

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO. 2 OF 2018

The State of Maharashtra ... Appellant

Versus

Ramdas Rangnath Shinde ... Respondent

**ALONG WITH
CRIMINAL APPEAL NO. 735 OF 2018**

Ramdas Rangnath Shinde ... Appellant

Versus

State of Maharashtra ... Respondent

**ALONG WITH
CRIMINAL APPLICATION NO. 901 OF 2018
IN
CRIMINAL APPEAL NO. 735 OF 2018**

Ramdas Rangnath Shinde ... Applicant

Versus

State of Maharashtra ... Respondent

Mrs. P.P. Shinde, APP for the State in Confirmation Case No. 2 of 2018 and for respondent State in Criminal Appeal No. 735 of 2018..

Mr. Aniket Nikam a/w Mr. Aashish Satpute, Mr.Nihal Mansuri, Mr.Vivek Arote and Mr.Piyush Toshniwal for the respondent in Confirmation Case No. 2 of 2018 and for the appellant in Criminal Appeal No. 735 of 2018.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.
RESERVED ON : 03 APRIL, 2019
PRONOUNCED ON : 30 APRIL, 2019**

ORAL JUDGMENT (Per Dharmadhikari,J.):

The judgment and order dated 26/4/2018 delivered by Sessions Judge, Nashik in Sessions Case No.189 of 2016 sentencing the accused to death under section 302 IPC form the subject matter of this confirmation case. Very same judgment is questioned by the convict Ramdas in Criminal Appeal No.735 of 2018. Criminal Application No. 901 of 2018 is taken out for dispensing with the affidavit of convict Ramdas who is in jail.

2. As per the case of prosecution, the incident of double murder has taken place in the night intervening 17th and 18th April, 2016. The FIR in relation to this double murder has been registered at 2.40 pm on 18/4/2016. PW 1 Kacharu Sansare is the reporter. Deceased Pallavi, aged about 34 years happened to be his wife and Vishal, aged about 6 years happened to be his son.

3. He was occupying Northern side ground floor portion on rent in the house of Rangnath Shinde. The tenanted premises are separated from remaining ground floor portion by East-West

partition wall. The tenanted premises can be accessed through a door opening on the backside of ground floor. Front portion of ground floor is in the occupation of accused Ramdas who is son of Rangnath Shinde. Rangnath Shinde and his son Vinod reside on 1st floor of this building. Ramdas was residing with his wife and children on ground floor.

4. On 17/4/2016 Kachru, his wife and son arrived back from the place called Taharabad. After taking some rest and food at about 6.40 p.m. Kachru went to attend his duty in the night shift. He came back at about 7.00 am on 18/4/2016 and found the door of his house locked from outside. He then went to the house of his sister to enquire about his wife and son and thereafter to the house of another sister. He could not get any information and hence, he came back. Vinod, son of landlord then enquired from him and also told him that light and fan in Kachru's house were on. As such the informant went to kitchen room of accused, he peeped into the tenanted portion through a cement window and found his wife and son sleeping. He tried to wake them up, but could not succeed.

5. Kachru therefore, went to his sister Satyabhama and returned along with her and nephew Rajendra. They broke the lock and entered the house. He found pool of blood on the floor and there were no cloths on the person of his wife. His wife and son both were dead. He informed Satpur police station at about 8.30 am on telephone and police came to his house. Thereafter he filed report at Exh. 26.

6. In the present mater, homicidal death of the deceased wife and son is not in dispute. There are no eye witnesses. The trial court has relied upon the circumstantial evidence and the learned APP has also relied upon these circumstances while respondent accused attempted to show that none of the circumstances are proved at all.

7. First circumstance relied upon by the prosecution is neighbour PW 5 Dipali, seeing accused Ramdas going towards the tenanted premises at about 10.45 pm. Second circumstance is phone calls and extra judicial confession by the accused to his friend PW 9 Subhash Rajput. Third circumstance is of recovery of the blood stained cloths of accused under section 27 of the

Evidence Act, recovery of blood stained knife and a key from the accused under section 27 of Evidence Act only. Lastly learned APP has submitted that wife and children of the accused were not at home that night and hence, the accused was alone. He absconded after murder and was arrested at 2.05 pm on 19/4/2016 near one hotel. Accused also could not explain the blood on his cloths.

8. It is in this backdrop that we have heard Advocate Nikam for the accused and learned APP Smt. Shinde for the State.

9. By inviting attention to deposition of PW Kachru and spot panchanama Exh. 44, as also map of spot at Exh. 106, Advocate Nikam submits that the police initially had detained Kachru only as suspect and in late afternoon, they have recorded the FIR. The FIR has been recorded after inquest and spot panchanama and after completing material investigation.

10. Inviting attention to spot panchanama, he says that when PW 1 peeped through a cement window into his house, he saw body of his wife without cloths and also body of his son. He definitely must have seen the blood which had splashed everywhere and

hence, he should have called the police immediately instead of calling relatives and forcing entry into the premises. If there was any real urgency, the conduct of PW 1 in going to his sister Satyabhama's place and fetching Satyabhama and nephew Rajendra before forcing open the door, cannot be understood and has not been explained.

11. He further states that when prosecution claims that lock of entrance door of tenanted premises was broke opened and Kachru entered the tenanted premises, there is also an attempt to show that the connecting door in East West wall joining tenanted portion and portion in possession of the accused was also open and tenanted premises were accessed through it. By inviting attention to evidence of PW 10 Vinod Barve, counsel for the accused submits that the glass of one window was also broken. Panchanama proved by PW 10 records that after lock was broken, door could not be opened as it was closed from inside. Hence, the connecting door was opened by entering the house of accused Ramdas and through that door entry was secured in the tenanted premises. Thereafter, door of tenanted premises which was latched from inside was unlatched. He therefore, states that there is material

variance in the deposition of PW 1 and PW 10 as also the spot panchanama. When two bodies with multiple stab wounds were lying in a closed room and nobody could have accessed it, the Investigating Officer should have been more vigilant. The broken window pane has not been looked into and there is no verification to find out whether the tenanted premises could have been accessed by opening the connecting door. There is no verification to find out whether locked main door providing entry to tenanted premises was really latched from inside or not.

12. The last seen theory is also assailed by pointing out that the toilet to be used by the accused and his family members was on the backside and entry to the tenanted premises was also on backside. Hence, accused going towards the toilet in the night cannot become a doubtful circumstance at all. The spot panchanama is read out to show that bangles worn by the deceased lady were broken and its pieces were lying scattered in the room. There were multiple stab wounds on the body of the son as also the deceased woman and the scenario presented scuffle in that room. The house of PW 5 Dipali is in the vicinity and she and her husband had slept on ota (platform) outside their house.

They would have definitely heard the noise of quarrel or scuffle. The couple slept without any disturbance at all and woke up at 7.00 am. Mr. Nikam therefore, submits that her testimony is unacceptable.

13. While dealing with the extra judicial confession, he submits that basically it is a weak type of evidence and the fact of confession itself has not been established beyond reasonable doubt. The prosecution claims that the accused made two confession calls to PW 9 Subhash Rajput. First call was made at about 3.28 am and second call was made within a short time thereafter. PW 9 Subhash has not supported the story. He submits that mobile with Subhash was not seized till 1/5/2016 though police got knowledge of the alleged extra judicial confession on 18/4/2016 itself.

14. The procedure followed by the prosecution for verification of extra judicial confession is faulty. The trial court therefore, did not exhibit the panchanama which recorded process of copying of extra judicial confession into pendrive but only marked signature of Subhash upon it as Exhibit 42. The said panchanama therefore,

does not support the case of prosecution at all.

15. The evidence of PW 17 Pradip Thakare is assailed on the ground that this police Naik who transferred the data of extra judicial confession from mobile to pendrive cannot be relied upon. Learned counsel submits that though he speaks of procedure adopted, his cross examination shows that the mobile of Subhash could not have inbuilt call recording software. This witness could not explain how that mobile phone came in police station and therefore, was made available to him. This shows that PW 9 Subhash to whom that mobile belongs, was not then present. It is contended that the entire evidence of this witness is therefore, untrustworthy and should be discarded.

16. PW 14 Bala Ajagare is the next witness who speaks of the process of transfer and is panch witness for that purpose. Through his deposition, the prosecution attempted to prove the seizure of data containing extra judicial confession on 18/4/2016 vide seizure memo Exh.70. This witness points out that PW 9 Subhash was present at the time of transfer of data. However, this witness explains the procedure followed by PW 17 Shri. Thakare. He

explains that the folder of 'File Manager' was opened by PW 9 and then he entered the password "6892". The folder thereafter could be accessed and it revealed two recorded calls. First call was at 3.28 am on 18/4/2016 and it lasted for 1 minute and 28 seconds. The another call recorded was at 3.30 am. PW 14 gives gist of alleged talk between the accused and PW 9 Subhash. Advocate Nikam submits that it has not been properly established. He expresses surprise that after completing this procedure of transferring data in pendrive, police did not seize the mobile of Subhash. It was seized on 1/5/2016 i.e. after 13 days of getting the knowledge that the mobile contained recording of extra judicial confession. This witness also accepts that there were several call recordings in the mobile phone of PW 9 and they were either before or after recording the two calls in question. He has also invited our attention to hash value and its importance in the process. He submits that the seizure memo at Exh. 70 does not record the fact of opening of the file manager by PW 9 or his applying the digital key to unlock the folder. He therefore, contends that neither Exh. 70 nor deposition of PW 14 can inspire any confidence in the present matter.

17. Inviting our attention to evidence of PW 22 Mr. Mahesh Gangurde, learned counsel submits that he has undertaken exercise of voice identification after 3/5/2016. He received Samsung Galaxy mobile, pendrive and memory card. He has analyzed the voice with the help of software by name 'Multispeech' and 'Goldwave'. In paragraph 7 of his deposition he has explained the conversation between accused and Subhash but then actual text of conversation has not been made available by the prosecution at all. He invites attention to paragraph 6 of examination of this witness to show that the mobile of Subhash had software installed in it which facilitates call recording in the mobile. This witness has explained that in the mobile after applying digital key '6892' the audio manager application opened and in that application, there was a folder 'Music'. In this folder there is another folder by name '**d**' and in that '**d**' folder, there were two audio clips. Advocate Nikam argues that this proved incorrect recording in Exh. 70 when exercise of copying was undertaken by PW 17 and tampering in mobile of PW 9 Subhash. He also submits that there was noise of network when this expert examined the mobile. But that noise was not there when the conversation between the accused and Subhash took place. Learned counsel

submits that in this situation evidence of Spectrograph also does not inspire confidence.

18. Our attention is drawn to Exh. 111 which is document prepared in the presence of panchas on 25/4/2016. It is submitted that it is claimed to be a script i.e. talk between accused and Subhash on 18/4/2016. This talk is at variance with one which has been examined by spectrographer PW 22.

19. The evidence of PW 3 Rajendra Kshirsagar, witness on discovery under section 27 of the Evidence Act is also attacked pointing out that the carry bag which was allegedly containing knife, half pant Bermuda and steel key of medium size, though seized by police, was never produced in Court. The description of Bermuda deposed to by PW 3 does not match with the description in panchanama Exh. 31 and hence, finding of blood stains on pant of accused is not established at all. The seizure of key (article 7) does not support the case of prosecution at all. The alleged seizure is from an open space and hence, cannot be used for any purpose against the accused. He further states that the knife when found was not having any blood stains, but then CA report surprisingly

shows presence of “B” group human blood on it. He also adds that very same CA report shows that there was no blood in the nail clippings or pubic hairs of the accused. Advocate Nikam also pointed out that the blood has been detected on inner blade of scissor lying in the tenanted premises only and it has not been explained. He claims that as polythene bag was suppressed, there is definitely tampering with the evidence.

20. He submits that false implication of the accused cannot be ruled out since there is no full transcript of the extra judicial confession as contained in the mobile on 18/4/2016. There is no panchanama of whole transcript. Police provided a laptop to PW 17 and the difference in transcript recorded on 1/5/2016 in panchanama Exh. 73 and in seizure memo Exh. 70 dated 18/4/2016 casts serious doubt on the entire story. He also invites attention to Exh. 111 dated 29/4/2016 which contains text of conversation between the accused and Subhash. In this backdrop, our attention is drawn to evidence of PW 16 Mahesh Nandurdikar to show that he claims to have obtained voice sample of accused for comparison. Exh. 47 recorded by him on 25/4/2016 shows that another script was drafted and the accused was made

to read from it. Advocate Nikam submits that certificate at Exh. 49 forwarded by senior PI under section 65(B) of Evidence Act is again vague and does not meet the requirements of law. The evidence of Anna Kale who is witness to Exh. 47 shows that the script not in mobile was given to accused for reading and it was recorded. The voice recorded and recorder was in possession of the police officer and it was not seized under the panchanama. The draft script was prepared by Mr. Gaikawad and other staff. Advocate Nikam claims that this material on record does not conclusively establish the alleged extra judicial confession at all.

21. Advocate Nikam points out that the lock seized from the backside door of the house of Rangnath Shinde was already damaged since it was forced open. The key used by the trial court to open it had different number. The fact that the lock could be operated with that key is inconsequential.

22. Advocate Nikam has relied upon various judgments to which we will make reference at appropriate juncture.

23. Learned APP Shinde has pointed out that the murder was

done in most cruel manner and thereafter to suppress it and to give incorrect impression, the accused locked the entrance door of tenanted premises from inside and put lock on it from outside. He used the connecting door in the partition for ingress and egress. The evidence of PW 1 has relied upon for this purpose along with spot panchanama to show that somebody had put a small pebble to see that the partition door could not have been closed on the side of tenant. She relies upon the report of PW 1 to police and submits that at 9.15 am vide Exh.104, the crime was reported by Vinod Shinde, brother of accused. She also submits that the inquest panchanama Exh. 32 was completed between 10.15 am to 12.15 in the noon and which shows that after stabbing the deceased on multiple occasions and at various places, the cloths on her person were torn and removed. Learned APP submits that the deceased lady was also stabbed brutally on private parts and it reveals some abnormal or mal intention of the offender. The spot panchanama was then completed between 12.35 in the noon to 15.00 hrs in the afternoon. In the meanwhile, FIR was noted at 2.40 pm.

24. Inviting attention to extra judicial confession, she submits

that at 3.28 am accused has given his location to Subhash and that location is proved by bringing on record his CDR through PW 18 Aditya Niphadkar. She submits that Spectrographer PW 22 has in paragraph 11 of his deposition, in unequivocal words stated that there was no possibility of any manipulation or human error in the entire analysis undertaken by him. She has read out the relevant evidence on record through witnesses like PW 17 and PW 14 for this purposes.

25. She further points out that non production of plastic bag which contained the pant of accused, key and knife is not fatal, since the blood group of deceased is found on knife and pant. She further points out that the lock used on the door of tenanted premises could be opened by key recovered under section 27 with these articles. Trial court therefore, has rightly used the same as a clinching evidence.

26. Our attention is also drawn to the fact that deposition of PW 9 Subhash was recorded under section 164 of Cr.P.C. and Subhash has accepted the same. That recording is also proved by examining concerned Judicial Magistrate, First Class as PW 12.

Therefore, the fact that PW 9 has turned hostile latter on, has been sufficiently brought on record.

27. She relies upon the report of Spectrographer to show the article used by him for carrying out exercise of voice matching.

28. Inviting attention to the evidence of PW 3, she submits that he has inadvertently used the word "Bermuda" and article no.2 mentioned in the panchanma is actually "pant" as described therein. She submits that this fact is accepted by him in cross examination. According to her, therefore, the chain of circumstances, complete in itself implicating the accused, has been established on record. The accused who was alone at his residence, forced entry into the house of PW 1 where his wife and son were sleeping and elder daughter of PW 1 was out of station. The accused entered the premises through partition door with some wrong intension. When it could not materialize, he killed the wife of PW 1 and also eliminated his child aged about 6 years. She has relied upon the judgments looked into by the trial court to urge that the findings recorded by the trial court are not perverse and punishment of death imposed must be upheld as it is rarest rare

case.

29. The prosecution has to establish that the accused entered the house of the deceased in the night between 17/04/2016 and 18/04/2016 and committed ghastly double murder. Apart from PW 5 Dipali, there is no other witnesses pointed out by them for the said purpose. PW 5 Dipali also does not claim that she saw the accused entering the house of deceased. Her evidence is she saw the accused proceeding from his front door towards backside where there was a toilet and also the door of the house of the deceased.

30. The prosecution has claimed that because the tenanted premises could not be accessed, informant PW 1 broke opened the lock. In this respect PW 1 Kachru states that he broke opened the lock of the house and also door to find his wife and son lying on the ground. They were dead. The tenanted premises has access from this door which is on the backside of ground floor. As against this, prosecution has also placed on record as Exh. 44 spot panchanama. The spot panchanama has been prepared after drawing inquest and obviously after entering the premises. In this

spot panchanama, it is recorded that the person giving them details informed that to ascertain the position, lock of entrance door to tenanted premises, was broken by Kachru. However, as said door was also latched from inside, through the door provided in the partition, the said tenanted premises were accessed and then latch of the front door from inside was opened. This information is given as per spot panchanma by Vinod Shinde who is brother of the accused. However, no such evidence is tendered on record by the prosecution. Vinod has not been examined as witness and the person who opened that door in the partition and then entered the tenanted premises to open the main door, has also not been examined.

31. The Investigating Officer ought to have attempted to ascertain the truth and find out whether one can open the door in the partition and then access the tenanted premises. In the spot panchanama Exh. 44, it is mentioned that in East West wall which separates backside tenanted portion from front portion in occupation of the accused, there is a door and it has latch on both sides. On West of this door in the wall, there are two holes and the bolt can be inserted in that hole. It is also recorded that in

the hole on the side of tenanted premises, a small pebble was found inserted and because of it, the door could not have been bolted and closed from tenant's side.

32. The map of the spot at Exh.106 shows that just in front of that partition door in the tenanted premises, an iron cot was put and some material is also shown stored in the spot panchanama below it. The question is whether in this situation, the door could have been opened without removing the cot or not. There is no explanation in this respect on record.

33. PW 1 informant who peeped through a cement window and found his wife and son sleeping, does not say that he saw any blood stains. However, if the side door in the partition was first opened, the person entering through it must have seen the dead bodies and blood in huge quantity. Why in that situation steps were not taken to call the police immediately or then why Investigating Officer has not found it necessary to record the statement of that person is not clear. Whether story narrated by PW 1 of entering the tenanted premises by breaking open the lock of main door, is correct or then alleged narration by Vinod of

entering the tenanted premises through partition door is correct, therefore cannot be answered by the prosecution.

34. The spot panchanama also mentions that apart from the cement window of 2 ft x 2 ft there was also steel window with glass pane with dimensions 3 ft x 3 ft. This window had its glass broken and hence, paper was pasted upon it. The question is whether through that window, a person could have entered and gone out of the tenanted premises. Again there is no investigation in this respect.

35. The prosecution has in spot panchanama mentioned that the main door of tenanted premises was facing North its chain/bolt was bent. Near door also close to step, steel lock of Radiant Star Company was seen. Its upper portion was having dents and pressed inside. The prosecution claims that the key to this lock was recovered under section 27 from the accused.

36. PW 9 Subhash Rajput is the first witness on extra judicial confession. His examination-in-chief shows that he did not accept the receipt of telephone call at 3.28 am on 17/04/2016 from the

accused admitting the commission of any murder. He did not accept even receipt of second telephone call. He denied the portion marked "A" in his statement to police. He accepted that his Samsung J2 Mobile was seized by police 15 to 20 days thereafter. He accepted that his statement was recorded before the Magistrate and before Magistrate, he accepted the receipt of telephone call at 3.28 am wherein accused admitted that he had committed murder. He also accepted that before the Magistrate he stated that shortly he received another telephone call. He however, added that since police threatened him to say so, he gave that statement. Learned APP was then permitted to cross examine him. He has stuck to very same story. He denied that police seized his mobile and conversation was copied in pendrive or the panchanama to that effect was prepared. He accepted that the panchanama Exh. 42 bears his signature. The signature thereupon is only exhibited as Exh. 42. In the cross examination, he stated that in his mobile there was no facility for recording of calls.

37. PW 17 Pradip Thakare is Police Naik who transferred the data from the mobile of PW 9 Subhash to pendrive. He received these instructions on 18/4/2016 and went to Satpur Police Station. API

Gaikwad gave him laptop of Dell company in the presence of two panchas and also gave him mobile of Samsung Galaxy 4 Mini of Subhash. He was then told that two phone calls of accused were recorded in it. He deposed that in the mobile handset there was software for automatic call recording. After opening the data, he found that on 18/4/2016 at 3.28 am and thereafter at 3.30 am, phone calls were made by Rama to Rajput. SIM Card in the mobile of Rama was of Vodaphone Company and SIM card of mobile of Rajput was of Airtel company. These conversations were played in the mobile handset in the presence of panchas. Thereafter the Investigating Officer Gaikwad provided pendrive and the said pendrive was connected to the laptop. After pendrive was opened, it was blank. The call recordings in the mobile handset of Rajput were copied in the blank pendrive in the presence of panchas. The pendrive was detached from the laptop and it was sealed by the Investigating Officer in his presence and in the presence of panchas. He issued certificate u/s. 65 (B) of the Evidence Act at Exh. 83. He also identified the mobile handset and pendrive.

38. In the cross examination, he accepted that there may be other data in the laptop but he did not see the same. He stated

that there were more call recordings in the memory of mobile but he did not check it. He deposed that Samsung Galaxy Phone Mini mobile handset does not have in-built call recording software. He cannot explain how the pendrive came to police station and how the mobile phone came there. His deposition and then certificate at Exh. 83 does not show that PW 9 Subhash Rajput was then present.

39. PW 14 Bala Ajagare claims that he was witness to the said data transfer. He also states that PW 9 Subhash Rajput was then present in the police Station. The mobile of Subhash had two SIM cards one was of Voldaphone Company while the other was of Airtel company. When in the contact list name "Rama" was typed, number 9823919275 appeared. Then folder 'File Manager' was opened by PW 9. The said folder was locked with a password "6892". The folder had two call recordings. One at 3.28 am was dated 18/4/2016 and it lasted for 1 minute and 28 seconds. The recording was opened and person by name Rama told Rajput that at his hands a big mishap had happened. Rajput enquired and Rama told him to meet personally. He then told that he was at Thakkar Bazar near CBS. Another recording at 3.30 am show that

Rama told Rajput not to disclose anything to any family member. The further examination-in-chief shows the process of copying to pendrive. He states that copy of the print was taken from printer. He also identified that print out. He also proved panchanama at Exh. 70. The printout of hash value has been given Exh. 71.

40. On 1/5/2016 he was again called at police station for seizure of mobile of Rajput. He identified that mobile in the Court. He in his cross examination deposed that on 18/4/2016, he himself, PW 9 Rajput and police were present at police station. He did not know who brought the pendrive. He has deposed that Rajput was sitting with his mobile and it was opened by Rajput only. He also stated that there were several call recordings in the mobile phone of Rajput and the same were before and after the disputed calls. He stated that the laptop was already there and there was no earlier recording in it. He did not see the data in the laptop. He stated that the print out of hash value was taken which was not signed by himself or any other pancha.

41. The seizure memo Exh. 70 is in consonance with his deposition and portion spoken of by the accused is mentioned in

inverted commas in Marathi in the said panchanama. The recording at 3.28 am or 3.30 am does not show any admission of commission of murder. The panchanama also records that after the phone calls were transferred to pendrive, mobile was returned to Subhash Rajput with a caution not to delete the important calls. This panchanama at Exh. 70 at its end, after the signature of Police Officer, carries the signature of PW 9 which has been given Exh. 42.

42. The panchanama at Exh. 73 is dated 1/5/2016 and again it records what Subhash has disclosed in the police station. The disclosure by Subhash recorded in inverted commas in this panchanama shows that Ramdas informed Subhash that he has committed murder. This panchanama then records what Subhash has told police. This also records that the police heard the conversation between him and accused and then copied it down on the pendrive. It also records that thereafter, he saved that conversation in the folder by name "Audio Manager". He thereafter received letter to produce his mobile and accordingly he produced that mobile. All locks of his mobile were cancelled. The private files on it were copied on another mobile. Police then told him to show

call records and to play it. The call history was first shown and then he went into Audio Manger folder and inserted the code number. After code number was typed, option "Music" opened and in it "d" folder surfaced. It contained both the recordings. That recording was as disclosed by Subhash. The mobile was then taken in possession by the police. Thus the seizure panchanama Exh. 73 drawn on 1/5/2016 shows more details. The disclosure by Ramdas that he has committed murder does not form part of deposition of PW 14 Bala.

43. PW 22 Mahesh Gangurde is the Scientific Officer in Regional Forensic Science Laboratory, Nashik. His deposition shows that on 3/5/2016 his office received three articles in a sealed condition, one was Samsung Galaxy Mobile, second was pendrive and third was memory card. The purpose was to find out whether voice exhibits of speaker Exh. 1 and 2 are similar to specimen voice of speaker marked Exh. 3. His deposition shows that he analyzed Exh. 1, 2 and 3 with the help of soft ware namely 'Multyspeech' and 'Goldwave'. They segregated two sounds with the help of 'Goldwave' software. His deposition shows that he also had voice sample which was provided in memory card. He then performed

spectrography with the help of 'Multyspeech' software. The report of his analysis shows that the questioned voice exhibited of speaker marked Exh. 1 and 2 are similar to specimen voice exhibited of speaker marked Exh. 3. He accordingly gave report at Exh. 112.

44. During his further examination, he examined mobile in court and told that the software for call recordings was installed in it. When he examined the said mobile phone, he found that software and the folder 'Audio Manager'. He then applied the code to Audio Manager folder opened by him and then went to folder 'Music' and thereafter to folder by name "d". In that folder, there were two audio clips. In paragraph 7 of deposition, the Audio clip heard by the witness has been reproduced. This call which lasted for about 1 minute and 28 seconds also carries disclosure of the fact of murder by speaker A to B. In the second conversation, there is only a request not to tell anything to the family. He also stated that in the handset Samsung Mobile Phone, sound recording application is automatic programme and there cannot be manipulation by human act.

45. His cross examination shows that when he examined Exh. 1 mobile phone, there was no disturbance except noise of network. But the said voice was not there at the time of conversation. He accepted that except voice of conversation, there was noise of network. He denied that because of tampering, there was third noise.

46. Thus evidence of this witness first shows full contents of first phone call made at 3.28 am in the morning allegedly by the accused to Rajput. The contents not mentioned in the deposition of witness PW 14 Bala are found included in it. Seizure Memo Exh. 70 records the fact of murder but it does not reproduce the entire text of any of the conversations. This panchanama also does not show creation of any folder by Subhash Rajput for preserving the conversation with the accused.

47. Exh. 73 other panchanama again does not contain these details. This panchanama not deposited to by Subhash, however, records statement of Subhash that because of the instructions by police to save that conversation, he saved it in 'Audio Manager' folder in his mobile. It also records how Subhash opened that

folder and 'Music' app after applying the code number and reached the destination folder 'd' when the mobile was seized by the police authorities. However, statement of Subhash on these lines is not recorded by police on 1/5/2016 or Subahsh is not examined in support of this story in court.

48. Expert PW 22 speaks of comparing the conversation saved by Subhash in his mobile with the conversation on memory card or the conversation copied in pendrive with the conversation in memory card. Exh. 3 is the specimen voice which has been used to compare the conversation in mobile or in pendrive. PW 17 Pradip Thakare who accessed the mobile first and claims that he copied the conversation to pendrive received that mobile in police station from the Investigating Officer. He does not say that the owner of the mobile Subhash was then present and mobile was handed over by Subhash to him in the presence of pancha witnesses. Even certificate issued by him at Exh. 83 does not carry mention of this fact.

49. The conversation looked into by PW-22-Mahesh Gangurde is mentioned in paragraph No.7 and 8 of his deposition. The first clip

which contain the conversation is important according to prosecution. The said script was compared with voice sample of accused Ramdas which has been obtained on 25/4/2016. The panchanama of the exercise in which said sample was obtained is at Exhibit 47. This panchanama mentions that on 18/4/2016 conversation between accused and PW-9 Subhash Rajput was copied in pendrive and pendrive has been seized for investigation. It also states that in that seizure panchanama script of conversation has been prepared. That script is reproduced in Exhibit 47. Again reproduction mentioned in inverted commas thereby indicating that the same is as per actual conversation. This script contained in panchanama dated 18/4/2016 as reproduced in Exhibit 47 does not exactly match with the conversation mentioned in paragraph No.7 of deposition of PW-22-Gangurde. On the contrary, in Exhibit 47 it is mentioned that script noted down on 18/4/2016 is too small. In this backdrop, when one looks into seizure panchanama dated 18/4/2016, the conversation reproduced does not tally with the script as reproduced in Exhibit 47. All this therefore creates a serious doubt about the exercise carried on 18/4/2016 or 25/4/2016. It reveals alteration in words/sentences in conversation.

50. The doubt arises on account of fact that the mobile which contains this conversation was not taken in custody on 18/4/2016 and it was in custody of PW-9-Subhash Rajput till 1/5/2016. Thus on date on which voice sample of accused was obtained, mobile was in custody of Subhash Rajput. PW 9 also claims that he shifted the voice/audio files to a folder.

51. Extra judicial confession by itself is a weak piece of evidence and PW-9-Subhash Rajput has not supported it in Court. Above anomalies in investigation therefore cannot permit the Court of Law to use the alleged conversation as incriminating circumstance.

52. The next circumstance is discovery of clothes of accused, knife and key. PW-3-Rajendra Kshirsagar is the witness examined by prosecution for said purpose. He states that on 22/4/2016 accused Ramdas made a statement and accordingly police and he went with him to Carbon Naka area. Vehicle was halted at a place which was 25-30 feet from spot where accused No.1 kept articles. They followed accused and accused took search near trees and shrubs. He took out one plastic carry bag from trees and shrubs.

Police took search of that carry bag. One knife, half pant Bermuda and one steel key of medium size was found in that plastic bag. He then states that the panchanama of said articles was done and they were seized at spot. Seal was put of Satpur police station on said articles.

53. According to him Bermuda seized by police was of Ash colour and it was half size pant. Apart from these three things, police also seized another thing which he was not in position to identify. He identified knife and key as also Bermuda pant. He also stated that carry bag was also seized by police and cover of key was having label of his signature. However label of Bermuda half pant did not have his signature. Thus, panchanama Exhibit 30 and 31 are proved by him.

54. The cross examination of this witness shows that the label as alleged by him was not fixed on the key. He also stated that the pant before the court was a full pant and of Greenish colour. He also deposed that he did not remember the details earlier. He denied that key, knife and pant were not seized in his presence. He accepted that carry bag which was taken out by the accused is

not before the court. This deposition therefore, shows that the label alleged to be with a key was not found and he identified a different pant. In chief, he deposed about Ash colour half size Bermuda pant. Why the plastic bag in which all these articles were placed, could not be produced and what happened to it has not been explained. This therefore, creates doubt on the story of prosecution about the discovery of these articles under section 27 of the Evidence Act. PW 13 Dr. Nikhil Saindane who has conducted post mortem deposed in the cross examination that he did not see any blood stains on weapon knife. The spot panchnama shows that the scissor with blood on inner side of its blades was also seen on the spot. This material therefore, does not inspire confidence and we cannot look into the discovery as reliable piece of evidence.

55. It appears that key discovered by the accused was tried on the lock by the trial court and the lock could be operated with that key. However, lock was seized on spot and it was lying near the back side door of Rangnath Shinde as deposed by PW 10 Vinod Barve, pancha of spot. That lock has not been identified by anybody as one which was applied on the door. As per the version of of PW 1 informant, the lock was broke opened and in that event,

we find substance in the contention of Advocate Nikam that the lock could have been operated by any key. There is difference in the number printed on the lock and in the panchanama. In the panchanama Exh. 44 lock with number 843/20 is shown to be seized by the police on spot. This panchanama mentions that the lock of Radiant Star Company was found lying near the steps below the door. The trial court in question no. 247 while examining the accused under section 313 Cr.P.C. applied the key recovered under section 27 of the Evidence Act to this lock and the lock could be operated with that key. In the said question, court has also put it to the accused that the number of lock and key is the same i.e. 843720 and name of company embossed on both as Radiant. The accused was asked what he wanted to say about it. He has stated that it is false. The trial court has in the said examination conducted some investigation and accused has not accepted the same. The Investigating Officer has not undertaken that exercise. The accused did not get legal assistance to meet the inference which could have been drawn from fact of the key fitting into the lock. However, here we find that the lock was broke opened by PW 1 and it has not been shown to him. It is therefore, not clear whether the lock which was earlier applied on the door of

premises in occupation of PW 1 was seized by police. There is no enquiry into the ownership of the said lock. Similarly there is no enquiry to find out from where the knife was procured, whether it came from the house of the accused or it belonged to the deceased.

56. PW 1 in Exh. 26 has mentioned that after he broke opened the said lock, the door was slightly shut from inside i.e. its latch was partially applied. Hence, he and other boys pushed the door and it opened. The Investigating Officer has not considered this aspect. He also mentions that after finding the dead bodies with injuries, police was informed at about 8.30 in the morning. The Investigating Officer has recorded the FIR at 14.40 hrs. However, at Exh. 104, station diary entry No. 10 recorded at 9.15 am has been produced. It mentions that Vinod Shinde personally came to the police station and informed that his tenant has told him that tenant's wife and son are lying dead in the tenanted premises. Vinod therefore, checked from outside and came to police station to inform. The station diary entry shows that police staff was then sent to the spot. There is therefore, no mention of phone call made by PW 1 husband of deceased at 8.30 am.

57. We therefore, find that the Investigating Officer has not investigated into all links or clues to gather that nobody else could have committed the ghastly double murder or to show that the accused is the only convict. Absence of accused from his house in the night has also not been brought on record by any convincing evidence. The circumstances like extra judicial confession or recovery under section 27 of knife, blood stained pant or key are also not established by any convincing evidence. Material on record therefore, is insufficient to rule out involvement of any other person in the matter. The conduct of PW 1 husband in going to his sister's place after seeing his son and wife lying in the tenanted premises and then braking open the door also does not appear to us to be natural. Through cement window, he could have very well seen the blood and realized the gravity of situation. If he wanted to help his wife and son, he could have immediately forced open the door instead of going to his sister's place to call her. It appears that he had mobile phone but did not use it to call her or any help.

58. Circumstances relevant to form a chain are not proved by State by cogent and convincing evidence. As the material on record

does not form chain so complete as to indicate respondent Ramdas as the only accused person and does not rule out involvement of anybody else, we are inclined to give benefit of doubt to accused Ramdas. Therefore, Criminal Appeal No. 735 of 2018 needs to be allowed. Prayer in Criminal Application No. 901 of 2018 also stands granted and Criminal application is disposed of.

59. Accordingly we proceed to pass the following order :

ORDER

- (a) Confirmation proceedings are accordingly disposed of.
- (b) Criminal Appeal No. 735 of 2018 is accordingly allowed.
- (c) Criminal Application No. 901 of 2018 also stands allowed.
- (d) Judgment and order dated 23rd April, 2018 and 26th April, 2018 delivered by the Sessions Judge, Nashik in Sessions Case No. 189 of 2016 is hereby quashed and set aside.
- (e) Accused Ramdas Rangnath Shinde is acquitted of the offence punishable under section 302 of IPC.

(f) He be set free if his custody is not required by the State in any other matter.

(g) Muddemal property be dealt with as directed by the trial court after the appeal period is over.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)