

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.498 OF 2013**

Rakesh Mahadu Dandekar & Anr. .... Appellants

versus

The State of Maharashtra .... Respondent

**INTERIM APPLICATION NO.1812 OF 2025  
IN  
CRIMINAL APPEAL NO.498 OF 2013**

Rakesh Mahadu Dandekar & Anr. .... Applicant

versus

The State of Maharashtra .... Respondent

**WITH  
CRIMINAL APPLICATION NO.1639 OF 2014  
IN  
CRIMINAL APPEAL NO.498 OF 2013**

Mahendra @ Belu Govind Karwa .... Applicant

versus

The State of Maharashtra .... Respondent

.....

- Mr. Dinesh G. Mishra, Advocate for Appellants.
- Ms. Geeta P. Mulekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &  
SHYAM C. CHANDAK, JJ.**

**DATE : 11<sup>th</sup> JUNE, 2025**

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**JUDGMENT : (PER : SARANG V. KOTWAL, J.)**

1. The Appellants have challenged the Judgment and Order dated 02/04/2013 passed by the Additional Sessions Judge, Palghar, in Sessions Case No.05/2009. The Appellants were the original accused Nos.1 and 2 respectively. There were two more accused who were acquitted from all the charges.

2. By the impugned Judgment and Order, the Appellants were convicted as follows ;

- (i) The Appellants were convicted for commission of offence punishable u/s 302 of the Indian Penal Code and were sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer further simple imprisonment for one year.
- (ii) Both of them were convicted for commission of offence punishable u/s 120-B of the Indian Penal Code and were sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer further simple imprisonment for one year.

- (iii) They were also convicted for commission of offence punishable u/s 201 of the Indian Penal Code and were sentenced to suffer simple imprisonment for seven years and and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer further simple imprisonment six months.
- (iv) All the substantive sentences were directed to run concurrently.
- (v) The other accused i.e. accused No.3 Seema Dandekar and accused No.4 Sonu Kakwa were acquitted of all the charges.

3. Heard Mr. Dinesh G. Mishra, learned counsel for the Appellants and Ms. Geeta P. Mulekar, learned APP for the State.

4. The prosecution case involves murder of four persons, viz. Vanasubai, Sanjay, Sadhana and Rekha. Sanjay was nephew of Vanasubai and Sadhana was niece of Vanasubai. Sadhana was Sanjay's sister. Rekha was engaged to Sanjay. But was residing with him. The accused No.3 Seema was daughter-in-law of

Vanasubai. Accused No.1 Rakesh i.e. the present Appellant No.1 was Seema's son and Vanasubai's grandson. Accused No.4 Sonu was brother of accused No.3 Seema. Accused No.2 i.e. the Appellant No.2 Mahendra was Rakesh's friend. There were other two accused Ghanshyam Harijan and Shamsunder Harijan. But they were absconding and did not face the trial.

5. Somewhere between night of 14/08/2008 and 15/08/2008, Vanasubai was murdered by throttling. Sanjay, Sadhana and Rekha were missing. The prosecution case is that because of the dispute regarding the property, Seema and Rakesh conspired with other accused to commit murder of the deceased persons. In executing their plan, they first committed murder of Vanasubai by throttling. The other three deceased were assaulted in Vanasubai's house. Then they were taken to a Nala. They were forcibly drowned in the water. The accused tied their dead bodies and threw them in a septic tank behind a railway colony near Gholwad.

6. Vanasubai's niece Geeta was the first informant in this case. She saw Vanasubai lying dead in her house on

15/08/2008. The police were informed. Initially the accidental death was reported and the enquiry was made. Subsequently, according to the police, it was investigated as a case of murder. The accused were arrested. It is alleged that the accused No.1 Rakesh showed willingness to point out the place where the dead bodies of Sanjay, Sadhana and Rekha were disposed of. Accordingly, the police were taken near a septic tank, from where the three highly decomposed dead bodies were taken out. According to the prosecution, the accused had tied wires around the dead bodies. Then the dead bodies were tied to heavy stones. The accused dumped those bodies in the septic tank. The accused Seema allegedly gave voluntary statement, pursuant to which, the pieces of some wires used for tying the dead bodies were recovered from the place, where the three deceased were assaulted. The accused No.2 i.e. the Appellant No.2 Mahendra expressed his willingness to give confessional statement and therefore he was taken to a Judicial Magistrate. His confessional statement was recorded after giving him more than 24 hours to contemplate about the consequences of giving the confessional statement. It is alleged that he described the entire incident

involving the other accused and himself in committing the murder and in disposing of the dead bodies.

7. The investigation was completed and the charge-sheet was filed. The case was committed to the Court of Session.
8. During trial, the prosecution examined 20 witnesses. Most of the witnesses were Pancha witnesses for various Panchanamas. Most of these Panchas turned hostile. They did not support the prosecution case at all. Remaining witnesses were the informant Geeta Thapad and the deceased Rekha's father Wadasha. P.W.11 Dr. Amitkumar Desak had conducted post mortem examination on Vanasubai's dead body. He had also examined the accused No.1 for his injuries. Similarly, P.W.12 Dr. Kapil Patil had examined the accused No.1 for his injuries.
9. There were two Nodal Officers from the mobile phone service providers and then there was evidence of the Investigating Officers in respect of the investigation carried out. The defence of the accused No.1 was that one Kamlesh @ Kalia

and one Mahendra Panchal were interested in the same property of Vanasubai. They wanted the Appellant Rakesh to give his share to both of them. But since he refused, Kalia and Mahendra Panchal implicated the Appellant Rakesh falsely in this case. Those two were helped by Sanjay's father Vansha and one Yashwant who was working at Gholwad police station, where the FIR was registered.

The property in question originally belonged to Hasam Khan, who had bequeathed that property to Vanasubai. Appellant Rakesh, Sunita and Rahul were to get that property after Vanasubai's death.

10. The defence of the other Appellant Mahendra was that police had told him that Vanasubai and three others were murdered and that he had to give statement against the Appellant Rakesh and others. According to Appellant No.2 Mahendra, he refused to do so. Therefore he was assaulted and kept in prison. The police told him to give evidence before a Judge and that then he would be released from that case.

Accordingly he only nodded before the J.M.F.C. and he was falsely implicated in this case.

11. The learned Judge considered the evidence on record. He relied on the confession given by the Appellant No.2. He relied on the evidence of the police witnesses against the Appellant No.1 in respect of discovery of dead bodies and mainly on these two aspects convicted both the Appellants.

12. The prosecution evidence is as follows :

P.W.1 Geeta Thapad was Vanasubai's niece. Vanasubai was residing at Jambugaon, Waghmarapada in a Wadi. P.W.1 Geeta's brother Sanjay and sister Sadhana were staying with Vanasubai. According to the P.W.1, Vanasubai's son Mahadu was residing separately. On 15/08/2008, P.W.1 went to Vanasubai's house to tie Rakhi to her brother Sanjay. At that time, nobody was in the house. She opened the door and entered the house. She saw that Vanasubai was lying on her bed. She tried to wake her up, but Vanasubai did not respond. P.W.1 then called others. It was realized that Vanasubai was dead. P.W.1 then called one

Kalia Chikoowala informing him about Vanasubai's death. After that she informed the police. They recorded her information which was registered as Accidental Death Report at 06.35 p.m. on 15/08/2008 at Gholwad police station. Her Accidental Death Report mentions that Mahadu was Vanasubai's son from her first husband. She got married second time with Hasam. Accused No.3 Seema was Mahadu's wife.

In the cross-examination she stated that she was in Vanasubai's house between 12.00 p.m. to 02.00 p.m. on that day. Kalia did not come there. The police came to the house at about 04.00 p.m. Vanasubai was in the habit of drinking liquor. She had met Kalia Chikoowala 4-5 days prior to the incident in Vanasubai's Wadi. Kalia used to purchase Chikoos from Vanasubai. She admitted that she had been to Vanasubai's house to meet her on 14/08/2008 in the evening. She further admitted that she gave statement to the police as per her talk with Kalia Chikoowala.

13. P.W.2 Dilip Bhimara was a Pancha for the Spot Panchanama of the house where Vanasubai was found dead. He

was also a Pancha for inquest Panchanama. Both the Panchanamas are produced at Ex.29 and 30. These Panchanamas were carried out after 07.00 p.m. on 15/08/2008.

14. P.W.4 Wadasha Kharpade was the father of the deceased Rekha who was engaged to Sanjay. He deposed that Rekha was residing with Sanjay and they were residing with Vanasubai. Sadhana was Sanjay's sister. She was also residing with them. The accused No.3 Seema and accused No.4 Sonu were instrumental in getting Sanjay and Rekha engaged. Accused No.3 Seema was Vanasubai's daughter-in-law and accused No.1 was Seema's son and Vanasubai's grandson. They were residing in another Wadi. He deposed that there were disputes between Rakesh, Seema and Vanasubai over Chikoo Wadi. On 19/10/2007 when this witness had visited the accused Seema and Rakesh's house, Seema's mother had expressed her unhappiness as Seema was not in good financial condition and also because P.W.4 Wadasha's daughter Rekha and Sanjay were residing happily with Vanasubai. Rekha had a telephonic talk with P.W.4 on 11/08/2008. She was to come to his house for

Raksha Bandhan. But he did not meet her. On 17/08/2008, one Daswant Kharpade informed this witness that Rekha, Sanjay and Sadhana were not traceable and that Vanasubai was murdered. On 31/08/2008, he was informed that the three dead bodies were found. He went to the spot where the dead bodies were kept near Gholwad Railway Colony. He identified the dead bodies as those of Rekha, Sanjay and Sadhana.

In the cross-examination, he deposed that Vanasubai's husband Hasam was the owner of that Wadi. He had already passed away. He admitted that he had not told about unhappiness expressed by Seema's mother to him when his police statement was recorded. In his police statement dated 19/08/2008 he has not mentioned about telephonic talk he had with Rekha on 11/08/2008.

15. The other witnesses were mainly Pancha witnesses who had turned hostile. They are as follows :

- P.W.3 Shamshad Masmad was a Pancha for seizure of deceased's clothes.

- P.W.5 Krishna Bich was the another hostile Pancha on the point of the Appellant No.1 Rakesh showing spot from where the dead bodies were recovered. He was also a Pancha for inquest Panchanama.
- P.W.6 Joseph Dandekar was another Pancha for the same important Panchanama, regarding Rakesh showing the place from where the dead bodies were recovered.
- P.W.7 Rajesh Barad was a hostile Pancha in whose presence allegedly the Appellant No.2's motorcycle and clothes were seized.
- P.W.8 Sunil Thakre was a Pancha in whose presence wooden log and clothes of the Appellant Rakesh were recovered and pieces of wires were recovered at the instance of accused No.3. But he has not supported the prosecution case and was declared hostile.
- P.W.9 Pravin Rayat was a Pancha who had turned hostile. He was a Pancha for Spot Panchanama and for recovery of motorcycle Panchanama.
- P.W.10 Nilesh Mhatre was a Pancha in whose presence a mobile phone of the accused Sonu was recovered. But

since Sonu is acquitted, his evidence is not of much importance.

- P.W.14 Madan Patil, was a Photographer. But the prosecution had dropped him and did not cause his deposition to be recorded.
- P.W.16 Ishwarbhai Patel had drawn the map of the spot.
- P.W.17 Stephen Menezes and P.W.18 Vijay Shinde were the Nodal Officers of mobile phone service providers. But their evidence is not of much value.
- P.W.11 Dr. Amitkumar Desak had conducted post-mortem examination on Vanasubai's dead body. He found marks of Asphyxia and there were five injuries on the face and neck in the nature of abrasion, contusion and swelling. The cause of the death was mentioned as 'Respiratory asphyxia due to compression of neck structures with smothering with head injury.'

On 02/09/2008, he had examined the Appellant No.1 Rakesh at the instance of Gholwad police. They had sought his opinion as to whether the injury on the Appellant No.1's leg was

due to biting and the police wanted to know the age of the injury. According to this witness, there was abrasion with underlying pus over the Appellant No.1's leg above ankle joint. The injury was simple and could have been inflicted by hard and blunt object. The age of the injury could not be determined. He had given opinion that the injury could have been caused by biting. But in cross-examination he admitted that on 02/09/2008 he could not opine that the injury was caused due to biting.

The injury certificate recording the examination of Appellant No.1 carried out on 02/09/2008 is produced on record at Ex.76.

16. Interestingly, the prosecution examined PW.12 Dr. Kapil Patil, who had also examined the Appellant No.1 Rakesh on 17/08/2008 at the request of the police. That medical certificate is produced on record at Ex.80. That medical certificate shows that the Appellant No.1 Rakesh had suffered 9 injuries in the nature of abrasions on fingers of both hands, right wrist, near

right eye, left rib and left ankle. The medical certificate shows that those injuries were caused possibly between 24 to 70 hours from the examination conducted on 17/08/2008. The injuries were apparently caused by hard and blunt object. The police had sought opinion of this Doctor regarding those injuries suffered by the Appellant No.1. Significantly, at that stage, the Appellant No.1 Rakesh was mentioned as 'witness' in the requisition letter sent by police on 17/08/2008.

In the cross-examination, the stand taken by the Appellant No.1 was that the injuries could have been caused in a vehicular accident. This suggestion was accepted affirmatively by P.W.12 Dr. Kapil Patil.

17. The post-mortem notes of the other three deceased were produced on record at Ex.125, Ex.126 and Ex.127. Those documents were admitted by the defence. However, these notes do not throw light on the prosecution case, as the cause of death could not be ascertained because the bodies were highly decomposed.

18. The C.A. reports were produced on record. However, there were no Exhibit numbers to the C.A. Reports. One of the C.A. reports mentions that the pieces of wires recovered at the instance of the accused No.3 and those on the dead bodies were similar and they were parts of each other. However, the Panchanama Ex.95 itself mentions that those pieces of wires were simply kept in front of Panchas when they were seized. There is nothing to show that those pieces of wires were actually tied around the dead bodies which were recovered. In any case, both these Panchas Krishna Bich and Joseph Dandekar had turned hostile. Therefore, these C.A. reports do not really help the prosecution case.

The other main evidence in this case was in the form of police witnesses and the learned J.M.F.C., who had recorded confession of the accused No.2.

19. P.W.13 PI. Siddharth Gade was the first Investigating Officer. He has deposed about the Accidental Death Report dated 13/08/2008 recorded at Gholwad Police Station in respect of

Vanasubai's death. He had carried out the Spot Panchanma in her house and had sent the dead body for post-mortem examination. He had sent the letters for collecting Call Data Record of certain mobile phone numbers and based on that analysis arrested the accused No.1 Rakesh on 29/08/2008. He seized the mobile phone handset and SIM card of one Ghanshyam Harijan, who subsequently absconded. His further deposition is quite important in the context of the present case and therefore it is produced as is recorded by the learned Trial Judge.

“16. Subsequently on 31/8/2008 when Rakesh Dandekar was in my custody he made voluntary statement stating that he is ready to discover the dead bodies of three persons named Sanju Raman Dandekar, Sadhana Raman Dandekar and Rekha Sanju Dandekar. Hence, I recorded his voluntary statement in presence of panch witnesses. Now I am shown the said voluntary statement recorded. It bears my signature, signature of Rakesh and the panch witnesses. The voluntary statement is marked Exh.91.

17. In pursuance of the voluntary statement he carried us to Jambhulgaon, Waghmarapada, in the wadi of Vansubai and told in presence of panch

witnesses as to the spot where they committed the crime and thereafter he carried us to the spot where the dead bodies were dumped and he carried us towards a abandoned safety tank of railway colony. He after going to the said septic tank showed us the three bodies which were dumped in the said septic tank. The said septic tank were having two compartments and two dead bodies were in one compartment and another dead body was in another compartment. We fetched the dead bodies out of the said septic tank in presence of panch witnesses and with the help of persons present over there. After the dead bodies were brought on the ground, Vansha Govind Kharpade identified the dead bodies to be of the deceased persons by naming them. Thereafter I prepared the discovery panchanama and obtained signatures of the panch witnesses over the discovery panchanama and also obtained signatures of the accused and I have also signed below it. Now I am shown the said discovery panchanama. It is marked Exh.91-A.”

He further deposed that the dead bodies were tied with a nylon rope and iron wires and those were also seized under the panchanama.

20. In the cross-examination he referred to the information given by Kalia Chikoowala regarding the Will executed by Hasam Khan in respect of his property. Vanasubai was not willing to give that property to Mahadu i.e. the father of the Appellant No.1. He admitted that foul smell started emanating after the dead bodies were fetched out of the septic tank. He also admitted that he did not record statements of any of the residents of railway colony. Interestingly, he has further deposed that he was not aware as to whether public was aware before 31/08/2008 that there were dead bodies in the septic tank. He denied the suggestion that the railway colony residents had informed him about the foul smell. He denied the suggestion that since he could not nab the real culprit, he falsely implicated the Appellant No.1 Rakesh.

21. From the record it appears that, the FIR was lodged on 16/08/2008 by PI Siddharth Gade regarding death of Vanasubai, which was registered vide C.R. No.I-29/2008 at Gholwad Police Station, against unknown persons.

22. P.W.15 ACP Mohammad Makandar was the second Investigating Officer, who investigated the offence from 01/09/2009. He recorded statements of some of the witnesses. He had seized a motorcycle on 03/09/2008. The wooden sticks and the clothes worn by the Appellant No.1 Rakesh were recovered on 03/09/2008. Those two wooden sticks and the clothes were recovered kept on one tree. However, this witness P.W.15 has not stated about the exact words used by the Appellant No.1 Rakesh regarding the authorship of concealment and the place where those articles i.e. the two wooden sticks and clothes were kept by him on the tree. This aspect is important because the Panchas have turned hostile and the investigating officer's evidence will have to be scrutinized carefully on the basis of the law laid down by the Hon'ble Supreme Court in this behalf.

23. Rest of the deposition of this witness is in respect of the recovery at the instance of the accused Seema, which is not material because she is already acquitted. He had taken steps to conduct DNA test of the dead bodies to establish that those dead

bodies were of the three deceased. However, the DNA report is not on record. He has further deposed that he had written a letter to the learned J.M.F.C.. Dahanu to record statement of the Appellant No.2 u/s 164 of Cr.P.C. After that, the statement was recorded by the learned J.M.F.C. Dahanu on 18/09/2008. The Will and the revenue record were produced on record at Ex.111. The said Will mentions that Hasam had bequeathed the property to Vanasubai absolutely. However, it was mentioned that Vanasubai would not have right to transfer the immovable properties and she was to have only a life interest in the properties. After her death, the property was to vest absolutely in the name of the Appellant No.1 Rakesh and his sister Sunita unconditionally.

Thus, in any case, the Appellant No.1 Rakesh was the beneficiary under the Will. The deceased Vanasubai had only an interest till her life.

He had filed the charge-sheet after completion of the investigation.

24. P.W.19 PI Sunil Vadke had assisted P.W.15 ACP Makandar in the investigation. Under his supervision, the mobile phone was recovered from the accused Sonu. He had recorded statements of some other witnesses. He had obtained C.A. Reports.

25. The last witness i.e. P.W.20 was J.M.F.C. Sabina Altaf Maliq/Sabina Mustafa Shaikh. She was posted at Dahanu at the relevant time i.e. on 17/09/2008. She had stated that, on that day, she received a letter from P.W.15 ACP Makandar requesting her to record the confessional statement of the Appellant No.2 Mahendra in connection with the said offence i.e. C.R.No.21/2008 of Gholwad police station. She further deposed that she put some questions to the Appellant No.2 on 17/09/2008 and recorded his answers. She gave 24 hours period for reflection and directed the police to produce him on 18/09/2008. Then she sent him to the Magisterial custody. On 18/09/2008, the Appellant No.2 was produced before her at 05.15 p.m. She ensured that there was no policeman in the

Court Room. She again asked the Appellant No.2 whether he wanted to give any voluntary statement. He showed his willingness to make the voluntary statement. On her questioning he told her that period of 24 hours was sufficient for reflection. She made him aware that he was not bound to give any statement and whatever he was to tell, could be used against him. She asked him whether anybody had threatened him or had given him any promise. He denied regarding the same. She was then satisfied that he was giving statement out of his free will. She then recorded the confession. She had given another certificate below the recorded statement that she had explained to him that he was not bound to make the confession and that if he did so, the confession might be used against him. She gave a certificate that the confession was voluntarily given. She further recorded in the certificate that the statement was read over to the Appellant No.2 and he had admitted it to be correct.

In the cross-examination, she deposed that she was aware of the guidelines mentioned in the Criminal Manual regarding recording of the confession. She further deposed that

the Appellant No.2 was a tribal and was illiterate. It was further admitted by her that the language of the Court at the time when she recorded the statement was Marathi. She had noticed that the Appellant No.2 was not knowing English. But she found it convenient to record the confession in English and therefore she had recorded it in English. She admitted that she was aware at the time of her deposition that the confession should bear thumb impression or signature of the person making it. However, at the time when she recorded it, she did not know that. Therefore, there is no thumb impression of the Appellant No.2 on the confessional statement. She also stated that she was aware that it was necessary to state in the certificate that she had explained contents of the recording to the Appellant in vernacular.

26. The gist of the confessional statement was that he had gone to the Appellant's house at 06.00 O'Clock. He had consumed liquor. The other accused i.e. Ghanshyam, Sundaram and Seema were present there. Then they went to Vanasubai's house, where Sanju, Sadhana and Rekha were present along with Vanasubai. Ghanshyam committed murder of Vanasubai by

throttling. The Appellant No.2 himself was simply standing there. After that, Rakesh and Sundaram started beating Sanju. When Sadhana and Rekha came to save him they were also beaten. The accused tied Sanju, Sadhana and Rekha with a rope to a tree. They waited for about ½ hour. Then Rakesh sat on the motorcycle driven by Ghanshyam. Sanju and Sadhana were made to sit on the same motorcycle between Ghanshyam and the Appellant No.1 Rakesh. Sundaram walked alongwith Rekha. The Appellant No.2 himself walked behind Rekha. They were taken to a Nala, near the railway station at Gholwad. The water was knee high. The accused forced the heads of all the three in the water. Because of that all the three died. Then the Appellant No.2 and Ghanshyam carried Sanju to the septic tank. It was open and the dead bodies were dumped in that septic tank. After that all the accused returned back. On 15/08/2008, the accused Sonu gave Rs.2,000/- to the Appellant No.2 and promised to pay Rs.10,000/- more.

The certificate was appended to this confessional statement as mentioned earlier.

27. This in short is the evidence led by the prosecution.

28. Learned counsel for the Appellants submitted that there is no direct evidence against the Appellants. The circumstantial evidence is extremely weak. There was no motive to commit murder of any of the deceased. The Appellant Rakesh was a beneficiary under the Will executed by Hasam Khan and therefore there was no reason to commit murder of Vanasubai for the property. In any case, there was absolutely no reason to commit murder of Sanjay, Sadhana and Rekha. The other co-accused Seema and Sonu are acquitted on the basis of similar evidence. Therefore, the benefit should have been extended to the present Appellants as well. The only evidence against the Appellant No.1 Rakesh is about the two Panchanamas. One of them was in respect of discovery of dead bodies at his instance and the other was in respect of the recovery of two wooden sticks and his clothes kept on a tree. However, both these Panchanamas were carried out in presence of the two Panchas who were declared hostile. Therefore, the evidence in respect of

these circumstances is only through the evidence of Investigating Officer, which is highly unreliable and therefore cannot form basis for conviction. The dead bodies were found in a septic tank near railway colony. Dead bodies were found after quite some time. They were highly decomposed. It is impossible that the residents could not have noticed the foul smell emanating from the septic tank. It was quite probable that somebody from the colony had informed the police and thus the dead bodies were recovered. The police had not recorded the statements of any of the residents of railway colony and therefore adverse inference needs to be drawn.

29. He further submitted that similarly, there is hardly any evidence against the Appellant No.2. The only piece of evidence against him is in the form of confessional statement. However, the required mandatory procedure for recording confessional statement was not followed by the learned J.M.F.C. Therefore, the confessional statement loses its evidentiary value. The maker of the confession has not attributed any significant role to himself and therefore it can hardly be a confessional statement.

30. The defence of the Appellant No.2 was that he was told by the police to give the confessional statement on the promise of releasing from custody, is quite probable. He was unable to understand English. He was not explained the contents in his language. The confessional statement does not bear his signature. Learned J.M.F.C. has not stated that he was given sufficient warning that the statement could be used against him as evidence. Therefore, this confession cannot form basis of conviction.

31. There is no other incriminating evidence against either of these Appellants. The C.D.R. are not material because they do not take the prosecution any further. In any case the description in the confessional statement indicates that the incident could not have been taken place in the manner it was described. It was highly improbable that two of the deceased would travel on the motorcycle driven by Ghanshyam while Rakesh was also sitting on the motorcycle. It was even more improbable that Rekha walked more than 1 km towards Nala without raising any shouts

or without struggling. There is no linking evidence to show as to how the dead bodies were carried to the septic tank. All this has raised serious doubt about the prosecution case.

32. Learned APP on the other hand, submitted that there are strong circumstances against both the accused. The Appellant No.1 Rakesh had strong motive to commit murder of Vanasubai because he could have got the property only after her death. He had to eliminate the other three deceased because they were staying with Vanasubai. Therefore, it was quite natural for him to have conspired with the other accused to commit murder of Vanasubai. She submitted that the most incriminating piece of evidence against the Appellant No.1 Rakesh is discovery of dead bodies at his instance. It was only at the instance of the Appellant No.1 Rakesh that the dead bodies could be discovered. This is a strong evidence against him. She submitted that though the Panchas of this Panchanama has not supported the prosecution case, the evidence of the police officer is admissible and therefore, conviction can be based on his evidence. She submitted that apart from discovery of the dead

bodies, there is another circumstance of recovery of the Appellant No.1's clothes and two sticks which were kept on a tree by him. Both these circumstances along with motive form a complete chain against the Appellant No.1.

33. As far as the Appellant No.2 Mahendra is concerned, his confessional statement can be read in evidence. It is not an exculpatory statement because he had played an important role of carrying the dead bodies from the spot where the murder was committed upto to the septic tank where the dead bodies were thrown. There is no reason to discard the testimony of the learned J.M.F.C. The confessional statement is corroborated by the evidence against the Appellant No.1 and therefore taking all these circumstances together, the prosecution has successfully proved its case against both the Appellants beyond reasonable doubt.

34. We have considered these submissions. As referred to by both the learned counsel the major pieces of evidence against the Appellant No.1 Rakesh are the two important Panchanamas. The first is about discovery of the dead bodies from the septic

tank near the railway colony at Gholwad and the other is about recovery of the two sticks and his clothes kept on a tree. Importantly, the Panchas to both these Panchanamas have turned hostile and have not supported the prosecution case. In this context, the only evidence available with the prosecution is that of the Investigating Officer P.W.13 P.I. Gade. We have already reproduced the evidence given by him in his own words in that behalf. Therefore, it will have to be seen as to the legal implication of such statement. In this context we are seeking guidance from the judgments of the Hon'ble Supreme Court in the following two cases :

(i) ***Ramanand Alias Nandlal Bharti Vs. State of Uttar Pradesh***, as reported in (2023) 16 ***Supreme Court Cases 510***.

(ii) ***Sadashiv Dhondiram Patil Vs. State of Maharashtra***, as reported in (2025) 4 ***Supreme Court Cases 275***.

35. The relevant portion from Ramanand's case is in paragraph Nos.57 to 59 which read thus:

“57. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the

position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

58. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.
59. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such

evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the

accused was willing to take it out from a particular place.”

36. Similarly, the relevant portion in Sadashiv’s case is in paragraph Nos.42 to 45, which are as follows :

“42. In this regard, we may only say that panch witnesses have not supported the case of the prosecution. They failed to prove the contents of the discovery panchnama.

43. If the panch witnesses are declared hostile then the prosecution is obliged to prove the contents of the said 17 discovery panchnama through the evidence of the Investigating Officer. The question is how is the I.O. expected to prove the contents of the panchnama.

44. The position of law in this regard is very clear. Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved. From the plain reading of the oral evidence of the Investigating Officer if the discovery is believable and inspires confidence, the same can definitely be looked into as one of the incriminating pieces of evidence against the accused.

45. However, unfortunately in the case on hand, all that the I.O. did was to depose that he had drawn the panchnama and in the end identified his signature on the same and that of the panch witnesses. This cannot be said to be proving the contents of the panchnama in accordance with law. In such circumstances, the circumstance of discovery also cannot be relied upon.”

37. In particular, in Ramanand’s case the Hon’ble Supreme Court has observed that the Investigating Officer had not stated about the exact words uttered by the accused at the police station in that case. Even if the entire evidence of the Investigating Officer was accepted as it is, what was lacking was the authorship of concealment.

38. In the present case before us, as can be seen from the above discussion, the Investigating Officer has failed to reproduce the exact words uttered by the accused when the Investigating Officer deposed before the Court. Most importantly, he has not stated in his substantive evidence about the authorship of concealment. It was observed by the Hon’ble

Supreme Court that Investigating Officer was obliged to depose in his evidence the exact statement and not by merely saying that the discovery panchnama was drawn as the accused was willing to take out those articles from a particular place. These observations are clearly applicable to the evidence led by the prosecution in the present case. This discussion is applicable to both the Panchanamas, i.e. the discovery of the dead bodies and the recovery of two wooden sticks and clothes of the accused No.1 Rakesh.

39. Another significant aspect in this case is about the injuries suffered by the Appellant No.1. The record shows that the police had sent the Appellant No.1 for medical examination on 17/08/2008. He had suffered many abrasions. At that point of time, the Appellant No.1 was treated as a witness which can be seen from the medical certificate. Then there is no explanation as to what transpired to change his status as a witness to an accused. Absolutely, no explanation is offered. All these factors cumulatively have resulted in raising serious doubt about the prosecution case in respect of evidence given by the

Investigating Officers. Since there is no independent evidence in the form of the Panchas in respect of recovery and discovery Panchanamas, we do not feel it safe to rely only on the evidence of the Investigating Officers in that behalf in this particular case.

40. It also must be noted that the Investigating Officer had not recorded statements of any of the residents of the said railway colony at Gholwad. The dead bodies were taken out from a septic tank from that colony. Therefore, the independent witnesses were easily available. But the prosecution has not produced any such evidence and none of the residents of the said railway colony is examined at the time of trial. Even their statements are not recorded during the investigation. All this has raised serious doubt about the discovery of the dead bodies at the instance of the Appellant No.1 and by the same reasoning even the recovery of clothes and sticks does not inspire confidence.

41. As far as the confessional statement of the Appellant No.2 is concerned, we find that there are major infirmities in that evidence as well.

42. In this context section 164(2), 164(4) and 281 of Cr.P.C. are important which read thus;

“164 : **Recording of confessions and statements** :

(1) .....

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) .....

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a

memorandum at the foot of such record to the following effect:—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him

(Signed) AB

Magistrate.

281 - **Record of examination of accused.**

- (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.
- (2) Whenever the accused is examined by any Magistrate other than a Metropolitan

Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the Presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

- (3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable in the language of the Court.
- (4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.
- (5) It shall thereafter be signed by the accused and by the Magistrate or Presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full

and true account of the statement made by the accused.

- (6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

43. The concerned provisions in the criminal manual can be found in Chapter 1, clauses 18(vi) and (vii).

The criminal manual also lays down the procedure for recording the confessional statement. One of the important requirements of this procedure is that learned Magistrate is duty bound to warn the maker of the confession that he is not bound to give confession and if he gives the confession, it can be used against him in evidence. In the present case, though the form recorded by the learned Magistrate on 17/09/2008 mentions that she had so warned the maker. In her substantive deposition, learned Magistrate has nowhere stated that the Appellant No.2 was warned on 17/09/2008. She has deposed in her deposition that on 18/09/2008, when he was again produced before her, she gave such warning. This is an important lapse, which

prejudicially affects the Appellant No.2. We considered the substantive piece of evidence of the P.W.20 in this behalf, in which she had mentioned about that warning given on 18/09/2008. This is important because the maker should be aware of the consequences of making the confession and for that exact reason he is to be given a period of atleast 24 hours to think about all these consequences. In this particular case, this aspect is missing.

44. Another serious lacuna in the procedure for recording of the confession is that the confessional statement does not bear thumb impression or the signature of the Appellant No.2. The third important lapse is that though the certificate mentions that the statement was read over to the Appellant No.2, it can be seen that the statement was recorded in English. P.W.20 has admitted that the Appellant No.2 was a tribal and illiterate. He was not knowing English language and therefore merely reading over the statement to him does not show that it was explained to him in a language known to him. There is neither such endorsement on the certificate nor has she stated in her

deposition that the statement was explained to him in the language which was known to him.

In the cross-examination she has admitted that she was aware that it was necessary to state in the certificate that the contents of the statement were explained to the maker in vernacular. This particular aspect is missing from the evidence. All these are important aspects which prejudicially affect the Appellant No.2. In this context, a reference can be made to the observations of the Hon'ble Supreme Court in the case of *Dagadu and Others Vs. State of Maharashtra*, as reported in *1977 Cr.L.J. 1206*. Paragraph No.50 in that context is important, which reads thus;

“50. Learned counsel appearing for the State is right that the failure to comply with s. 164(3), Criminal Procedure Code, or with the High Court Circulars will not render the confessions inadmissible in evidence. Relevancy and admissibility of evidence have to be determined in accordance with the provisions of the Evidence Act. Section 29 of that Act lays down that if a confession is otherwise.

relevant it does not become irrelevant merely because, inter alia, the accused was not warned that he was not bound to make it and the evidence of it might be given against him. If, therefore, a confession does not violate any one of the conditions operative under ss. 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true.. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence. That shows how important it is for the Magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with s. 164 of the Code and with the instructions issued by the High Court affords in a Large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements.”

45. From these observations and from the record of this case we are of the opinion that the failure to observe safeguards prescribed in these provisions has diminished the evidentiary value of the confessional statement purportedly made by the Appellant No.2. P.W.15 ACP Makandar has not explained as to how the Appellant No.2 expressed his desire to give confession. That link is missing from the evidence. Thus, if the circumstance of confessional statement of the Appellant No.2 is not established then, there is no other evidence against him. As discussed, we do not find it safe to rely on this confessional statement.

46. As a result of the above discussion, in our opinion, the prosecution has failed to prove its case against both the Appellants beyond reasonable doubt. On the other hand, the defence taken by the Appellant appears to be probable in view of the fact that the Appellant No.1 Rakesh was a beneficiary of the property which was originally owned by Vanasubai's husband Hasam. The prosecution has also kept away Kalia, who was the

first person to whom P.W.1 had informed about the incident. Considering all these aspects, the Appellants will have to be given benefit of doubt.

47. Hence, the following order :

**ORDER**

- (i) The Appeal is allowed.
- (ii) The Judgment and Order dated 02/04/2013 passed by the Additional Sessions Judge, Palghar, in Sessions Case No.05/2009, convicting and sentencing the Appellants, is set aside.
- (iii) The Appellants are in custody. They shall be released forthwith if not required in any other case.
- (iv) Before their release, the Appellants shall execute P.R. Bonds in the sum of Rs.25,000/- each, u/s 481 of the Bhartiya Nagrik Suraksha Sanhita (BNSS) (correspondingly u/s 437-A of Cr.P.C.) for their appearance in case the Appeal is preferred.

- (v) Fine amount if deposited by the Appellants, be refunded to them.
- (vi) With the disposal of the Appeal the connected applications are also disposed of.

**(SHYAM C. CHANDAK, J.)**

**(SARANG V. KOTWAL, J.)**