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Sessions Case No.104/2022

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, DIST. YAVATMAL <i>(Presided over by S. C. Munghate)</i>	
	Sessions Case No. : 104/2022 FIR No. 176/2022 Under Section 302, 324 of the Indian Penal Code, 1860. Police Station, Ner, District: Yavatmal	
COMPLAINANT	:	State of Maharashtra, Police Station, Ner, Tq. Ner, District: Yavatmal
PRESENTED BY	:	APP Shri N. N. Pande
ACCUSED	:	Devidas Pralhad Rathod, Aged 35 Years, Occu. Labour, R/o. Kumbhar Kinhi, Tq. Darwaha, Distt. Yavatmal,
PRESENTED BY	:	Adv. Shri H. D. Deshmukh

.. 2 ..

Part – 'B'

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

Date of offence	27.04.2022
Date of FIR	28.04.2022
Date of charge Sheet	04.08.2022
Date of framing Charge	28.02.2023
Date of commencement of evidence	12.03.2026
Date on which judgment is reserved	19.05.2026
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.P.C.
1	Devidas Pralhad Rathod	01.05.2022	14.08.2022	Section 302 IPC	Convicted	Suffer imprisonment for life and to pay a fine of Rs.500/- i/d further R.I. for 3 months	01.05.2022 to 14.08.2023

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.26	Mohammad Asif Md.Hayat	Informant

	Kureshi	
PW2- Exh.29	Pravin Kamalsing Rathod	Witness
PW3- Exh.30	Sunil Nagorao Chavan	witness
PW4- Exh.31	Mahadev Shravan Rangari	Spot & Seizure pancha
PW5- Exh.44	Dr. Sanjay Rawanrao Jadhao	Medical Officer
PW6- Exh.50	Rajendra Pundlik Madavi	Witness
PW7- Exh.51	Chagan Mansing Chavan	Witness
PW8- Exh.52	Dr. Shishir Sunil Vidhate	Medical Officer
PW9- Exh.58	Narendra Punjabrao Lavare	Witness (duty officer)
PW10-Exh.60	Rajesh Pundhlikrao Chaudhari	First Investigating officer
PW11-Exh.63	Ramkrushan Pahadsing Jadhav	Investigating 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	27	Report
2	28	First Information Report
3	32	Panchanama
4	33	Seizure panchanama
5	34	Seizure Panchanama
6	35	Seizure Panchanama
7	36	Seizure Panchanama
8	45	MLC Report

9	46	Injury Report
10	47	Referral Letter
11	48	Letter for Weapon Query
12	49	Query Report
13	53 & 54	Question answer Form
14	55	PM. Report
15	56	Viscera report
16	59	Letter
17	64	Arrest Panchanama
18	65 & 66	Acknowledgment
19	68 to 72	C.A.Report

B. Defence

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

Sr.No.	Exh.No.	Description
01	Exh.37	Request Letter for PM.
02	Exh.38	Ghat Certificate
03	Exh.39	Injury report
04	Exh.72-A	Injury report
05	Exh. 76	Inquest Panchanama
06	Exh. 77	Accident Death report

D. Material Objects.

Sr.No.	Exh.No.	Description
01.	M.O.-1	Tikas (टिकास)
02.	M.O.-2	वाकळ
03.	M.O.-3	Pant
04.	M.O.-4	T-shirt

J U D G M E N T

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

1. The accused is tried for offence punishable under Sections 302 and 324 of the Indian Penal Code, 1860.

Brief facts of the prosecution case are as follows :-

2. Informant has brick kiln situated in the agricultural field of Shekhar Malani at Pimpri road and where a total four male labourers from different villages reside along with their families and out of which Devidas Prahlad Rathod, resident of Kubharkini, Taluka Darwaha, along with his wife Sushma Devidas Rathod, had been working in his brick kiln for the past two months and they had frequent quarrels. Therefore, he and other labourers had on several occasions tried to advise and pacify them. Moreover, there was no improvement in their behaviour. On 27/04/2022, at about 09:30 p.m., he received a phone call from the labour Vikram Jadhav and said labour informed him that Devidas Prahlad Rathod had assaulted his wife by hitting her on the head with the wooden handle of a pickaxe, due to which she was lying unconscious. Thereafter, he went to brick kiln and, along with the parents of Sushma Devidas Rathod, took her in an auto-rickshaw to the Rural Hospital at Ner. There, the doctor provided primary treatment to the injured and referred her to the Government Hospital, Yavatmal, for further treatment and she died during the treatment.

3. On the basis of the said information Crime No.176/2022 came to be registered against accused under Section 324 and 302 of the Indian Penal Code, 1860 at Police station Ner. The investigation was entrusted to P. S. I. Ramkrushan P. Jadhav. During the course of investigation, he conducted inquest panchnama, seizure panchanama and sent dead body for post-

mortem examination. He recovered muddemal in the instant case.

4. Investigation Officer obtained the postmortem report. He recorded the statements of the witnesses as per their narration and after completion of the investigation, as per his opinion there is evidence against accused, he filed charge-sheet against the accused for the offence punishable under Section 302, 324 of the Indian Penal Code, 1860 before the learned Judicial Magistrate First Class, Ner.

5. The learned Judicial Magistrate First Class, Ner after complying all formalities as per Section 207 of the Code of Criminal Procedure, intimating the accused and the Public Prosecutor, by passing order below (Exh.1) dated 26/02/2022, committed the case to the Sessions Court, at Yavatmal as it is exclusively triable by the sessions Court. Thereafter, matter was assigned to this Court for final disposal as per law.

6. After hearing learned APP and counsel for the accused my learned predecessor framed charge against accused at (Exh. 04). The contents of charge were read over and explained to accused. Accused denied the charges and claimed to be tried. The prosecution examined in all eleven witnesses and closed their evidence by filing pursis at Exh.73.

7. The statement of accused under Section 313(1) (b) of of Criminal Procedure Code was recorded at (Exh.74). His defence is of total denial and false implication, he has not examined any defence evidence nor has examined himself on oath.

8. Heard the submissions advanced by learned APP for State and learned advocate for the accused and the charge framed against the accused, on the basis of facts and circumstances emerging on record, the following points arise for my determination along with findings and reasons recorded therein.

<u>Points</u>	<u>Findings</u>
01) Whether prosecution has proved that the deceased Sushma Devidas Rathod died ... homicidal death ?	Yes
02) Whether the prosecution prove that on 27/04/2022 at about 9.30 pm at bricks kiln at the field of Shekhar Malani, Ner-Pimpri Ijara road, Tq.Ner, Dist.Yavatmal, accused voluntarily caused hurt to the deceased Sushma Devidas Rathod by means of wooden rod of hand pick (Tikas) and thereby committed an ... offence punishable under section 324 of IPC ?	Yes.
03) Whether prosecution proved that on 27/04/2022 at about 9.30 pm at bricks kiln at the field of Shekhar Malani, Ner-Pimpri Ijara road, Tq.Ner, Dist.Yavatmal, accused committed murder of his wife Sushma by means of wooden rod of hand pick (Tikas) by intentionally or knowingly causing the death of Shushma and ... thereby committed an offence punishable under section 302 of IPC ?	Yes.
04) What Order ?	... As per final order.

REASONS

9. In order to prove the guilt of the accused, prosecution has relied on the oral and documentary evidence as appended in the part “C” of this judgment. The prosecution is coming with the case that accused have committed murder of his wife deceased Sushma by means of wooden rod of hand pick (Tikas). No direct evidence is available on record, therefore, the prosecution is relying on the circumstantial evidence to the prove the guilt of the accused.

As to point No. 1

10. In order to prove Homicidal death of the deceased, the prosecution has relied upon the evidence of medical expert and the inquest panchanama. Thus, I have to deal with the medical evidence in the form of post-mortem examination report proved through the medical officer PW-5 Dr. Sanjay and P.W.8 Dr. Shishir to consider the aspect whether the prosecution prove the death of deceased Sushma Rathod being Homicidal Death. To prove it, the prosecution tendered the evidence on the first medical officer P.W. 4 Sanjay who has examined deceased for the first time and referred to deceased for further management. So also postmortem examination report as well as evidence of PW-8 Dr. Shishir.

11. Prosecution has also examined Medical Officer Dr. Sanjay Jadhao (PW 5) in order to prove the guilt of the accused. Dr. Sanjay, (PW 5) during the course of his evidence has deposed that he was attached to Rural Hospital, Ner as Medical Officer in the year 2022 and on 27/04/2022 at 09:50 pm patient Sushma Devidas Rathod was admitted in Rural Hospital, Ner with the history of assault and she was directly

admitted in Hospital. He informed to Police Station Ner vide written Sana. The MLC Exh.45. He examined patient. On examination, he found following injuries on the person of patient. CLW - size of injury irregular, injury on left forehead and temporo parietal region by hard and blunt object, it was fresh fresh. Contusion – size of injury was irregular, injury on left parietal region of head by hard and blunt object, it was fresh injury. Contusion – size of injury was irregular, injury on left cheek by hard and blunt object, injury was fresh.

12. All the injuries were multiple injury irregular in size with head injury, its healing time was 10 to 12 days if no complications arise. Thereafter, as per the request of police station officer, Ner he issued injury certificate Exh.46 on 05/05/2022. He further deposed that after preliminary treatment he referred patient to VNGMC Hospital at Yavatmal as per referral letter Exh.47. Considering the cross-examination, nothing is brought up on record to disbelieve her version.

13. P.W. No. 8 Dr. Shishir stated in his evidence that 01/05/2022 he was on post-mortem duty in the Government Medical College, Nagpur. On that day, the dead body of Sushma was sent for post-mortem examination with inquest panchanama and 16 columns question answer form. He had started post-mortem of the dead body of the Sushma on same day at about 1.10 p.m. and completed on the same day at about 2.20 p.m. During external examination of deceased Avadhut he found following injuries on the body of deceased.

i. Stitched present over left frontal region, situated 01 cm above eyebrow, of length 04 cm associated with 06 sutures in situ, no gaping, no oozing, dry.

ii. Stitched wound present over left temporal region, of length 03 cm associated with 03 sutures in situ, no gaping, no oozing, dry.

iii. Therapeutic injection marks present over dorsum of right forearm.

14. Further, during internal examination he found injury on head as follows. Injury under the scalp, their nature—Underscalp hematoma present over left fronto-temporo-parietal region, of size 08 cm x 07 cm, associated with extravasation of blood present in temporalis muscles, irregular, red. Skull – Depressed fracture of Vault present over left frontal region, of size 02 cm x 01 cm, radiating towards left temporal region as linear fracture, of length 06 cm, extravasations of blood in fractured margins, red. Brain – Dura – intact, no injury. Subarachnoid hemorrhage present over all over brain, red. Brain - contusion present over left frontal region, of size 02 cm x 02 cm, extravasation of blood in surrounding brain parenchyma, red.

15. The injuries mentioned in column No. 17 are ante-mortem in nature. As per his opinion, death was caused due to head injuries. The injury in column No. 17 corresponding with injury mentioned in column No. 19 are sufficient to cause death in ordinary course of nature.

16. Considering the evidence of the Medical Officer PW. No.

5 Dr. Sanjay Jadhao and P.W. No. 8 Dr. Shishir, so also inquest panchanama (Exh.76) which is admitted by defence, from the evidence of medical officer and the inquest panchanama, in my considered view the prosecution has proved the deceased died homicidal death. Therefore, I answer point No. 1 in the affirmative.

As to point No. 2 and 3

17. It is well established principle of law that when the case is based on the circumstantial evidence, it is incumbent on the part of prosecution to prove each and every circumstance by cogent, succinct and reliable evidence and it must form complete chain for inescapable inference of guilt of the accused. On this count it would be appropriate to refer the observation of Their Lordships of Hon'ble Apex Court in para No. 152, 153 and 154 of the judicial precedent in **Sharad Birdhichand Sarda – Vs – State of Maharashtra**, reported in **(1984) 4 SCC 116** as follows -

"152. Before discussing the cases relied upon by the High Court, we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant vs. State of Madhya Pradesh. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi .v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J has laid down in Hanumant case:

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 should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. 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.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* where the following observations were made: [SCC para 19, p.807 : SCC(Cri) p.1047].*

(1) Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

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

other hypothesis except that the accused is guilty,

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

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

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

18. On the touch-stone of aforesaid legal guidelines, it would be essential to scrutinize the evidence of prosecution witnesses to determine the nexus and proximity of the accused with the alleged homicidal death of deceased Sushma.

19. The oral and circumstantial evidence adduced on record demonstrate that the entire edifice of the prosecution rests on the following sets of circumstances to bring home guilt of the accused.

- i) Last seen theory and accused seen along-with weapon near dead body
- ii) Time gap between last seen together and death of deceased and Conduct of Accused.
- iii) Motive.

20. On this note it would be appropriate to take note of the section 106 of the Indian Evidence Act, 1872 which reads as follows :-

Section 106– Burden of proving fact especially within knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

21. Now, It would be appropriate to consider the oral and documentary evidence brought on record by the prosecution to complete the chain of the circumstantial evidence as relied on by prosecution.

22. On this count, it would be appropriate to note on the Section 8 of the Indian Evidence Act, 1872 which reads as follows-

***Section 8.** Motive, preparation and previous or subsequent conduct.*

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

23. The prosecution to prove that accused and deceased were last seen together and accused was found alongwith weapon near the dead body of deceased at his home had examined PW. No. 1 Mohd., PW. No.2 Pravin, PW. No. 6 Rajendra and PW. No. 7 Chhagan. Let us now evaluate the evidence of this witnesses.

24. P.W.No. 1 Md.Asif Md. Hayad Kureshi deposed in his evidence that his brick kiln is located at the farm of Shekhar

Malani on Ner-Pimpri Road. In the year 2022, the workers at his brick kiln were Raju Madavi, Shalik Jadhav, and Devidas Rathod. About two months prior to the incident, Devidas Rathod had come to work at his brick kiln along with his wife namely Sushmabai Rathod and they were residing in a hut adjacent to the brick kiln. Sometimes, the accused Devidas used to come home after consuming liquor and quarreled with his wife. Therefore, he, Shalik Jadhav, and Rajendra Madavi used to advise the accused Devidas not to consume liquor and to behave properly with his wife.

25. On 27.04.2022, between 9:00 p.m. and 9:30 p.m., while he was at home, he received a phone call from Vikram Jadhav and he informed that the accused Devidas had assaulted his wife on the head with the handle of a pickaxe and caused injuries to her. Thereafter, he went to the brick kiln. Deceased Sushma was lying injured on a cot. At that time, Sushma's parents had also arrived there. Thereafter, he take Sushma to the Government Hospital at Ner. After examining she was referred to the Government Hospital at Yavatmal.

26. He further deposed that thereafter, he went to the Ner Police Station and informed the police about the said incident and lodged the report Exh.27 and F.I.R. Exh.28. Next day police came at his brick kiln and he shown the spot of incident to the police and police prepared panchanama. Thereafter, after 3 to 4 days Sushma died during the treatment. Police recorded his statement. He Identified the accused before the court.

27. In his cross he stated that he had not stated in his report how many times and on which occasions he, Shalik, and Rajendra had advised the accused not to consume liquor and quarrel. Vikram Jadhav had not told him over the phone that he had witnessed the incident. When he went to Sushma's house at the brick kiln, Sushma and her parents were present there and neighboring people were also present there. The house was made of tarpaulin with a grass roof and that house was not constructed with bricks. When he went to the spot of incident, the accused Devidas Rathod was not present there.

28. He admitted that he had not removed the accused Devidas from work and they were living properly in his presence. The distance between the brick kiln and Ner Police Station is about 2 kilometers. He reached the police station from the hospital in approximately one hour. He also admitted that during that period he had thought about how the complaint should be lodged with the police. Thereafter, he denied all the questions of the defence.

29. Considering the evidence alongwith cross-examination of this witness, it is crystal clear that he was the owner of the brick kiln and accused alongwith his wife, PW. No. 2 Pravin, PW. No. 6 was residing near the brick kiln by erecting huts. Further, he has given report after he got knowledge of the incident. His evidence on this point is trustworthy and therefore, it is believable.

30. P.W. No 2 Pravin Kamalsing Rathod deposed in his evidence that in the year 2022, he was working as a laborer at the brick kiln of Asif. The brick kiln is located on Ner-Pimpri

Road. About 4 to 5 months prior to the incident, he had started working at that brick kiln. he was residing in a hut at the brick kiln along with his wife and father-in-law. There were three huts at that brick kiln. Next to his hut, Devidas Rathod was resided with his wife Sushma. In the next hut, Rajendra Madavi was resided. There used to be regular quarrels and fights between Devidas and his wife. They used to advise Devidas not to quarrel. On 27.04.2022, after working throughout the day at the brick kiln, he and his wife went to sleep in their hut and around 9:30 p.m., he heard Sushma shouting. Therefore, he and his family members woke up. When he went outside, he saw Sushma lying injured on a cot. The accused was seen holding a pickaxe in his hand and, upon seeing them, accused fled from the spot. Thereafter, his brother-in-law Vikram Jadhav called the contractor and Sushma's brother over the phone. Then Sushma's parents and the contractor came and took Sushma to the hospital. He identified the Pickax Article M.O.1 and he also identified the accused before the court. Police inquired him during investigation.

31. In his cross he stated that there was a cooler installed in their hut. He denied that on 27.04.2022 he had gone along with his wife to Uttarwadhona for a marriage ceremony. He admitted that that was night time and it was dark outside the huts and due to darkness, he could not see from which direction the accused ran away and what clothes he was wearing and also admitted that due to darkness, he could not see who was standing outside the hut and he saw the pickax

for the first time today.

32. He further deposed that he did not lodge any complaint about the said incident to the police and admitted that during the inquiry he do not know what the police recorded in writing. Thereafter, he denied other questions put by the defence.

33. The admission given by this witness to the effect that due to darkness he was unable to see the persons outside the Hut, but considering further cross-examination of this witness he has denied the fact that he has not seen the accused running from the spot of incident. It is also not disputed fact that accused was living with the deceased alone and on the day of incident he was alone with the deceased.

34. P. W. No. 6 Rajendra Pundlik Madavi deposed in his evidence that in the year 2022, he was working at the brick kiln of Asif. The brick kiln is located on Pipri Road. He and his wife were residing in a hut at the brick kiln itself. The accused Devidas Rathod was residing with his wife in the hut next. In the adjoining hut, Shalik Jadhav and his son-in-law were residing. There used to be frequent quarrels between the accused Devidas and his wife. They used to settle their disputes. The accused Devidas often used to consume alcohol and quarrel with his wife. The incident is dated 27/04/2022. On that day, after working throughout the day, he and his wife went to sleep at night. Around 9:30 p.m., he heard Sushma shouting. She was saying “याडी ये मरगो”. Therefore, he and his wife came outside. At that time, Shalik and his son-in-law also came out. They saw Sushma lying in a pool of blood, and the

accused Devidas was holding a pickaxe in his hand and accused fled from there. Thereafter, Shalik's son called the contractor and also informed Sushma's parents. The contractor and Sushma's parents then arrived. Thereafter, Sushma's parents and the contractor took Sushma to the hospital. Later he came to know that Sushma had died. His statement was recorded by the police. He identified the accused Devidas before the court and also identified the pickaxe Article No.1.

35. In his cross he deposed that he did not give a report of the said incident to the police station and also not give any report regarding quarrels between Devidas and his wife. He denied that there was a cooler installed in his hut. The hut was constructed with bricks. He also denied that when he came out of the house, no one other than Sushma was seen.

36. It is not disputed fact that after witnessing the incident he has not lodged report at police station. But considering the fact that he is rustic villager and only on the count that the this witness have not filed any report, in my view, can not be a ground to discard the testimony of this witness.

37. Chhagan Mansing Chavan (PW. No.7) who is the father of the deceased deposed in his evidence that deceased Sushma was married to the accused Devidas Rathod about 14 years ago. They have one daughter. He identified the accused in the court. After the marriage, Sushma went to live in the village of Khubharkinhni. The accused used to frequently quarrel with Sushma. Deceased Sushma lived with the accused for about 4 to 5 years. Thereafter, she came to his house along with her

daughter. He arranged a separate house for Sushma. After that, she lived in his village for about 7 years. During Dussehra in the year 2021, the accused came to his daughter's place and accused stayed with his daughter for 2 days and thereafter borrowed Rs.1.5 lakh from a moneylender and then fled from there.

38. He further deposed that thereafter, he took Sushma along with the family and went to work at a brick kiln located behind Uddhav Baba Dhaba near Ner. The accused also came there. He got him employed at the dhaba. Later, he had a quarrel with the owner of the dhaba. Then he told him that he would go to another contractor. Thereafter, he took Sushma and went to work at a brick kiln on Pipri Road. At that brick kiln, he and his wife were residing in a hut. There also, the accused used to harass Sushma. On the day of the incident, he had gone to their hut in the morning. He had tea there and returned to the brick kiln along with his granddaughter. After working throughout the day, they all went to sleep at night. At about 9:30 p.m., he received a phone call from the son of Shalik Jadhav and he informed that the accused Devidas had hit Sushma on the head with a pickaxe. Thereafter, he, his wife, went to Sushma's house. Sushma was lying unconscious on the cot, and there was an injury on her head from which blood was coming out. The contractor also came there, and we took Sushma to the Government Hospital at Ner. From there, she was referred to the Government Hospital at Yavatmal. They further advised taking her to Nagpur. Thereafter, they admitted her to the Government Medical College at Nagpur, where she died. Police recorded his statement.

39. In his cross he deposed that he had not previously lodged any complaint at the police station regarding quarrels and disputes between the accused and Sushma. deceased Sushma had never filed any divorce case or maintenance case against the accused. On the morning of the day of the incident, Sushma had not made any complaint to him against the accused. Thereafter, he denied all suggestions of the defence.

40. It would be appropriate to take guidance of the judgment relied on by the Ld. A.P.P. relied in the case of **Ramgopal Manshram -Vs- State of Madhya Pradesh Special Leave Petition (crl.) No. 9221/2018** wherein the Hon'ble Supreme Court observed that Section 106 of the Evidence Act is not certainly to relieve the prosecution of its duty to prove the guilt of the accused. Nonetheless it is equally settled legal position that if the accused does not throw any light upon the facts which are prove to be within his special knowledge in view of section 106 of Evidence Act, such failure on the part of the accused as it may provide an additional in the chain of circumstance required to be proved against him.

41. The ratio laid by the Hon'ble Supreme Court in the case of **Ramgopal (cited supra)** is indeed being the settled position of law in terms of Section 106 of Evidence Act and the same is succinctly applicable to the set of the facts of the present case.

42. In the light of the facts of the present case in view of the section 106 of the Indian Evidence Act, 1872 burden was bestowed upon the accused to prove the facts which are specially within his knowledge, considering the facts of the

present case. However, accused has not rebutted the evidence brought on record by the prosecution by leading any evidence on his part. The opportunity was also given to accused at the time of recording of statement U/s 313 (1) (b) to explain the circumstances appearing against him from the evidence of the prosecution. However, during the recording of statement accused has merely denied the incriminating circumstances appearing against him.

43. Considering the evidence of PW No. 1 Mohd. Asif, PW No. 2 Pravin, PW No. 6 Rajendra and PW. No. 7 Chhagan, it is crystal clear that the accused was residing alongwith deceased wife and on the day of incident the sons of deceased and accused were not in the house. Further, it is crystal clear that from the evidence of PW No. 2 Pravin and PW No. 6 Rajendra they have seen deceased having Tikas in his hand and was standing the near his wife deceased and after seeing the both these witnesses, he left the spot and never returned till he was arrested. Further, it has come on record, after the injured received to the deceased never had accompanied her nor any explanation is put forth by accused where he was till his arrest.

44. Considering this evidence, it is crystal clear that there is no possibility of another person committing crime other than the present accused.

45. As discussed above, PW No. 1 Mohd. Asif, PW No. 2 Pravin, PW No. 6 Rajendra and PW. No. 7 Chhagan are consistently stating that the accused was beating and abusing the deceased wife. Further, on going through the evidene of PW No. 7 Chhagan, it appears that accused has left the

deceased to the house of this witness and deceased had resided in the village for 7 years and thereafter, accused had taken deceased to the spot of incident where they were residing. This goes to show culpable mind and motive towards the deceased and in my considered view, the prosecution has proved motive to eliminate deceased.

46. Further, let us now evaluate the evidence of PW. 4 Maharadeo and PW. No. 10 Rajesh first investigating officer and PW No. 11 Ramkrushna the investigating officer.

47. P.W. No. 4 Mahadev Shrawan Rangari deposed in his evidence that in the year 2022, he was working as a watchman in the Forest Department and on 28.04.2022, as per direction of their senior officer, he and Wasram Jadhav were gone to Ner Police Station for conducting a panchnama and from there, the police took them near the brick kiln. Mohammad Asif was with them. They went to the spot on a motorcycle. Mohammad Asif showed them the place of incident. The place was near the brick kiln on Ner-Pimpri Road. The land belonged to the Malani family. In their presence, the police inspected the spot. On the eastern side of the spot, there were three huts. In front of the middle hut, in the courtyard, there was a cot with a blanket on it. Blood stains were found on one corner of the blanket. In front of the courtyard of the hut, one pickaxe was lying. There were blood stains on the handle of the pickaxe. Both these articles were seized in his presence and a panchnama Exhibit No.32 was prepared, and his signatures along with the other panch witness were taken, another seizure

panchnama Exhibit No.33 was also prepared. He also identified pickaxe Article M.O.1 and blanket Article M.O.2. Thereafter, they returned to the police station and in police station, the clothes of accused Devidas Rathod were seized. These included one pant and one T-shirt. Thereafter, a seizure panchnama Exh.34 was prepared. He also identified the light sky-blue colored full pant Article M.O.3 and the red-colored T-shirt Article M.O.4. Thereafter, the police seized two sealed bottles containing blood samples from a police constable and prepared a panchnama Exh.35.

48. He further deposed that thereafter, the police again called him police station and the police seized two sealed sample bottles through a police constable and prepared a panchnama Exh.36.

49. In his cross he deposed that he was called by the police as a panch witness in 4 to 5 cases. He admitted that he do not know what has been written in the spot panchnama and he only signed the panchnama at the spot. He also admitted that he do not know what has been written in the seizure panchnama of the accused's clothes and he do not know what has been written in Exhibits No. 33, 35, and 36.

50. Considering the cross-examination of this witness, preparing spot panchanama in his presence and seizing the Tikas form the spot of incident. In my considered view, it proved by the prosecution.

51. Thereafter, prosecution examined Narendra Punjabrao laware (PW.9) who is the duty officer and registered the crime No.176/2022 against accused as per report and as per letter

Exh.59 of A.S.I. Rajesh Chaudhary requested Forest Department, Ner for two Government panch. Therefore, Mahadev Rangari and Wasram Jadhav came to the police station. He went to the spot of incident along with two panch and seized blanket and Tikas with Blood stains as per seizure panchanama Exh.33 and prepared spot panchanama Exh.32 and drawn the sketch of the spot incident in spot panchanama. He identified the M.O.1 Tikas and M.O.2 blanket. Thereafter, further investigation done by PI. Ramkrushan Jadhav.

52. In his cross he deposed that he did not prepare the spot panchnama during the night. No police personnel were deployed at night for protecting the scene of offence. The complainant is not an eyewitness to the incident. The articles shown by the complainant at the scene of offence were seized. At the time of preparing the spot panchnama, he had taken photographs. He did not hand over the photographs to the subsequent Investigating Officer along with a certificate under Section 65-B of the Indian Evidence Act. He had not seized soil samples from the spot, nor had he taken fingerprints from the scene of offence. There were no blood stains on the iron portion of the pickaxe. When he seized both the articles, the blood stains on them had already dried.

53. Thereafter, prosecution examined Rajesh Pundlikraon Chaudhary (PW.10) who is also the duty officer. He seized the clothes of the accused as per the say of PI. Jadhav and prepared seizure panchanama Exh.34. He identified the Skyblue colour Full-pant which is at M.O.3 and red colour T-

shirt which is at M.O.4 and also identified the accused before the court. In his cross he admitted that accused was present at the police station, but he do not know whether he had been arrested or not. Thereafter, he denied all suggestions of the defence.

54. Thereafter, prosecution examined Ramkrushan Pahadsing Jadhav (P.W.11) who is the investigation officer. He deposed that he conducted the investigation and on 01/05/2022 he arrested the accused Devidas Rathod in presence of pancha and prepared arrest panchanama Exh.64. During the investigation, he had sent the accused through NPC Mahesh to the Medical Officer for obtaining his medical samples. NPC Mahesh brought the sealed blood samples handed over by the Medical Officer to the police station. He seized the same in the presence of panch witnesses as per Exhibit No.35 and prepared a panchnama. PC Sanjay, Buckle No. 1501, brought the sealed blood samples of the deceased given by the Medical Officer to the police station. He seized the same in the presence of panch witnesses as per Exhibit No.36 and prepared a panchnama accordingly.

55. During the investigation, he had sent a letter Exh.48 to the Medical Officer, Rural Hospital, Ner seeking his opinion regarding the weapon seized during the investigation and the injuries sustained by the deceased. The Medical Officer examined the weapon and gave his report in writing on the reverse side of my letter. Thereafter, he sealed the weapon and returned it to me.

56. On 06.06.2022, he had sent the articles seized in the offence to the Chemical Analyzer, Amravati for examination

along with two letter Exh.65 and 66.

57. In his cross-examination he deposed that initially, the offence in this case was registered under Section 324 of the Indian Penal Code and deceased died on 01.05.2022. The documents relating to the treatment given to the deceased have not been annexed in this case. During the investigation, it did not appear that any dying declaration of the deceased had been recorded. During the investigation, he did not record the statement of a person named Vikram Jadhav. he recorded the statement of Prosecution Witness No.7, Chhagan, as narrated by him. In his statement, he had not stated that he had received a phone call from Shalik's son. He denied that the statement of Prosecution Witness No.3, Sunil, was not recorded as per Exhibit No.67 and also denied that he did not record the statements of witnesses as narrated by them. During the investigation, he did not verify whether fingerprints were present on the weapon seized in the case.

58. Considering the fact that the seizure is proved nothing is brought up on record to show that the panch witness PW No. 4 Mahadeo and the investigating officers have falsely involved the present accused.

59. Lastly, summing up my findings, I would like to take help of the decisions of Hon'ble Apex Court in the matters of Shivaji Sahabrao Bobade and another Vs. State of Maharashtra (1973) 2 SCC 793, it was observed by a three Judge Bench of the Hon'ble Supreme Court

“Even at this stage we may remind ourselves of necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author (Glanville Williams in ‘Proof of Guilt’) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated ‘persons’ and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that “a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.....

In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal

innocents”.

In **State of Punjab Vs. Jagir Singh Baljit Singh AIR 1973 SC 2407**, it was again observed that:

“A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of an interplay of different human emotions. In arriving at the conclusion of a crime, the court has to judge the evidence by yardstick of probabilities, its intrinsic worth and the animus of the witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the court should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

60. Considering the guidelines of the above ratio of the Hon'ble Apex Court, the proper approach would be not to start with the presumption that the testimony and the evidence are false, but to find out if they are sufficient to establish the facts in support of the prosecution case. Minor inconsistencies, contradictions etc., in the evidence of witnesses are bound to arise. Apart from the fact that human beings are bound to error, the power of reception, retention and reproduction varies from person to person. In the present case in hand, the witnesses have only stated what they have actually observed and seen. reasonable approach would to read the evidence of all the witnesses and see whether there is any material contradiction or inconsistency in the evidence. The evidence of each witness should be read as a whole and it may be ascertained whether there is a ring of truth. The mere non-examination of a witness or non-production of a document

cannot by itself be fatal.

61. The question as to what degree of probability is necessary to establish the prosecution case is a question not of logic but of prudence. It is well established that there are no precedences in the matter of evaluation of evidence. The standard to be employed is that of a reasonable and prudent man. A fact is said to have been proved when after considering the matters before it the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances to act upon the supposition that it exists. Therefore, two conditions of mind are required. First that in which a man feels absolutely certain of a fact, or in other words, he believes it to exist and secondly that in which although he may not feel absolutely certain of a fact he thinks it so probable that a prudent man would under the circumstances act on the assumption of its existence. It has already been observed that the benefit of doubt to which the accused can claim is only a reasonable doubt and not the doubt of a vacillating mind or of fleeting nature. The prosecution, in the case on hand, has succeeded in proving the circumstances, which led to the irresistible conclusion that the offence was committed by the accused and the accused alone. Men may lie, but circumstances do not.

62. On going through the above findings and after considering the material placed on record, and the guidelines of the above cited cases, I am of the considered view that the prosecution had proved beyond reasonable doubt that the deceased was in company of the accused Devidas when they went to sleep and accused was seen having Tikas in his hand

near the injured wife.

63. Considering all these facts, the circumstances proved by the prosecution beyond reasonable doubt, I do not find any impediment to draw the inference that prosecution has fully established the complete chain of circumstances, conclusive in nature and there is no room of doubt with regard to the guilt of accused. These circumstances are not only consistent with the hypothesis of the guilt of the accused, but also inconsistent with the innocence. All these circumstances levelled against the accused as discussed supra justified the conviction of the accused. In my considered view, I have no hesitation to arrive at conclusion that the accused is responsible for homicidal death of deceased Sushma.

64. The circumstances brought on record by prosecution are in parlance of the settled position of law in case of the case based on the circumstantial evidence. The primary principal that the accused 'must be' and not merely 'may be' guilty before court is duly proved by the prosecution. The facts established in the instant case are consistent only with the hypothesis of the guilt of the accused they are not explainable on any other hypothesis except that the accused is guilty of committing the murder of deceased Sushma by assaulting her with handle of Tikas. The circumstances brought on record by the prosecution are conclusive in nature and they exclude any other possibilities except the one brought on record by the prosecution. The prosecution has proved the chain of evidence so complete as not to leave any reasonable ground for the

conclusion consistent with the innocence of the accused and has shown that in all human probability the act of committing murder of deceased Sushma has been committed by the accused.

65. The prosecution proved the guilt of accused by adducing cogent and reliable evidence. The testimonies of prosecution witnesses are fully corroborated to the extent of proving the charge leveled against accused. Thus prosecution proved the offence against accused beyond all reasonable doubt. Therefore, I hold the accused is guilty for the offence under Sections 302 of the Indian Penal Code. The offence against accused was initially registered under Section 324 of IPC and after the death of injured, it was converted to Section 302 of IPC. Therefore, I am not inclined to impose a sentence under Section 324 of IPC. Considering all these factors I record my finding to point No. 2 and 3 in the affirmative but as discussed above I am not inclined to impose sentence under Section 324 of IPC. Now it is necessary to hear accused and learned advocate for the accused and learned APP on the point of sentence.

Date :- 22/05/2026

(Shekhar C. Munghate)
Sessions Judge,
Yavatmal.

66. Heard learned APP on the point of sentence. Heard the accused. He has stated that he has small daughter and no one is there to look after them. Further, he prayed for leniency. The learned Counsel for the accused reiterated the same argument as such contended by the accused. The Learned APP argued

that the accused had committed the serious offence, so deterrent punishment may be imposed. Considering the facts and circumstances of the case, in my view, following sentence will meet ends of justice. Therefore, this Court proceeds to pass the following order.

ORDER

- 01) Accused **Devidas Pralhad Rathod** is hereby convicted under Section 235(2) of The Cr.P.C. for the offence punishable under section 302 of Indian Penal Code.
- 02) He is sentenced to suffer imprisonment for life 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 302 of the Indian Penal Code.
- 03) The accused is in jail from 01.05.2022 to 14.08.2023 therefore, he is entitled to set off under section 428 of the Code of Criminal Procedure for the period he is in jail.
- 04) The muddemal property i.e. Tikas and other seized muddemal being worthless be destroyed after appeal period is over.
- 05) Copy of judgment be given to the accused, free of costs.
- 06) Legal assistance was given to accused during trial, 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,

.. 34 ..

Bombay, Bench at Nagpur. Copy be forwarded to Secretary DLSA Yavatmal for information and necessary action.

- 07) Copy be forwarded to the District Magistrate under section 365 of Code of Criminal procedure.

(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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