



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.347 OF 2006

Wanji s/o Zenduji Chavan,
aged about 75 years, occupation: pensioner,
r/o Kathoda, tahsil Arni,
district – Yavatmal. **Appellant.**

:: V E R S U S ::

State of Maharashtra, through PSO
Arni, district Yavatmal. **Respondent.**

**Shri Abdul Subhan, Counsel for the Appellant.
Mrs.Shamsi Haider, Additional Public Prosecutor for the
State.**

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 01/10/2025

PRONOUNCED ON : 17/10/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 29.6.2006 passed

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by learned Additional Sessions Judge, Darwha (learned Judge of the trial court), in Sessions Trial No.46/2004.

2. By the said judgment impugned in the appeal, the accused is convicted for offence punishable under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay fine Rs.1000/-, in default, to undergo further simple imprisonment for one month.

3. Brief facts of the prosecution case are as under:

A crime is registered on the basis of a report lodged by the accused on 21.5.1998 stating that Sangita (the deceased) was his daughter. She was not taking education and, therefore, he was intending to perform her marriage. She was hot tempered. His elder son Dhnyaneshwar and his wife were proceeding to Jalgaon

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on 30.5.1998 and the deceased was insisting to go along with them. However, he had not allowed her to go along with Dhnyaneshwar. Hence, she got annoyed. On that count, she tried to consume french polish and, therefore, he snatched the same and, thereafter, he had gone to his field. On 31.5.1998, at about 6:30 am, he returned back to the house. When he returned back to the home, he found his daughter was lying dead in the house and had received bleeding injury on her head. It is alleged by him that as he has not allowed his daughter to go along with Dhnyaneshwar, she caused self inflicted injury to herself by iron pestle on her head and died.

4. Initially, on the basis of the said report, the police have registered the merg report bearing No.29/1998. During enquiry of the said merg report, he has gone to the spot of the incident and prepared panchanama of the spot in presence of pancha witness.

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He has also drawn inquest panchanama on the dead body of the deceased and sent the dead body for postmortem examination. During investigation, he seized iron pestle and broken pieces of bangles from the spot in presence of the pancha witnesses. He has also forwarded a query to the medical officer as to whether the injuries are self inflicted in nature. However, the medical officer had given opinion that the injuries are not self inflicted in nature and also opined that it is possible by iron pestle. The dead body of the deceased was in decomposed state and the death of the deceased might have taken before 24 to 36 hours and, therefore, he recorded the statements of the witnesses and it revealed to him that the deceased had love affair with one Sahebrao Deokar. She had gone along with him and, therefore, the report was lodged against said Sahebrao Deokar of the offences under Sections 363 and 366 of the IPC. Thereafter, the

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deceased was found and, thereafter, the accused and other co-accused were not allowing the deceased to go out of the house and the death of the deceased was caused at the hands of the accused and other co-accused persons. On the basis of the said investigation, the chargesheet was filed against the accused and other co-accused persons.

5. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Sessions Court. Learned Judge of the trial court framed the charge vide Exh.17. The contents of the charge are read over and explained to the accused. He pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case, has examined in all 7 witnesses, as follows:

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PW Nos.	Names of Witnesses	Exh. Nos.
1	Manohar Mahure	50
2	Vijay Shankarrao Bompilwar, pancha on spot and inquest	51
3	Suresh Ganjare	57
4	Dattatray Nalge, pancha on memorandum statement of the accused and recovery panchanama	58
5	Pralhad Rathod, IO	61
6	Gajanan Shinde, IO	67
7	Dr.Madhukar Rathod, Medical Officer	72

7. Besides the oral evidence, the prosecution placed reliance on spot panchanama Exh.52, inquest panchanama Exh.53, seizure memo Exh.54, memorandum statement of the accused Exh.58, recovery panchanama Exh.59, merg report Exh.62, requisition to the medical officer Exh.64, report Exh.65, FIR Exh.66, CA report Exh.68, and postmortem report Exh.73.

8. All the incriminating evidence is put to the accused in order to obtain his explanation regarding the

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evidence appearing against him by recording his statement under Section 313 of the CrPC.

9. Learned Judge of the trial court, after recording the evidence and appreciating the same, held the accused guilty and sentenced as the aforesaid.

10. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused.

11. Heard learned counsel Shri Abdul Subhan for the accused and learned Additional Public Prosecutor Mrs.Shamsi Haider for the State.

12. Learned counsel for the accused submitted that the entire case of the prosecution is based on circumstantial evidence. The law is settled as far as circumstantial evidence is concerned that the prosecution has to establish all circumstances unerringly pointing out the guilt of the accused. The prosecution has placed

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reliance on the evidence of PW1 Manohar Mahure, which is only to the extent that on the day of the incident, he heard some shouts. Except that evidence, there is no material to show that it was the accused who has committed the murder of the deceased. Pancha PW2 Vijay Bompilwar, who has drawn spot and inquest panchanamas as well as PW3 Suresh Ganjare, who, as per the prosecution, is star witness, has not supported the prosecution case. PW4 Dattatray Nalge, acted as pancha on memorandum statement of the accused and recovery panchanama, has also not supported the prosecution case. Thus, only on the basis of the medical evidence and the evidence of the investigating officers, learned Judge of the trial court convicted the accused. There is no circumstantial evidence also as far as involvement of the accused is concerned. Learned Judge of the trial court has swayed away by the fact that dead body of the deceased

was found in the house and that is also in a decomposed condition. These two circumstances are not sufficient to warrant conviction against the accused. In view of that, the judgment impugned in the appeal deserves to be quashed and set aside.

13. Learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that relationship between the deceased and the accused is not disputed. It is also not disputed that the deceased eloped with one person and since then the parents of the accused were not allowing the deceased to go out of the house. On the day of the incident also, she was insisting to go along with her brother. However, the accused has not allowed her and, thereafter, the accused has committed the murder of the deceased. The deceased has sustained the head injuries when she was in the house, which are not explained by the accused. In view of

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Section 106 of the Indian Evidence Act, it is the accused within whose special knowledge the alleged incident has occurred and, therefore, he has to explain the said circumstances. Thus, the accused has not explained the circumstances under which the alleged incident has taken place and, therefore, the circumstantial evidence brought on record by the prosecution is sufficient to warrant conviction against the accused and, therefore, no interference is called for in the judgment impugned in the appeal.

14. Having heard learned counsel for the accused and learned Additional Public Prosecutor for the State, I have gone through the material available on record as well as the the investigation papers.

15. The first and foremost question is, whether the death of the deceased is homicidal one.

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16. To prove the homicidal death, the prosecution has placed reliance on the evidence of PW7 Medical Officer Dr.Madhukar Rathod, who deposed that on 31.5.1998 he was working as Medical Officer at Rural Hospital, Arni. On that day, he received a requisition from the Arni Police for conducting postmortem on the dead body of the deceased. On receipt of the dead body of the deceased, he examined and observed that whole body was swollen and decomposed. Postmortem lividity was seen faintly over back, buttocks and thigh. On examination, he found (i) lacerated injury over the scalp fronto parietal region with fracture compound type with depression of bones in brain matter. Size 2 x 2 approximate depth 2 ½ inch; (ii) lacerated injury over the scalp right tempo parietal region with compound fracture of skull bone with depression of bones in brain matter, size 3 x 2 x 2 inch deep; and (iii) contusion over the left mastoid region of

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size 2 ½ x ½ inch. The direction of injury NO.1 oblique and downwards and No.2 vertical to surface of the skull. Meaning are teared along with lacerated injury depressed fractures bone. Brain material decomposed and extended out from lavity from the fractured region. All the injuries were antemortem injuries. Opinion as to the cause of death is head injury. Accordingly, he prepared the postmortem note Exh.73. His further evidence shows that he also received a requisition from the investigating officer requesting him to give advance report on the points that (i) time since death of the deceased; (ii) whether the injuries on the skull of the deceased could be self inflicted one, and (iii) whether the deceased was found pregnant. Accordingly, he gave opinion that the cause of death is head injury, the approximate time since death is about 24 to 36 hours, the injury over the head is not self inflicted i.e. the injury over the head of the deceased is not self

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inflicted, uterus of the deceased was empty and she was not pregnant.

He further opined that the death of the deceased can be resulted due to assault with said pestle or similar type of object and the death of the deceased could be caused by assault on her head with said pestle or such type of pestle. The said opinion is at Exh.75.

As far as his cross examination is concerned, nothing incriminating is brought on record.

17. Perusal of the postmortem report and the evidence of PW7 Medical Officer Dr.Madhukar Rathod shows that there is no dispute as to the fact that the death of the deceased is caused due to head injury and, therefore, sufficient material is on record to show that death of the deceased is homicidal one.

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18. To prove the charge against the accused, who is father of the deceased, the prosecution mainly placed reliance on the evidence of PW1 Manohar Mahure and PW3 Suresh Ganjare.

As far as the evidence of PW1 Manohar Mahure is concerned, his evidence is to the extent that he is acquainted with the accused as well as the the deceased who is daughter of the accused. As per his evidence, on the day of the incident, at about 10:00 am to 11:00 am, he was standing in front of Fair Price Shop situated near his house. The house of the accused was at a distance of 150-200 feet from the said place. At that time, he heard the shouts of children and men from the house of the accused and, thereafter, he went to his house.

His cross examination shows that there is a water tank near the house of the accused and children

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always play in that open place. Except this evidence, as far as presence of the deceased in the house, at the relevant time, as well as presence of the accused in the house, at the relevant time, nothing is stated by this witness.

The evidence of PW3 Suresh Ganjare is to the extent that he got information and, therefore, at about 11:00 am, he had gone near the house of Chavan. About 10-12 villagers and two police constables were present there. The dead body of one girl was kept there. Some bangles pieces, clothes and utensils were scattered there. The police told him that they have to seize the articles and accordingly, he acted as a pancha on the said panchanama.

Thus, he has not supported the prosecution case and left loyalty towards the prosecution.

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19. Thus, as far as the actual incident is concerned, admittedly, there is no eyewitness to the said incident.

20. PW2 Vijay Bompilwar, acted as a pancha on the spot panchanama and inquest panchanama, has not supported the prosecution case as he specifically stated that nothing was seized in his presence and only his signatures are obtained. He has also denied that bangles pieces were also lying there and there were blood stains on the door frame and gate of that house.

Though an attempt was made to bring on record that this witness has practiced to sign on the documents after reading the same, that aspect itself is not sufficient to show that he was present at the time of drawing the panchanama.

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21. As already observed, PW3 Suresh Ganjare, also acted as a pancha on the spot, has also not supported the prosecution case.

22. The another circumstance, on which the prosecution relied upon is, the memorandum statement of the accused and the recovery of the weapon at his instance and to prove the said circumstance, the prosecution has examined PW4 Dattatray Nalge, acted as pancha on memorandum statement of the accused and recovery panchanama. The evidence of the said witness is to the extent that one head constable had obtained his signatures on 3-4 papers. Nothing happened in his presence. No memorandum statements or recovery of panchanamas were drawn in his presence.

Though he is cross examined at length, nothing incriminating is brought on record.

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23. As PW4 Dattatray Nalge has not supported the prosecution case, the prosecution completely relied upon the evidence of PW6 Investigating Officer Gajanan Shinde who testified that on 5.6.1998 while the accused was in custody, in presence of panchas, made a statement that he kept underwear stained with blood which he was putting which he wore on his person at the time of the incident in his bathroom and he would show the place. Accordingly, his memorandum statement was recorded and at his instance, his banian, stained with blood, was seized by the investigating officer.

The cross examination of this witness shows that when they went in the house of the accused, it was not locked. Only the door was chained from outside. The said bathroom was in use of all the family members of the accused.

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Thus, on the basis of this cross examination, an attempt was made to show that the evidence of recovery of the incriminating articles is not believable as other family members are also residing and the place is accessible to all.

24. PW5 Pralhad Rathod, another Investigating Officer, who has stated about the investigation carried out by him. His evidence shows that on 31.5.1998 he was working as enquiring in AD No.29/1998. He went to Kathoda village and visited the spot of the incident. At the spot, he saw blood stains and dead body of the deceased was lying. There were injuries on the head of the deceased it emitting foul smell. Near the dead body, one iron pestle stained with blood was lying. There were blood stains on the wooden frame and planks. The bangles pieces are also seen by him at the said place. He has seized articles and drawn the panchanama. His

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evidence further discloses that he has sent the dead body of the deceased for postmortem examination after inquest panchanama was drawn and has also issued requisition to the medical officer for advance report. He has also obtained opinion from the medical officer as to whether the injuries found on the head of the deceased could be self inflicted and whether she was pregnant. The opinion was received by him that she was not pregnant and the injuries are not self inflicted.

His cross examination shows that there was reference of the name of Dhnyaneshwar, the elder son of the accused, but he has not recorded the statement of said Dhnyaneshwar or his wife. He has also admitted that he has not initiated any proceedings against the accused for giving false information. He further admitted that during enquiry, the accused made statement that at the time of the incident, he, his wife, and the deceased were present

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in the house and except this evidence, no other evidence was collected during the enquiry.

25. Besides the oral evidence, the prosecution placed reliance on the scientific evidence. As per the CA report Exh.68, the earth collected from the spot of the incident, wooden pieces, simple soil, iron pestle, the clothes of the deceased, underwear of the accused, blood samples were forwarded to the CA. As per the CA report, Exh.1 earth, Exh.2 wooden pieces, Exh.4 iron pestle, Exh.6 kurta, and Exh.9 underwear of the accused were stained with Blood Group "A". The Blood Group of the accused is "B". The Blood Group of his wife is also "B" and the Blood Group of the deceased is "O". However, blood stains found on Articles Exhs.1, 2, 6, 7, and 9 are stained with Blood Group "A".

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26. Admittedly, the entire case of the prosecution is based on the circumstantial evidence.

27. The law regarding circumstantial evidence is well settled that (1) the circumstances from which an inference of the guilt is sought to be drawn must cogently and firmly established, (2) though circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances taken cumulatively, should form a chain so complete that there is no escape that within all probabilities the crime was committed by the accused and none else; (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

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28. It is not disputed that the prosecution case is entirely based on the circumstantial evidence. In such a case, the prosecution is under obligation to establish the chain of circumstance so complete that it unerringly establishes the guilt of the accused and does not lead any scope for any interference consistent with the innocence of the accused.

29. In the light of the above settled legal position, we have to see whether the prosecution succeeded in proving the chain of circumstances to prove the guilt of the accused. The circumstances on which the prosecution relied upon can be summed up as follows:

(1) the deceased was the daughter of the accused;

(2) the accused was residing along with the deceased and other family member;

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(3) the death of the deceased is caused in the house wherein the accused and other family members are also residing along with the deceased;

(4) the deceased has sustained the head injury and the death of the deceased is due to the head injury; and

(5) the injury sustained by the deceased was not self inflicted injury, and

(6) the blood stained pestle was recovered from the house as well as the blood stained underwear of the accused was also recovered from the house.

30. To prove the alleged circumstances, the prosecution mainly placed reliance on the evidence of PW1 Manohar Mahure who though stated that he has

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heard some noise at about 11:00 to 11:30 am from the house of the accused, his evidence nowhere discloses that at the relevant time the accused as well as the deceased along with other members of family were present in the house. His evidence is only to the extent that he has heard some noise from the house of the accused. PW5 Investigating Officer Pralhad Rathod has admitted that during investigation, it revealed to him that the accused and other co-accused who are parents of the deceased and the deceased were present in the house. But, except his bare statement, there is no evidence on record to show that the deceased was present in the house along with the accused and other family members. The only circumstance which goes against the accused is that the the dead body of the deceased was found in the house and that is also in a decomposed condition and she sustained head injury on her head. Except the above said material,

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no other circumstances show that it was the accused who is the only culprit or perpetrator of the crime.

31. It is well settled that when a case is rested on circumstantial evidence, the prosecution has to prove the chain of circumstances. When the prosecution establishes the chain of the circumstances, burden is shift on the accused to explain under what circumstances the death of the deceased is caused. Thus, the burden under Section 106 of the Evidence Act would shift on the accused when the prosecution establishes foundational facts which go against the accused.

32. In the land mark judgment in the case of **Trimuh Maroti Kirkan vs. State of Maharashtra, reported in 2006 ALL MR (Cri) 3510**, the Hon'ble Apex Court observed that if an offence takes place inside the privacy of a house and in such circumstances where the assailants

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have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. It is further held that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed.

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33. Thus, even in circumstantial evidence, initial burden to establish the case would, undoubtedly, be upon the prosecution.

34. In the present case, except the dead body of the deceased was found in the house in a decomposed condition and she has sustained the head injury, there is no other material to connect the accused with the alleged offence. Though the prosecution has placed reliance on the scientific evidence and the evidence of the pancha witness, recovery of blood stained underwear of the accused is also not established by the prosecution as pancha witness PW4 Dattatray Nalge has not supported the prosecution case. In fact, the said evidence of the pancha witness or the evidence of the investigating officer nowhere discloses that it complies with the requirement underlined under Section 27 of the Indian Evidence Act.

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35. The requirement of Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered, after search is carried out, on the search of any information obtained from the prisoner, such discovery is guaranteed that the information supplied by the prisoner is true. The said Section states about following ingredients:

“(i) discovery of fact in consequence of and information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must be in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

36. Thus, what is admissible is the information the same has to be proved and not the opinion formed on it by

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the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is a made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. Mere statement that the accused led the Police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

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37. In the light of the above well settled legal position, the evidence of PW4 Dattatray Nalge and PW6 Investigating Officer Gajanan Shinde nowhere reproduces the statement of the accused which he has disclosed before the panchas. Moreover, the alleged recovery of the blood stained underwear of the accused is from open place which was accessible to all. The specific admission of PW6 Investigating Officer Gajanan Shinde shows that when they visited the said place i.e. bathroom which was used by the all family members and it was open. The evidence of the Investigating Officer nowhere states that the said underwear was found in a concealed position. His specific admission, that the bathroom was in use of all family members of the accused, itself is sufficient to show that the recovery was from the open place. His further admission shows that he cannot say as to what was the exact place in the bathroom the underwear was hidden.

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38. Thus, evidence of the investigating officer is also not sufficient to prove the fact of recovery at the instance of the accused. Moreover, the said recovery of the said blood stained clothes is also not substantiated by the CA Report Exh.68. As per the CA Report, blood stains of Blood Group “A”, which were neither of the accused nor of the deceased, were found on the said underwear. The weapon recovered from the spot of the incident i.e. iron pestle (Article-4) also bears blood stains of Blood Group “A”, which, as per the CA Report, are neither of the accused nor of the deceased and, therefore, the evidence in the nature of scientific evidence is also not supporting the prosecution case.

39. Thus, as observed earlier, the burden is on the prosecution to establish the entire circumstances when case is rested on circumstantial evidence. Except circumstance, that dead body of the deceased was found

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in the house and she has sustained the head injury, no other circumstances are proved by the prosecution to establish the guilt of the accused.

40. Thus, the chain of circumstances which unerringly points out towards the guilt of the accused is absent in the present case and on that count, the judgment impugned in the appeal would not sustain and the same deserves to be quashed and set aside.

41. In view of the above discussion, the appeal succeeds. Hence, we proceed to pass following order:

ORDER

(1) The Criminal Appeal is **Allowed**.

(2) The judgment and order dated 29.6.2006 passed by learned Additional Sessions Judge, Darwha in Sessions Trial No.46/2004 is hereby quashed and set aside.

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(3) Accused Wanji s/o Zenduji Chavan is acquitted of the offence for which he is charged and convicted and sentenced.

(4) The bail bonds of the accused stand cancelled.

(5) R&P be sent back to the trial court.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!