



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

CRIMINAL APPEAL NO.456 OF 2021

APPELLANT : **Rahul S/o. Devidas Mahapure,**
(Ori. Accused no.1) Aged about 35 years, Occu: Agriculturist,
R/o. Amdapur, Tq. Chikhali, District
Buldana (**Presently in Jail**)

..VERSUS..

RESPONDENT : **State of Maharashtra,**
Through Police Station Officer, P. S.
Amdapur, District Buldana.

WITH

CRIMINAL APPEAL NO.528 OF 2021

APPELLANT **Vitthal S/o Ramkisan Dhanwate,**
Accused No.2 Aged about 27 Years, Occupation : Driver,
(IN Jail) R/o, Isoli Tahsil Chikhali, District
Buldhana.

..VERSUS..

RESPONDENT **State of Maharashtra,**
Through Police Station Officer, P. S.
Amdapur, District Buldhana.

Shri. R. M. Daga, Advocate for Appellant in Criminal Appeal No.456/2021.
Shri. A. M. Kukday, Advocate for Appellant in Criminal Appeal No.528 of 2021
(Appointed).
Shri. K. R. Lule, Addl. P P for Respondent/State in both appeals.

CORAM : **ANIL L. PANSARE AND**
RAJ D. WAKODE, JJ.

RESERVED ON : **18th NOVEMBER, 2025.**

PRONOUNCED ON : **17th DECEMBER, 2025.**

JUDGMENT : (PER : RAJ D. WAKODE, J.)

. Both these appeals arise out of the judgment dated 04.10.2021 passed by the learned Sessions Judge, Buldana in Sessions Case No.83 of 2016. The appellants in both the present appeals were original accused No.1 and accused No.2 in First Information Report No.0134 of 2016 registered by the respondent – Police Station, Amdapur, District Buldana, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as, “the IPC”).

2. Both the accused are convicted by the learned Sessions Court for the offence punishable under Section 302 read with Section 34 of the IPC and are sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-, in-default to further undergo simple imprisonment of one year. Thus, both the present appeals are being decided by the common judgment.

3. The appellants herein were prosecuted and charged by the learned Sessions Court for committing murder of one Vinod @ Bablu Sadashiv Mahapure on 31.03.2016 between 01:00 and 01:30 hours in the premises of Cotton Market of Amdapur, Taluka Chikhli, District Buldana. The case of the prosecution was that deceased Vinod Sadashiv Mahapure was paid Rs.8 lakh by the appellant – Rahul

Devidas Mahapure in Criminal Appeal No.456 of 2021 (hereinafter referred to as, “the accused No.1”) for selling the property. However, deceased Vinod did not execute the conveyance in favour of the accused No.1 and hence, the accused No.1 with the help of appellant – Vitthal Ramkisan Dhanwate (hereinafter referred to as, “the accused No.2”) in Criminal Appeal No.528 of 2021 committed the murder of Vinod Sadashiv Mahapure by hanging him.

4. The prosecution case was based upon the direct evidence i.e. on the basis of two eyewitnesses namely Gajanan Sonaji Chopade – PW-6 and Ravindra @ Amol Ambadas Pakhare – PW-10. These two eyewitnesses had deposed before the learned Sessions Court that they had seen the present appellants i.e. accused Nos.1 and 2 committing murder of deceased Vinod. The learned Sessions Court also held that the aforesaid evidence was supported by the medical evidence so also by the oral evidence of PW-5, Sima Vinod Mahapure, PW-7, Bharat Sugdeo Khandalkar, PW-8, Parmeshwar Madhukar Deulkar, PW-21, Milind Shivajirao Pathak and PW-22, Nishant Shankarrao Meshram and other witnesses. Thus, the learned Sessions Court has convicted the accused Nos.1 and 2 relying upon the aforesaid evidence and has sentenced them to suffer life imprisonment.

5. Being aggrieved by the aforesaid conviction and punishment, the accused Nos.1 and 2 have approached this Court assailing the impugned judgment dated 04.10.2021 passed by the learned Sessions Judge, Buldana in Sessions Case No.83 of 2016.

6. We have heard Shri. R. M. Daga, learned counsel for appellant in Criminal Appeal No.456 of 2021, Shri. Amit Kukday, learned counsel appointed for appellant in Criminal Appeal No.528 of 2021 and Shri. K. R. Lule, learned Additional Public Prosecutor for respondent/State in both the appeals.

7. We have gone through the evidence, the documents on record and the impugned judgment dated 04.10.2021. We will refer to the same to the extent if necessary to decide the following points arise for our consideration. We have recorded our findings thereon for the reasons to follow :

Sr. No.	Points	Finding
i)	Does the prosecution prove that deceased Vinod Sadashiv Mahapure died homicidal death?	In the affirmative
ii)	Does the prosecution prove that the accused Nos.1 and 2 in furtherance of common intention, did commit murder by intentionally or knowingly causing death of Vinod Sadashiv Mahapure and thereby committed an offence punishable	In the negative

	under Section 302 read with Section 34 of the IPC ?	
iii)	Whether inference is called for in the impugned judgment?	In the affirmative
iv)	What order ?	Appeals allowed.

8. **REASONS :**

As to point Nos.(i) to (iii):

Deceased Vinod Sadashiv Mahapure was found hanging from the tree near Cotton Market Godown on 31.03.2016 at about 06:00 a.m. Accordingly, PW-1, Prashant Jagannath Pathare, had lodged an oral report below Exhibit – 52 at page No.22 informing the respondent – Police Station Amdapur, District Buldana that Vinod Sadashiv Mahapure had committed suicide. The respondent – Police Station Amdapur, District Buldana registered A.D. Case No.14 of 2016. The respondent had conducted the inquest panchanama of deceased Vinod and so also the postmortem examination. The doctor who conducted the postmortem examination was examined by the prosecution as PW-18, Dr. Mina Dilip Kasare, who deposed that the postmortem examination revealed that the injuries were ante-mortem in nature and were mentioned in column No.17 as below :

“(i) Ligature mark reddish brown in colour, 18 Inch in length and ½ Inch in width, running between nose and upper lip anteriorly and running slightly obliquely upward and backward upto behind right ear,

(ii) Slight abrasion to lips with haemorrhage,

(iii) Abrasion on abdomen right side of lateral aspect, just below lower rib of size 4 cm. X 2 cm.,

(iv) Abrasion on back right scapular area of size 2 cm. X 2 cm.”

9. The aforesaid injuries mentioned in column No.17 were corroborated by the corresponding findings relating to the internal injuries noted in column No.19 and the doctor opined that the cause of death was asphyxia due to hanging. The learned Sessions Court had observed that nothing fruitful was elicited in the cross-examination so as to disbelieve the testimony of PW-18, Dr. Mina Dilip Kasare, and her opinion that the death was homicidal. Even otherwise, the ligature mark on the body of the deceased was described by PW-18 as running in between the nose and the upper lip and such a ligature mark would not be possible if a person hangs himself while committing suicide. There was no ligature mark on the neck of deceased Vinod. This fact clearly proves that the death of deceased Vinod was neither suicidal nor accidental, but homicidal. Accordingly, issue No.1 is answered in affirmative.

10. Once it is held that the death of deceased was homicidal, the next question arises as to who has committed the murder of deceased Vinod Sadashiv Mahapure. The learned Sessions Court, relying upon the prosecution's evidence, has come to the conclusion that accused Nos.1 and 2 have committed the murder of

deceased Vinod and accordingly has convicted them for the offence of murder. However, we will examine the aforesaid evidence on the basis of which such conclusion was drawn by the learned Sessions Court, and accordingly, address the issue No. 2.

11. Deceased Vinod Sadashiv Mahapure was found hanging from the tree on 31.03.2016 at around 06:00 a.m. in the morning. PW-1, Prashant Jagannath Pathare, has deposed before the learned Sessions Court that he had lodged an oral report (Exhibit – 52) on 31.03.2016 with respondent. The aforesaid report was of suicide and accordingly, the respondent has initially investigated the matter from the point of view of suicide. The inquest panchanama at Exhibit – 57 at record page No.33 also clearly mentions that the dead body was hanging from the tree and the snare was between the nose and upper lip. There were no substantial injuries on the body of deceased Vinod except two abrasions. The postmortem report at Exhibit-99, record page No.118, also indicates that the cause of death was asphyxia due to hanging. From 31.03.2016 to 09.06.2016, when the second oral complaint was lodged by PW-3, Rameshwar Gangadhar Jaybhaye, the respondent treated the aforesaid case as a case of suicide. On 09.06.2016, the First Information Report No.0134 of 2016 came to be registered against the accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 of the IPC for committing

homicide of the deceased and accordingly, the respondent started investigation from the point of view of homicide.

12. Immediately, on the same day i.e. on 09.06.2016, the present accused Nos.1 and 2 were arrested. On 15.06.2016, the memorandum panchanama under Section 27 of the Indian Evidence Act, 1872, was drawn which is at Exhibit-69, record page No.62, wherein the accused No.1, Rahul Devidas Mahapure, confessed to his offence and informed as to how, with the help of accused No.2, Vitthal Ramkisan Dhanwate, he committed murder of deceased Vinod Sadashiv Mahapure. He also pointed out the spot of tin shade where he had kept a rope and the tablet which he used for sedating the deceased. On the basis of aforesaid memorandum panchanama, a seizure panchanama was also conducted which is at Exhibit – 71, at record page No.64.

13. Thus, the fact remains that it was only after 09.06.2016 that the respondent started investigating the matter from a homicidal angle. The present case connects accused Nos.1 and 2 to the crime on the basis of the testimony of two eyewitnesses i.e. PW-6 and PW-10, apart from the aforesaid memorandum panchanama, seizure reports and other witnesses. The learned Sessions Court, in para No.33 of the impugned judgment, has itself recorded that the statements of the

aforesaid eyewitnesses under Section 161 of the Code of Criminal Procedure were recorded for the first time on 09.06.2016, and supplementary statements on 04.10.2016. The eyewitnesses, being residents of the said village, were personally knowing deceased Vinod so also the accused persons and still they took almost three months time to inform the aforesaid incident to the respondent Police Station.

14. The second eyewitness i.e. PW-10, Ravindra @ Amol Ambadas Pakhare, has deposed in his examination in-chief that on 31.03.2016, he went to the alleged spot at 07:00 to 07:30 a.m. wherein the mob and police officials were gathered. He also attended the funeral of the deceased and in the funeral, relatives of the deceased were present. However, he has not informed about the incident to either to the relatives or to the police. The aforesaid conduct of PW-10 is unnatural. Similar is the case with PW-6 Gajanan Sonaji Chopade. The prosecution's witness PW-21, Milind Shivajirao Pathak, in his evidence, has admitted in his cross-examination that prior to recording of the statements of the aforesaid two witnesses by him, the statements of the aforesaid witnesses were recorded four months earlier by Shri. Meshram. He further admitted the fact that the aforesaid incident which was narrated by the witnesses to him were not stated by the aforesaid witnesses in their earlier statements.

15. Thus, the fact remains that both eyewitnesses had an occasion from 31.03.2016 to 09.06.2016 to inform the police about the aforesaid incident, but neither they on their own nor after interrogation by the respondent, had informed the aforesaid fact to the authorities of having witnessed the crime. Such conduct by the aforesaid eyewitnesses, i.e., PW-6 and PW-10, raises serious doubts regarding their veracity. The aforesaid doubt is further increased by the fact that they did not inform the aforesaid incident to the police on 09.06.2016 also but on 04.10.2016 for the first time and thus, in our opinion, the aforesaid two eyewitnesses lose their veracity for the inordinate delay in informing the aforesaid incident to the police. In our opinion, such delay is extremely detrimental to the prosecution's case.

16. The fact further remains that the sequence of evidence as narrated by the aforesaid eyewitnesses as to how the murder of deceased Vinod was committed by the present accused Nos.1 and 2 also varies. PW-6, in his examination-in-chief, has narrated the sequence as below :

“Thereafter Vitthal climbed on the Neem tree; he tied the rope on the branch of tree. Thereafter both of them removed one person from the vehicle. Thereafter all the three persons climbed on the bonnet and Rahul and Vitthal put the snare (फास) in the neck of that person. After that, both of them alighted from the bonnet. Thereafter Rahul moved the vehicle ahead and stopped at some distance and came back and Rahul pulled the legs of person hung on the Neem tree.”

17. Whereas, the another eyewitness i.e. PW-10, Ravindra @ Amol Ambadas Pakhare, has deposed the aforesaid sequence in his examination-in-chief as below :

“Around 12-00 to 12-30 night, we were coming from hotel. On Amdapur – Undri road, on left side there is a shed of Rahul Mahapure. Near that shed, one white colour Tavera vehicle was stationed. The lights of vehicle were on. On driver’s seat, Rahul Mahapure was there. On middle seat, somebody was there. We moved our motor cycle ahead. We stopped at a some distance for urination. After some time, that Tavera vehicle went and stopped near to the Neem tree in Cotton Market. The lights of the vehicle were on. Rahul was on driver seat; one person was beside him. Both the persons alighted from the vehicle. The doors of vehicle were opened. The person on the middle seat was removed from the vehicle. That person was caused to stand near the vehicle. We felt that the said person was Bablu Mahapure. Firstly, Bablu Mahapure was pulled on the vehicle; thereafter he was hanged on the Neem tree. Thereafter those two persons jumped from the vehicle. The vehicle was moved ahead. The lights of the vehicle were off. Thereafter both the persons came and pulled the hands and legs of Bablu. We saw Bablu Mahapure was hanged.”

18. Thus, there is a serious variance in the aforesaid sequence of events. Apart from the omissions brought on record by the defence, such improvements raise serious doubts about the credibility of the aforesaid alleged eyewitnesses. The presence of the aforesaid two eyewitnesses in the midnight at around 01:30 a.m. appears, in our view, to be unnatural. PW-6, Gajanan Chopade, and PW-10, Ravindra Pakhare, both deposed that they had been to one hotel named Yash Hotel on Undri Road for dinner. They had dinner until approximately 12:15 a.m. in the night and then they started

returning back to their residence from the said hotel and in that span of period, they saw the incident. It is worth to mention here that the prosecution has not examined the owner of Yash Hotel to prove the aforesaid fact. Both witnesses, on a specific question put to them during cross-examination, admitted that they have neither submitted the bill of their visit to the hotel to the police nor produced it on the day of their deposition. Thus, the aforesaid failure of the prosecution to substantiate the reason for the presence of the aforesaid two eyewitnesses in the midnight at the spot of incidence makes their presence unnatural and raises doubt about their testimony.

19. PW-6, Gajanan Chopade, in his examination-in-chief, himself deposed that he saw the incident from a distance of approximately 1200 meters, which is highly improbable in the midnight at the spot of incident, where there was no source of light. The alleged source of light, as claimed by the witnesses, was the headlights of the Tavera vehicle, which were allegedly on. However, the investigating officer, PW-22, Nishant Meshram, during his cross-examination, specifically admitted that he had not prepared a separate panchanama regarding the vehicle's lamp or verified that it was in working condition. Thus, both the source of light so also the presence of the eyewitnesses at the time of the incident comes under cloud.

20. PW-6, Gajanan Chopade, in his cross-examination, had specifically admitted that his first statement was recorded by the police after two to three days of the incident. The fact remains that, at the very first instance, he has not stated anything about witnessing the murder of deceased Vinod at the hands of the present appellants. Therefore, it would not be justified to rely upon the evidence of such eyewitnesses for convicting the present appellants. A similar situation arises with PW-10, Ravindra Pakhare, who deposed in his examination-in-chief that he was present at the spot of incident the next morning at around 7:00 a.m., along with other people and police officials gathered there and still he did not inform anyone about the incident at that time. He has specifically admitted in his cross-examination that he had told the incident to the police for the first time on 10.06.2016. He has also admitted in his cross-examination that he has not obtained any bill from the hotel where he had been with PW-6, Gajanan Chopade. Thus, in our considered opinion, the learned Sessions Court has committed a grave error in law in relying upon the evidence of these two eyewitnesses, whose conduct, presence, and depositions were unnatural and contradictory. Hence, the impugned judgment deserves to be quashed and set aside on this ground alone.

21. The learned Sessions Court has also relied upon the evidence of PW-5, Sima Vinod Mahapure, the wife of deceased Vinod, who deposed that her husband had received a telephone call on 30.03.2016 at around 7:00 p.m. When she enquired as to who had called, he initially stated that it was Vitthal Dhanwate, i.e., accused No.2, and thereafter stated that it was Rahul Mahapure, i.e., accused No.1. The learned Sessions Court has also relied upon the oral complaint lodged by her on 02.04.2016 with the respondent police station, alleging the homicide of her husband. The aforesaid complaint dated 02.04.2016 is at Exhibit-74. While accepting the evidence of PW-5 regarding the alleged telephone call made by the present appellants to her husband on 30.03.2016, the learned Sessions Court completely ignored the fact that she failed to disclose this material fact to the police in her complaint at Exhibit-74. Further, the fact remains that if the deceased had indeed received the last phone call from the present appellants in the presence of PW-5, she would have, in the normal course of human conduct, raised suspicion against the present appellants in the said oral complaint. However, Exhibit-74 clearly alleges that some unknown person had committed the murder of her husband, which materially contradicts her subsequent deposition.

22. The learned Sessions Court has relied upon the prosecution theory as to the motive about dispute between accused No.1 and deceased Vinod. In paragraph 46 of the impugned judgment, the learned Sessions Court specifically observed that the deceased had received an amount of Rs.8 lakh from accused No.1, Rahul Mahapure, towards sale of property, but deceased had not conveyed the property to accused No.1 and therefore, held that the motive for eliminating the deceased appeared to be probable. However, PW-5, Sima Vinod Mahapure, in her cross-examination, has specifically admitted that for the last eighteen years, accused No.1, Rahul Mahapure and her husband were not on talking terms. This admission speaks volumes and renders the alleged motive highly improbable, if not impossible. The learned Sessions Court also ignored the fact that the investigating officer, PW-22, Nishant Meshram, specifically admitted in his cross-examination that he had not seized any document relating to the said transaction. He further admitted that he neither collected any evidence nor placed before the Court any material to show in whose presence the alleged transaction was conducted. Thus, the learned Sessions Court was not justified in relying upon the aforesaid alleged motive for convicting the present appellants.

23. Another piece of evidence on which the learned Sessions Court has relied in accepting the prosecution theory about the guilt of the accused is the testimony of PW-7, Bharat Sugdeo Khandalkar. PW-7 deposed that on 30.03.2016, he was present at his egg-snack cart and that at around 7:00 p.m., accused No.1 purchased three omelettes from him. He further deposed that accused No.2 added 'eating acid' (खाण्याचा सोडा) to one of the omelettes. According to the prosecution case, accused No.1 had prepared powder from one tablet and mixed it in the omelette of the deceased, and the said tablet allegedly acted as a sedative, as a result of which deceased Vinod, fell asleep during the commission of the offence. The aforesaid evidence of PW-7 was, according to the learned Sessions Court, corroborated by the memorandum panchanama of accused No.1 at Exhibit-69, as well as the seizure panchanama at Exhibit-72, under which one tablet was seized from the tin shed of accused No.1. The CA report at Exhibit-100 also confirms that the said tablet was Lorazepam, a tranquilizer. However, the learned Sessions Court completely ignored the evidence of PW-18, Dr. Mina Dilip Kasare, who conducted the postmortem examination and who, after referring to column No.21, admitted that at the time of postmortem, she had not felt any smell of Lorazepam or any antibacterial or tranquilizing substance. The postmortem report at Exhibit-29, particularly column No.21,

corroborates this opinion and does not record the presence of any such chemical substance.

24. In view of the above, the evidence of PW-7, so also the memorandum panchanama, seizure panchanama and chemical analyzer report, in our considered view, lose their significance and did not connect the present appellants with the offence. Thus, in our considered opinion, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. As regards the remaining witnesses, their evidence does not materially advance the prosecution case and is merely formal in nature.

25. The evidence of PW-11, Dhananjay Mohite, is of no use. PW-13, Rameshwar Sawle, is a formal witness, who has drawn spot map (Exh.86).

26. Thereafter the prosecution has examined PW-14, Sachin Dedhe, who has asseverated that he was administered a tablet in the omelet; he felt the test was bitterish; thereafter he felt giddiness; and on the next day, he was taken by accused No.1 to his house. What exactly the prosecution wanted to show, cannot be ascertained from the evidence of this witness. Hence, much weight-age cannot be given to the evidence of this witness.

27. Thereafter, prosecution has examined PW-15, Khurshid Jafarbaig, who is owner of the Tavera vehicle. She asseverated that deceased was serving as driver with her, on Tavera vehicle since last 5 to 6 years. She has asseverated that lastly the deceased had taken the vehicle from her custody and did not return till the news of hanging was heard by them on the next day.

28. Thereafter, prosecution has examined PW-16, Dnyaneshwar Mahale at Exh.91, through whom the panchanamas of seizure of mobiles were proved vide Exhibits - 92, 93 and 94. The panchanamas of mobiles, seizure of the vehicle of the accused were prepared vide Exhibits - 92, 93 and 94.

29. PW-19, Sawairam Rathod, is the carrier of muddemal vide letter Exhibits - 105, 106 and 107. The report of Forensic Science Laboratory is received at Exhibit - 100, wherein it was found the tablets which were seized and sent for examination was found be drowsy tablets, "Lorazepam, tranquilizer and Ceftriaxone (an antibacterial injection) was detected.

30. In our considered opinion, the conviction was based on evidence that did not establish the involvement of the appellants in the crime beyond reasonable doubt. We find that the learned Sessions Court convicted the present appellants on the basis of strong

suspicion created against them by the prosecution from the evidence collected; however, it is a long-standing principle settled by the Hon'ble Supreme Court that suspicion, however strong, cannot take the place of proof. Accordingly, the point No.(i) is answered in the affirmative. The point No.(ii) is answered in the negative and point No.(iii) is answered in the affirmative. The appeals are allowed in answer to point No.(iv).

31. In view of the aforesaid discussion and the evidence on record, both documentary and oral, the impugned judgment and order dated 04.10.2021 is liable to be quashed and set aside. We, therefore, proceed to pass the following order :

ORDER

- i) The present criminal appeals are **allowed**.
- ii) The impugned judgment and order dated 04.10.2021 passed in Sessions Case No.83 of 2016 by the learned Sessions Judge, Buldana, is hereby quashed and set aside.
- iii) The appellants namely "Rahul Devidas Mahapure" in Criminal Appeal No.456 of 2021 and "Vitthal Ramkisan Dhanwate" in Criminal Appeal No.528 of 2021, are hereby acquitted of the offence punishable under Section 302 read with Section 34 of the IPC.

iv) The appellant in Criminal Appeal No.528 of 2021 viz. Vitthal Ramkisan Dhanwate shall be released forthwith, if not required in any other case.

v) The appellant in Criminal Appeal No.456 of 2021 viz. Rahul Devidas Mahapure was released on bail by suspending his sentence by this Court vide order dated 16.04.2024 in Criminal Application No.910 of 2023. The bail bond furnished by him shall stand cancelled.

32. The fees of the appointed learned counsel Shri. Amit M. Kukday appearing in Criminal Appeal No.528 of 2021 be quantified and paid as per Rules.

(RAJ D. WAKODE, J.)

(ANIL L. PANSARE, J.)