

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 22 OF 2014**

Ramdas Anaji Mahadik @ Vinherkar ...Appellant
(Org. Accused No.1)

Versus

1. The State of Maharashtra
2. Vivek S. Vinherkar ...Respondents

WITH

APPEAL NO. 499 OF 2014

Chandrakant @ Chandu Mangal Patil ...Appellant
(Org. Accused No.4)

Versus

The State of Maharashtra ...Respondent

WITH

APPEAL NO. 122 OF 2020

Rajan @ Raja @ Bala Shankar Nayar ...Appellant
(Org. Accused No.8)

Versus

1. The State of Maharashtra
2. Vivek S. Vinherkar ...Respondents

WITH

APPEAL NO. 975 OF 2019

The State of Maharashtra
(Through Mahad Taluka Police
Station, Taluka Mahad, Dist. Raigad
Vide C.R. No. 08 of 2007) ... Appellant

Versus

1. Ramdas Anaji Mahadik @ Vinherkar
2. Santosh Sadanand Mahadik
3. Gilbert William Ohol
4. Chandrakant @ Chandu Mangal Patil
5. Prashant Kamlakar Vinde
6. Rajan @ Raju @ Bala Shankar Nayar
7. Sandeep Sadanand Mahadik @ Vinherkar ...Respondents.

WITH

**INTERIM APPLICATION NO. 4051 OF 2022
IN
APPEAL NO. 22 OF 2014**

**WITH
INTERIM APPLICATION NO. 801 OF 2019
IN
APPEAL NO. 122 OF 2020**

Mr. Nitin Sejpai a/w. Ms Pooja Bhojne, Ms Akshata Desai for the Appellant in Appeal No.22/14 for the Respondents in Appeal No. 975/19.

Ms Pooja Bhojne for the Appellant in Appeal No.499/14.

Mr. Ajay Patil, APP for the Appellant/State in Appeal No. 975/19 and for the Respondent/ State in Appeal Nos.22/14, 499/14 & 122/20.

None present for the Appellant in Appeal No.122/20.

Mr. Amit Mane, Appointed Advocate for Respondent No.2 in Appeal No.22/14 and 122/20.

**CORAM : SMT ANUJA PRABHUDESSAI &
N. R. BORKAR, JJ.**

**RESERVED ON : 27 SEPTEMBER 2023.
PRONOUNCED ON : 05 FEBRUARY 2024.**

COMMON JUDGMENT (PER N.R. BORKAR, J.)

1. All these Appeals are filed against one and the same judgment and order dated 1 January 2014 passed by the Additional Sessions Judge, Mangaon, Dist. Raigad in Sessions Case No. 43 of 2008. All these Appeals were therefore heard together and are being disposed of by this common judgment.

2. In the above sessions case, in all nine accused viz. accused No.1 - Ramdas Anaji Mahadik @ Vinherkar (appellant in Appeal No.22 of 2014), accused No.2- Santosh S. Mahadik, accused No.3 - Gilbert W. Ohol, accused No.4 - Chandrakant @

Chandu Mangal Patil (appellant in Appeal No.499 of 2014), accused No.5 Ramchandra @ Ram Bajirao Sonawane, accused No.6 – Ronald A. Parera, who died during the trial, accused No.7 - Prashant K. Vinde, accused No.8 – Rajan @ Raju @ Bala Shankar Nayar (appellant in Appeal No. 122 of 2020) and accused No.9 – Sandeep S. Mahadik @ Vinherkar were tried for the offences punishable under Sections 364, 365, 120-B, 302 read with 34 and 201 of the Indian Penal Code, 1860 (for short “IPC”).

3. By the impugned judgment and order, the trial Court convicted :

- (i) Accused No.1 - Ramdas Anaji Mahadik @ Vinherkar for the offences punishable under Sections 364, 365, 302 read with 34 and 201 of the I.P.C. and sentenced him to suffer rigorous imprisonment from 7 years to life imprisonment;
- (ii) Accused No.3 - Gilbert William Ohol for the offence punishable under Section 202 of the IPC and sentenced him to suffer the imprisonment for the period for which he was in jail during trial, i.e., from 23 March 2007 to 26 June 2007;
- (iii) Accused No.4 – Chandrakant @ Chandu Mangal Patil for the offences punishable under Sections 364, 365, 302 read with 34 and 201 of the I.P.C. and sentenced him to suffer rigorous imprisonment from 7 years to life imprisonment;
- (iv) Accused No.7 - Prashant Kamlakar Vinde for the offences punishable under Sections 364 and 365 read with 34 of the I.P.C. and sentenced him to suffer imprisonment from 7 years to 10 years. (Accused No.7 has not filed the appeal);

(v) Accused No.8 – Rajan @ Raju @ Bala Shankar Nayar for the offences punishable under Sections 302 read with 34 and 201 of the I.P.C. and sentenced him to suffer rigorous imprisonment from 7 years to life imprisonment;

4. Criminal Appeal No. 22 of 2014, Criminal Appeal No. 499 of 2014 and Criminal Appeal No. 122 of 2020 are filed by accused Nos.1,4 and 8 respectively against their conviction, whereas Criminal Appeal No. 975 of 2019 is filed by the State against acquittal of accused No.2- Santosh Mahadik, accused No.5- Ramchandra @ Ram Bajirao Sonawane and accused No.9- Sandeep S. Mahadik @ Vinherkar. Accused No.3 – Gilbert W. Ohol and accused No.7- Prashant Kamlakar Vinde have not filed appeal against their conviction.

5. The deceased Shantaram was the relative of accused Nos.1,2 and 9. He along with his family was residing in Mumbai. According to the prosecution, there was a dispute between the deceased and accused Nos.1,2 and 9 on account of their ancestral agricultural land at their native village Vinhere. There were some other disputes between them. According to the prosecution, due to said disputes they made a plan to kill the deceased and to execute the said plan, they hired accused Nos.3 to 8. It is alleged that pursuant to the said plan, on the date of incident which took place on 7 March 2007, the deceased was abducted, he was killed and his dead body was thrown in the valley near Chirekhind village on Poladpur-Mahabaleshwar road.

6. The trial Court to convict the accused Nos.1,3,4, 7 and 8 has relied upon the following circumstances.

- (i) Enmity between accused No.1 and deceased;
- (ii) Recovery of the dead body at the instance of accused No.1;
- (iii) Confessional statement of accused No.3.

7. We have heard learned counsel for the appellants/accused, learned APP for the respondent No.1 - State and learned appointed counsel for the respondent No.2.

Enmity:

8. The trial Court to arrive at the conclusion that there was enmity between accused No.1 and the deceased has relied upon the evidence of PW-1 Vivek Vinherkar, the son of the deceased, PW-3 Ashok Vinherkar, the cousin of the deceased and PW-5 Vanita Devalekar, the sister of the deceased.

9. The learned counsel for the appellants/accused submit that PW-1 Vivek has admitted in his evidence that he had no personal knowledge about the alleged enmity. It is submitted that thus the evidence of PW-1 as regards alleged enmity is of no consequence.

10. PW-3 Ashok is the first informant in the present case. The learned counsel for the appellants/accused submit that according to PW-3, he was with the deceased at the time of alleged abduction, however, he has not disclosed about the alleged enmity in the first information report lodged on 7 March 2007. It is submitted that according to PW-3, he was also

present when the dead body of the deceased was brought to village Vinhere on 14 March 2007, still he did not disclose about the alleged enmity to the Investigating Officer. It is submitted that PW-3 has disclosed about the alleged enmity to the Investigating Officer for the first time in his supplementary statement dated 19 March 2007. The learned counsel for the accused submits that considering the overall facts and circumstances it would not be safe to place reliance on the evidence of PW-3 to hold that there was enmity between the deceased and accused No.1.

11. The learned counsel for the accused further submits that similar is the situation of PW-5 Sou. Vanita. It is submitted that she too did not disclose about the alleged enmity to the police till recovery of the dead body of the deceased. It is submitted that even otherwise the evidence of PW-5 in relation to alleged enmity is vague. It is submitted that the trial Court therefore, erred in arriving at the conclusion that there was enmity between the accused No.1 and the deceased.

12. On the other hand, the learned APP for the State submits that the trial court has rightly relied upon the evidence of PW-3 and PW-5 to conclude that there was enmity between the deceased and accused No.1. It is submitted that the evidence of PW-1, PW-3 and PW-5 cannot be discarded merely on the ground of delay in disclosing about the alleged enmity to the Investigating Officer.

13. We have perused the evidence of PW-1, PW-3 and PW-5. According to PW-1, there was enmity between his father and accused Nos.1,2 and 9. PW-1 has, however, admitted in his cross-examination that he had no personal knowledge about it. Thus, the evidence of PW-1 is of no consequence on the point of alleged enmity.

14. PW-3 on the point of enmity has stated that the relations between the deceased and accused Nos.1,2 and 9 were strained and thus meeting was held. In the said meeting, the accused No.1 had uttered the words that he would kill the deceased. PW-3 in his evidence has not disclosed as to when this meeting was held. He has admitted that he disclosed about it to the police for the first time on 19 March 2007, i.e., after 12 days of the alleged abduction. Thus, in our view, it would not be safe to rely upon the evidence of PW-3 on the point of alleged enmity.

15. PW-5, on the point of enmity, has stated that prior to the incident accused No.1 had threatened the deceased of dire consequences. The evidence of PW-5 about the alleged threat is vague. Apart from it, PW-5 has admitted in her evidence that she disclosed about the alleged threat to the police on 14 March 2007, i.e., after 7 days of the alleged incident of abduction.

16. According to the witnesses, the deceased was repeatedly threatened. However, there is not even a single complaint to the

police. Apart from it, no independent witness has been examined on the point of alleged enmity. The trial Court was therefore, not justified in arriving at the conclusion that there was enmity between the deceased and accused Nos.1,2 and 9.

ABDUCTION AND MURDER:

17. According to the prosecution, the alleged abduction took place when the deceased was going to Karanjadi Railway Station from his native village - Vinhere where he had come to attend annual fair of Zolai Devi. According to the prosecution, at the time of alleged abduction, PW-3 Ashok and PW-6 Mahesh were with the deceased.

18. The learned counsel for the accused submits that according to PW-3 and PW-6, the accused came in Tata Sumo Jeep. Accused Nos.4 and 7 got down from the said Jeep. They introduced themselves as police personnel. They made the deceased to sit in the Jeep and took him away. It is submitted that the trial Court to convict accused Nos.4 and 7 has relied upon the evidence of PW-3 and PW-6 and the retracted confessional statement of accused No.3. It is submitted that admittedly accused Nos.4 and 7 were not known to PW-3 and PW-6 and thus test identification parade was conducted. The learned counsel for the accused submit that the trial Court while relying upon the test identification parade has ignored that it was not conducted in accordance with rules provided under the criminal manual. It is further submitted that the trial Court erred in relying upon the alleged confession of accused

No.3 which is exculpatory in nature. It is further submitted that even otherwise the incriminating material in the alleged confession was not put to the accused at the time of recording their statement under Section 313 of Cr.P.C. It is submitted that the trial Court thus erred in convicting the accused Nos.1,4 and 7 for the offence of abduction.

19. On the other hand learned APP supported the findings recorded by the trial Court on the point of alleged abduction. It is submitted that PW-3 and PW-6 has identified the accused Nos.4 to 7 in test identification parade. It is submitted that the confession of accused No.3 corroborates the evidence of PW-3 and PW-6.

20. We have perused the confession of accused No.3. The same reads thus:

EXHIBIT - 188

STATEMENT OF ACCUSED UNDER SECTION 164 OF THE CODE OF CRIMINAL PROCEDURE.

I, the Accused, by name Gilbert William Ohol, age - 29 years, residing at - Pune, would like to state that I work as a Driver on a Jeep.

I work as a driver on a Motor Jeep viz. TATA SUMO SPACIO, which Jeep number is MH-04-CE-2771. I ply this jeep on Mumbai-Pune route for ferrying the passengers. On the date 06.03.2007, at or about 01:30 to 02:00 hrs. in the afternoon, I received a call on my mobile phone from Raju Nair whose mobile phone number was 9881672120 and he asked me to bring the vehicle to Mahad. At that time, he further told me that, his vehicle had gone out of order at Mahad and that therefore, I should go there. At that time, I told him that I could not afford to come by leaving Mumbai-Pune route. At that time, he told me

that he would pay me Rs.4,000/- (Rupees Four Thousand) as hire charges. Thereupon, when I told him that I did not know the road for Mahad, he told me that I should take a right turn at Khopoli and then I should proceed ahead straight away by Mumbai-Goa Highway and then I would reach Mahad Village. At that time, at or around 03:00 to 03:30 p.m., I left from Dadar, Mumbai and reached at S.T. Stand, Mahad, at or around 07:00 p.m. in the evening. After I reached there, Raju Nair and other three persons met me near S.T. Stand. I told Raju Nair for filling up diesel. Then, they all four persons accompanied me in the vehicle and we got the Jeep filled with diesel of Rs.1,500/-. After filling diesel in the vehicle, we returned near S.T. Stand and had meal in a hotel. Thereafter, as they told me that they wanted to go to the fair at Vinhere, we went there. After we reached at Vinhere, Raju Nair gave me Rs.500/-. He told me that Ramdas Mahadik who had accompanied them, hailed from the said village and further told me to visit the fair and spend the said money. At that time, the person by name Ramdas Mahadik slept in the vehicle and the other three persons left therefrom. The Jeep was parked on the ground of a school. At about 01:30 to 02:00 a.m., when I returned to the vehicle, Mahadik was slept in the vehicle and I also slept in the vehicle. At or about 02:00 to 02:30 a.m., the three persons who had gone away, returned to the vehicle and said, "we will go to Mahad, we will take rest in a lodge at Mahad and then, in the morning, we will leave for Mumbai." Thereafter, we came to Mahad and stayed in the Lodge viz. "Sai Tej" at Mahad. In the next day morning, at about 11:00 to 11:30 a.m., we got up and had our bath etc.. One more person came at the said place and took out and showed some diagram. After having lunch etc., we left the lodge at 02:00 p.m.. When we left the said place after our lunch, I was told that we had to go to Karanjadi Railway Station. The person who showed the diagram, got down at a place from where the Karanjadi Phata was at a distance of 50 ft. away. He told us that we should go in the right hand direction. At that time, at a distance of 150 to

200 mtrs. away from Karanjadi Phata, in all 4 persons were walking on Railway Station Road. They were comprised of 3 males and 1 female. Ramdas Mahadik pointed Raju Nair that one of the said persons was Shantaram Vinherkar. At that time, Raju Nair and 2 other persons who had maintained (hair) cut like Police and who had told me that they were Police personnel, got down and they made Shantaram Vinherkar to sit in the jeep and told him that they had come from Mumbai and that they were the Police Personnel. Thereafter, Raju Nair brought us to Mahad to make entry in the Mahad Police station. Thereafter, another person told not to make entry in the Police station and further told that we would go directly and asked to drive jeep towards Poladpur. We filled the Jeep with Diesel of Rs.1000/- at the Petrol pump at Poladpur. At that time, I was told that they wanted to go to Mahabaleshwar from the said place. When I told that I did not know the road, the person of strong built and looking like the police personnel, asked me to drive the vehicle towards right side. After we drove the vehicle upto 10 to 12 k.m., suddenly we came across a mountain pass and all those persons started beating up Shantaram Vinherkar in the jeep itself. They asked him : "From whom you have taken monies to give jobs? We have received a complaint in respect thereof and therefore, we are taking you alongwith us." After going ahead for some distance, they asked to stop the jeep on big turn, brought Shantaram Vinherkar out from the jeep. At that time, he was lying unconscious. At that time, Raju Nair and the person looking like the Police took big stone, hit the same on his head, lifted him and threw him down in the valley. Thereafter, I was asked to drive the jeep towards Mahabaleshwar. I drove the jeep towards Mahabaleshwar. After reaching at Mahabaleshwar, two persons of them were asking me to again drive the jeep in straight direction and two persons of them were asking me to take a left turn. At that time, they assaulted me and threatened me : "If you disclose this incident to anybody, we will not let you to drive the vehicle on Mumbai Pune route and will not leave you

as well." Due to the said threat and fear, I met with an accident on Mahabaleshwar-Satara road. Thereupon, I contacted my brother from my mobile phone. Thereupon, my brother came at the said place with 'Indica' car. We went to Pune alongwith my brother to bring crane to tow the jeep. Two persons who were alongwith me in the jeep, came at Katraj and another person came alongwith crane at the place of incident. They lifted and towed the said vehicle and we came to Pune. The person who had accompanied me, left from Pune. I did not disclose about this incident to my family and at anywhere else. Being scared, I fled to Goa. The Police went at my house in Pune and they brought my brother and the said 'Sumo' vehicle at Mahad. At that time, I had telephoned my brother on mobile phone and had told him that I was at Panjim. The Police came at Panjim, they caught me at the S.T. Stand at Panjim and brought me to Mahad.

Note : I can read Marathi language a little bit and can write in Marathi language a little bit. I can speak Marathi and can understand the conversation in Marathi. This statement is read out to me and I understood the same.

Note : I can read & write English."

21. Perusal of confessional statement of accused No.3 show that it is exculpatory. This Court in **Mohd. Sameer Mohd. Juber Shaikh vs. The State of Maharashtra**¹, has held that :

"29. It is thus clear that Section 30 of the Evidence Act thus allows use of the confession of one accused against co- accused on fulfilling the following conditions :-

- i) There must be a joint trial for the same offence.
- ii) The statement of the accused which is sought to be used against co-accused must be a confession.
- iii) The confession of guilt must inculcate himself as well as other i.e. co-accused. It must implicate the maker

¹ Appeal No.255 of 2009 a/w. 1241 of 2008 decided on 10.1.2017

to the same extent as co-accused.

iv) The confession of guilt must be duly proved.

30. Thus careful scrutiny of the provisions of Section 30 of the Evidence Act makes it clear that when the statement of the accused does not amount to confession, i.e., when it is wholly or partly exculpatory, it cannot be used against co-accused. Where an accused pleads innocence and throws the blame on the co-accused, such statement cannot be termed as confession of that accused and as such cannot be used against co-accused. For making use of it against co-accused the statement of accused must amount to a distinct confession of his own guilt. Self exculpatory statement of the accused as such cannot be used to infer guilt of co-accused”.

22. Apart from above, the incriminating material in confession of accused No.3 was not put to the accused at the time of recording of their statement under Section 313 of the Cr.P.C. The trial Court has acquitted all the accused of the charge punishable under Section 120-B of the IPC for lack of evidence to that effect. Considering the overall circumstances, the trial trial Court was not justified in convicting the accused Nos.1,4 and 7 for the offence of abduction only on the basis of evidence of PW-3 and PW-6 who identified them in test identification parade and before the Court.

23. According to the prosecution, after the alleged abduction, the deceased was killed and his body was thrown in the valley. It is alleged that the dead body was recovered at the instance of accused No.1. To prove this circumstance, the prosecution has examined panch witness PW-4 Ravindra Pawar.

24. According to PW-4 on 14 March 2007 when he was at Mahad Bus Stand, two policemen came to him and requested him to act as a panch witness for recording memorandum statement. He accompanied them to Mahad Police Station. Accused No.1 was there in the police station. Another panch witness was also there. According to PW-4, accused No.1 had shown the place where the dead body of deceased was thrown and the dead body was found in a decomposed condition.

25. In the cross-examination, PW-4 has admitted that he is resident of Mumbai. He has further admitted that on 14 March 2007, he had gone to Mahad to meet Estate Agent Shri. Dhule. On that date, he had important work to show agricultural land to the said Estate Agent. PW-4 is a witness on the other panchanamas also.

26. The evidence of PW-4 does not inspire confidence. According to PW-4 himself, on 14 March 2007 he had gone from Mumbai to Mahad to attend his important work. It is unlikely that instead of attending the said work he would agree to act as panch witness on multiple panchanamas. Apart from it, the Investigating Officer has admitted in his cross-examination that the dead body was visible from the road.

27. Considering the overall facts and circumstances of the case, it is difficult to hold that the prosecution has proved its case against the accused beyond reasonable doubt. Hence, the following order is passed.

ORDER

- a. Criminal Appeal No.22 of 2014, Criminal Appeal No.499 of 2014 and Criminal Appeal No. 122 of 2020 are allowed;
- b. The impugned judgment and order dated 1 January 2014 passed by the Additional Sessions Judge, Mangaon, District Raigad in Sessions Case No. 43 of 2008 convicting the appellant/original accused No.1 - Ramdas Anaji Mahadik @ Vinherkar and the appellant/original accused No.4 - Chandrakant @ Chandu Mangal Patil for the offences punishable under Sections 364, 365, 302 read with 34 and 201 of the I.P.C. and the appellant/original accused No.8 - Rajan @ Raja @ Bala Shankar Nayar for the offences punishable under Sections 302 read with 34 and 201 of the I.P.C. is set aside and they are acquitted of the said charges;
- c. The appellant/original accused No.1 - Ramdas and appellant/original accused No.8 - Rajan are in jail, they be released forthwith unless their custody is required in connection with any other crime;
- d. The bail bonds of appellant/original accused No.4 - Chandrakant shall stand cancelled;

- e. The appellant/original accused No.1 - Ramdas, appellant/original accused No.4 - Chandrakant and appellant/original accused No.8 - Rajan shall execute P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each and one surety of like amount in terms of section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Raigad;
- f. The fine, if any, paid by the accused Nos.1, 4 and 8 be refunded to them;
- g. Criminal Appeal No. 975 of 2019 stands dismissed.
- h. Pending Interim Applications, if any, are disposed of.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)