused. Therefore, considering the age and family back ground lenient view may be taken and

mercy be shown. Therefore, considering the gravity of the matter as well as family ground of the accused, following sentence would suffice to meet the ends of justice in view of offence, the accused is not entitled for the benefit of Probation of Offenders Act. Hence, to answer Point No.4, I proceed to pass the following order.

ORDER

- 01) Accused Daluram Gulab Rathod is hereby convicted under Section 258(2) of the Bharatiya Nagarik Suraksha Sanhita for the offence punishable under section 105-II of the Bharatiya Nyay Sanhita.
- 02) He is sentenced to suffer Rigorous imprisonment for six years and to pay a fine of Rs.500/- (Rs. Five Hundred only) in default he shall undergo further R.I. for 3 months for the offence punishable under Section 105-II of the Bharatiya Nyay Sanhita.
- 03) The accused is acquitted for the offence punishable under section 103(1) of the Bharatiya Nyay Sanhita.
- 04) Accused is in jail from 17.06.2025 to till date therefore, he is entitled to set off under section 468 of the Bharatiya Nagarik Suraksha Sanhita for the period he is in jail.
- 05) The muddemal property i.e. Sword be sent to the District Magistrate for disposal according to law and other seized muddemal being worthless be destroyed after appeal period is over.
- 06) Copy of judgment be given to accused, free of costs.
- 07) Accused is in Jail, if he wants to prefer appeal against this Judgment and Order, he has right to seek free legal aid at the expenses of the state from the Legal services Authority, High Court of Judicature, Bombay, Bench at Nagpur. Copy be forwarded to Secretary DLSA Yavatmal for information and necessary action.

- 08) Copy be forwarded to the District Magistrate under section 406 of the Bharatiya Nagarik Suraksha Sanhita.

(Dictated and pronounced in open Court.)

Dated :22/05/2026.

(Shekhar C. Munghate)
Sessions Judge,
Yavatmal.

Certificate

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

Name of Stenographer :-	R. S. Wanjari, Stenographer Grade I.
Court name :-	Principal District & Sessions Court, Yavatmal.
Date :-	22/05/2026
Judgment signed by	
Presiding officer on :-	22/05/2026
Judgment uploaded on :-	22/05/2026

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