

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

CONFIRMATION CASE NO. 5 OF 2019

The State of Maharashtra ..Appellant
Versus
Vilas Annasaheb Mahale ..Respondent

.....

WITH

CRIMINAL APPEAL NO. 1645 OF 2019

Vilas Annasaheb Mahale ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

.....

WITH

CRIMINAL APPEAL NO. 373 OF 2022

Annasaheb Baburao Mahale & Ors. ..Appellants
Versus
The State of Maharashtra & Anr. ..Respondents

.....

WITH

INTERIM APPLICATION NO. 3948 OF 2022

IN

CRIMINAL APPEAL NO. 373 OF 2022

Annasaheb Baburao Mahale & Anr. ..Applicants
Versus
The State of Maharashtra & Anr. ..Respondents

.....

WITH

INTERIM APPLICATION NO. 4043 OF 2022

IN

CRIMINAL APPEAL NO. 373 OF 2022

Shailabai Annasaheb Mahale ..Applicant
Versus
The State of Maharashtra ..Respondent

Smt. S. D. Shinde, APP for State/Appellant in Conf. Case No.5 of 2019.

Dr. Yug Mohit Chaudhary a/w. Ms. Payoshi Roy and Siddharth Sharma for Respondent No.1 in Conf. Case No.5 of 2019 and for Appellant in Appeal No.1645 of 2019.

Ms. Ameeta Kuttikrishnan, Appointed Advocate for the Respondent No.2 in Conf. Case No.5 of 2019.

Mr. K. H. Holambe Patil a/w. Mr. K. K. Holambe Patil, Mr. Bhalchandra Kumbhar and Vishal Shirsat for Appellants in Appeal No.373 of 2022.

Accused Vilas Mahale produced before the Court.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

RESERVED ON : 25th FEBRUARY, 2026

PRONOUNCED ON : 24th MARCH, 2026

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The learned Additional Sessions Judge, Nashik, vide her Judgment and order dated 15.05.2019 passed in Sessions Case No.209 of 2017 on her file, has forwarded the death penalty reference resulting in Confirmation Case No.5 of 2019 to this Court for confirmation of the sentence of death penalty imposed on the original Accused No.1 Vilas Annasaheb Mahale for commission of the offence punishable U/s.302 of the I.P.C.

The said Accused No.1 Vilas has preferred Criminal Appeal No.1645 of 2019 challenging the same Judgment and order.

The original Accused No.2 Annasaheb Baburao Mahale, the original Accused No.3 Pravin Annasaheb Mahale and the original Accused No.4 Shailabai Annasaheb Mahale have preferred Criminal Appeal No.373 of 2022 challenging their conviction and sentence recorded in the same Judgment and order.

During the pendency of these proceedings the original Accused No.2 Annasaheb Baburao Mahale has passed away and, therefore, the Criminal Appeal No.373 of 2022 stands abated, as far as, he is concerned. It is now proceeding only against the original Accused Nos.3 and 4.

For convenience, the accused are referred to by their original status in the trial as accused.

2. Heard Dr. Yug Mohit Chaudhary, learned counsel for the Respondent No.1 in Confirmation Case No.5 of 2019 and for Appellant in Criminal Appeal No.1645 of 2019, Ms. Ameeta Kuttikrishnan, learned appointed Advocate for the Respondent No.2 in Conf. Case No.5 of 2019, Mr. K. H. Holambe Patil, learned counsel for the Appellants in Criminal Appeal No.373 of 2022 and Smt. S. D. Shinde, learned APP for the State/Appellant in Confirmation Case No.5 of 2019 and other connected Appeals.

3. We have heard all the learned counsel at some length. Learned APP took us through the entire evidence. In response, Dr. Yug Mohit Chaudhary, learned counsel appearing for the original Accused No.1 made some submissions on merits of the matter. His main thrust of the argument was that the Accused No.1 was denied the opportunity of a fair trial. He submitted that, since there was failure of justice, either the Accused No.1 be acquitted or the matter be remanded back for *de novo* trial.

4. Mr. Holambe Patil, learned counsel appearing for the Accused Nos.3 and 4 made his submissions for acquittal of the accused Nos.3 and 4, but he also supported the submissions of the learned counsel for the Accused No.1 that the matter can be remanded back.

5. After these submissions were advanced before us, in response, learned APP specifically submitted before the Court that, since proper opportunity was not given to the Accused No.1 to defend himself, the matter be remanded back before the Trial Court for *de novo* trial.

6. Learned counsel Ms. Ameeta Kuttikrishnan appearing for the Respondent No.2 addressed us on the merits of the matter,

but she also conceded that the matter is required to be remanded back for *de novo* trial.

7. Thus, not only the counsel appearing for the defence, but also the counsel for the Respondent No.2, as well as, the learned APP unanimously submitted before us that the matter be remanded back before the trial Court for *de novo* trial.

8. Before referring to the submissions made in support of remanding the matter back before the trial Court; it is necessary to refer to the evidence led by the prosecution in this case and also the manner in which the trial was conducted.

9. Before referring to the facts, it must be noted that this is a very serious and grave offence.

. The brief facts involved in this case are as follows:

The victim in this case was a seven year old child. Her date of birth was 04.11.2009. It is the prosecution case that, all the accused were relatives of the victim. The Accused No.1 was residing separately from the other accused. On 24.04.2017, there was a religious ceremony in the village Male Dumala. The victim wanted to buy ice-cream. Her mother gave her Rs.5/- to buy ice-cream. The victim started going towards the shop. The accused met

her on the way and told her to bring tobacco and gave her some money. The victim went to the shop. She bought a chocolate for herself and tobacco for the Accused Nos.1 and 2. She went to the house of the Accused No.1 Vilas. It is the prosecution case that, between 1:30p.m. to about 4:00p.m. the Accused No.1 committed rape on the victim in his house. He kept her body in the corner of his room. It was covered with garbage and a big basket. He locked the house from outside and started going away. In the meantime, the mother and the grand-mother of the victim were searching for her. The Accused No.1 made enquiries with the mother of the victim as to what they were looking for. He told the mother of the victim that he had sent her to buy tobacco. He went away. Since the victim's mother got to know that the Accused No.1 had met the victim, she got suspicious. She was not satisfied with this interaction. She and others went to the house of the Accused No.1. It was locked. The other accused were present nearby. The victim's mother and others requested the other accused to open the door, but the Accused No.4 stopped them from going to the Accused No.1's house. This further raised suspicion in the mind of the victim's mother and grand-mother. The victim's mother made a

telephonic call to the Accused No.1. He did not return to the village. He did not respond to the call made by even the Accused No.2. The villagers got suspicious. They broke open the lock and entered the house of the Accused No.1. They saw the shocking scene in his house. The police were informed. Her dead body was sent for the postmortem examination. The victim's mother lodged her F.I.R. The offence was registered vide C.R.No.54 of 2017 at Vani police station on 24.04.2017 at about 8:00pm. The investigation started.

10. The police started searching for the Accused No.1. The Accused No.1 was arrested from some other village on 25.04.2017 at about 12:00p.m. During the investigation, the Forensic Experts visited the spot and collected the evidence at the spot. The postmortem examination revealed that the victim was subjected to sexual assault and she was murdered by strangulation using a wire. After his arrest, a key was recovered at the instance of the Accused No.1 U/s.27 of the Indian Evidence Act. According to the prosecution case, it was the key of the lock found on the door of the Accused No.1's house. Various panchanamas were conducted and statements of various witnesses were recorded. The statements

of the witnesses were also recorded U/s.164 of the Cr.P.C. After getting sufficient evidence the charge-sheet was filed. The case was committed before the Special Court as the offence involved provisions of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').

11. During trial, the prosecution examined 22 witnesses including the mother and the grand-mother of the victim, the shopkeeper from whom the victim had bought chocolate and tobacco, the panchas for various panchanamas, the witness to whom, allegedly, the Accused No.1 had made extra judicial confession on a phone call, the owner of the Accused No.1's house, the photographer, the Medical Officer who had conducted postmortem examination, the Forensic Science expert who had visited the spot, the Nodal Officer to prove the Call Data Record and the police officers conducting the investigation.

12. The defence of the Accused was of total denial. It is their defence that, just to involve them in a false case, the witnesses had deposed against them. The learned Trial Judge did not believe the defence taken by the Accused. She relied on the evidence led by the prosecution. The learned Trial Judge convicted and sentenced

the accused as under:

The Accused No.1 Vilas Mahale was convicted and sentenced as follows:

- i. He was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to death with a direction that he be hanged by neck till he was dead.
- ii. He was convicted for commission of the offence punishable under sections 4 and 6 of the POCSO Act and was sentenced to suffer life imprisonment and to pay a fine of Rs.2 lakhs and in default to suffer S.I. for one year.
- iii. He was convicted for commission of the offence punishable U/s.377 of the IPC and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.10000/- and in default to suffer S.I. for three months.
- iv. He was convicted for commission of the offence punishable U/s.8 of the POCSO Act and was sentenced to suffer R.I. for five years and to pay a fine of Rs.500/- and in default to suffer S.I. for one month.

The Accused Nos.2, 3 and 4 were convicted for commission of the offence punishable U/s.201 of the I.P.C. and were sentenced to suffer R.I. for seven years each and to pay a fine of Rs.1000/- each and in default to suffer S.I. for two months.

The substantive sentences imposed on the Accused

No.1 for commission of the offence punishable under Sections 4 and 6 of the POCSO Act and U/s.377 of the IPC were directed to run concurrently. All the accused were granted set off U/s.428 of the Cr.P.C. Out of the total fine amount, Rs.2 lakhs was directed to be paid to the victim's mother.

13. It must be noted that the charges against the accused Nos.2, 3 and 4 were not framed specifically U/s.201 of the IPC.

14. Before appreciating the submissions made by the learned counsel for *de novo* trial, it is necessary to refer, briefly, to the evidence led by the prosecution, so that, the significance and importance of that evidence can be considered in the background of the submissions that fair opportunity was not given to the Accused No.1 to defend himself properly.

15. PW-1 was the mother of the victim. She deposed that, she was residing with her husband, the husband's parents and her two daughters including the victim who was 7 years of age. The victim was studying in 2nd standard. On 24.04.2017 at about 1:30p.m. the victim wanted to have ice-cream. PW-1 gave her Rs.5/- to buy ice-cream. For about twenty to twenty-five minutes, she did not return. Hence, PW-1 went to the shop. The woman

attending the shop told PW-1 that the victim had purchased two tobacco pouches and 10 gutkha packets. PW-1 and her mother-in-law started searching for the victim in the village, but she was not found. On the way back to their house, they met the Accused No.4. She told them that they had sent the victim to buy tobacco pouch. The Accused No.1 met her on the way. He made enquiries as to whom they were searching for. PW-1 told him that they were searching for her daughter. The Accused No.1 told PW-1 that he had sent the victim to buy tobacco and two chocolates. He then proceeded ahead. PW-1 returned to her house and discussed everything with her mother-in-law. They both then started searching for the victim again, but she was not found. PW-1 suspected the Accused No.1, as, he had met the victim before she went missing. PW-1 informed her husband telephonically. He came home. Then all of them went to the house of the Accused No.1. It was locked. Other villagers had gathered there. They started searching for the Accused No.1, but he was not found. After some time, PW-1's husband received a phone call from the Accused No.1's mobile phone. PW-1 received that call. The Accused No.1 asked her as to why the villagers were searching for him and as to

what had happened. PW-1 handed over the phone to her husband, who asked the Accused No.1 to come to the village. But he did not return. One of the villagers broke open the lock and entered the house. While they were going to the first floor, they saw the shocking scene of the victim's dead body in a sitting posture in the corner of the room covered with a basket. There was a wire around her neck. Her pant and underwear had been pulled down. There was blood on the pillow. There were signs of forcible sexual intercourse. There was one electric wire and an aluminium wire around her neck. She was dead. Some dust was thrown on the dead body. The Police Patil informed Vani police station. The dead body was taken to Government Hospital, Vani. PW-1 then lodged her F.I.R. It is produced on record at Exhibit-30. She produced the Birth Certificate of the victim before the police. The date of birth of the victim was 04.11.2009. It is produced on record at Exhibit-33. She described the scene of the offence. There was one scissor lying nearby. It was blood stained. There was one napkin. There was some sticky substance on the napkin. One packet of tobacco was lying there. One cutter, empty liquor bottle and other articles were also seen on the spot. The photographer took the photographs of

the scene of the offence. She identified all these articles produced in the Court, including the basket.

16. As can be seen, PW-1 is one of the most important witnesses in the case. However, when she was examined the accused No.1 was not provided a Legal Aid Counsel. There is a specific noting dated 5.1.2018 that the Court had issued a letter at Exhibit-7 on 11.8.2017 to the Legal Aid Office and till 5.1.2018 no Legal Aid was provided for the accused No.1 and, therefore, the examination-in-chief was deferred till the next date. It continued on 6.1.2018, 8.1.2018, 17.1.2018, 29.1.2018, 13.3.2018 and 14.3.2018.

17. The services of Legal Aid counsel was provided to the accused but on 27.3.2018, the learned Counsel who was appointed to represent the accused No.1 as a Legal Aid Lawyer filed a purnsis for withdrawing from the case as the accused No.1 had informed the Court that he wanted to appoint a private Lawyer but till then no Vakilpatra was filed. In this view of the matter, the cross-examination was conducted on behalf of the accused Nos.2 to 4. On 11.5.2018, the accused No.1 expressed inability to engage a private lawyer and requested for appointment of a Legal Aid

Counsel. Thus from the record it is clear that the examination-in-chief was conducted when there was no Lawyer representing the accused No.1 and the situation continued when the cross-examination on behalf of other accused was conducted. There is a noting dated 27.3.2018 that after the first Legal Aid Counsel Advocate Gharate had refused to appear on behalf of the accused No.1 and since the accused No.1 had not engaged any private advocate and had also refused to take legal aid, the accused No.1 was given an opportunity to cross-examine PW-1 but the accused No.1 had declined to cross-examine PW-1 and, therefore, there was no cross-examination on behalf of the accused No.1 at that stage. The record shows that much later a legal aid counsel was appointed for the accused No.1 and then PW-1 was recalled for further cross-examination.

18. How the trial proceeded in absence of the counsel for the accused No.1 for major part of the trial when important witnesses were examined, we are highlighting this particular fact at this stage to show that the accused No.1 was not represented by an advocate for this important witness i.e. PW-1. At this stage, it must be noted that even at the stage of framing of the charge no

advocate was provided for the accused No.1.

19. We are refraining from referring to the cross-examination conducted on behalf of the accused Nos.2, 3 and 4 as well as the subsequent cross-examination conducted on behalf of the accused No.1 because we are not deciding these proceedings on the merits by evaluating the evidence; but, as submitted by all learned counsel appearing for all the parties, we have seriously considered remanding the matter back.

20. PW-2 was the grand-mother of the victim. She has corroborated the evidence of PW-1.

21. PW-3 was the shopkeeper from whom the victim had bought tobacco pouch and Lyme pouch.

22. PW-4 was another shopkeeper. The victim had gone to her shop first but PW-4 had told her that the shop was closed.

23. PW-5 Vinayak Kakad was a pancha for inquest panchnama. He had also taken part in searching for the victim when the victim's family and other villagers were looking for her. He has corroborated the evidence of PW-1 and PW-2 regarding search and how they entered the house of the accused No.1.

24. PW-6 Dipak Mahale had taken part in the search with other villagers. Importantly he had broken open the lock of the house of the accused No.1 and had entered the house. It is, of course, disputed by the accused No.1 by taking a stand that it was not his house.

25. PW-7 Vijay Bagul was another important witness. He was examined on the point of extra judicial confession made by the accused No.1 to him when the accused No.1 had made a telephone call to him.

His examination-in-chief concluded on 9.7.2018. Even there, a noting was that the accused No.1 was going to file another application for legal aid and by reserving his cross-examination, the learned Judge proceeded ahead with the trial by permitting the learned counsel for the accused Nos.2 to 4 to conduct the cross-examination. Much later on 19.1.2019 after a private advocate was engaged by the accused No.1, the cross-examination of this witness was conducted. It was a cursory cross-examination.

This witness's cross-examination was conducted by a Legal Aid Counsel Mr. S.R. Gadade.

26. PW-8 Pramod Koli was a pancha in whose presence a

key was recovered at the instance of the accused No.1, which according to the prosecution case he had concealed inside a pipe near his house in his agricultural land.

27. PW-9 Shamrao Mahale was a close relative of the accused No.1. According to the prosecution case it was his house where the incident had taken place and according to this witness the accused No.1 was occupying that house without his permission.

28. PW-10 Vaishali Pawar was a pancha for spot panchnama which is produced on record at Exhibit-85. It describes the scene of offence and the articles seized from the spot.

29. PW-11 Ganesh Shelar was a photographer who had taken photographs of the scene of offence.

30. On 13.7.2018, the learned trial Judge received a letter from DLSA appointing Advocate Smt. Pramila Jadhav to represent the accused No.1. She conducted the cross-examination of two witnesses. She made an application for recalling some of the witnesses. Importantly she had cross-examined PW-6 who had broken open the lock. He was an important witness but she had only given suggestions that the witness was not telling the truth. There was hardly any cross-examination on the important facts

deposed by PW-6.

31. PW-12 Vijay Barde was a pancha for seizure of clothes of the deceased.

32. PW-13 Arun Lilke was a pancha for seizure of clothes of the accused.

33. PW-14 Dr.Rajendra Bagul had conducted the postmortem examination. The postmortem notes are produced on record at Exhibit-135. It was conducted on 24.4.2017 between 9.05 p.m. to 10.05 p.m..

34. PW-15 Prajakta Khairnar was a Forensic Expert who had visited the spot.

35. PW-16 Ambadas Chaudhari was a pancha for arrest of all the accused. The panchnama was conducted on 25.4.2017.

36. PW-17 Khanderao Shirsath was a pancha for seizure of the ash of the victim.

37. PW-18 Ganesh Gangurde was a pancha for seizure of clothes of the accused Nos.2 to 4.

38. PW-19 Pradip Gangurde was a pancha for seizure of clothes of the accused No.1.

39. PW-20 PI Anand Targe was the first investigating officer.

40. PW-21 Dattaram Angre was a Nodal Officer, who had produced the record showing the telephonic conversation between the accused No.1 and the victim's family's phone referred to by PWs-1 & 2 in their evidence.

41. PW-22 Dy.S.P. Devidas Patil was the main investigating officer. He had filed the charge-sheet.

42. Besides this oral evidence, the prosecution produced the CA reports on record. According to the prosecution case, the semen found on the napkin which was lying inside the house of the accused No.1 was that of the accused No.1.

43. The victim's birth-certificate was also produced on record.

44. This, in short, was the evidence led by the prosecution.

45. Learned APP read the entire evidence before us. At the first instance her submissions were that the prosecution had proved its case beyond reasonable doubt and, therefore, the death sentence imposed on the accused No.1 be confirmed. In brief, her

submissions were that PW-1 and PW-2 were truthful witnesses; that the accused No. 1 was a near relative of the victim and had sent her to buy tobacco. The accused Nos. 2 to 4 had misled the villagers. That the house was locked and, despite repeated calls, accused No. 1 did not return to open it. The dead body was found in the house where the accused No.1 resided. The evidence of PW-9 established his residence there. The articles and cards found in the house showed that it was used by accused No. 1. The blood on the articles and semen stains on the napkin and mattress inside the house were of the accused No. 1. The accused offered no explanation as to how the body was found in the house. She further submitted that an extra-judicial confession was made to PW-7 and was supported by CDR. The victim was a small child; and the offence was committed by a close relative. The postmortem reports showed that the victim was subjected to rape and brutal murder; and that the offence was a rarest of rare case.

46. We have deliberately not discussed this evidence in detail because we propose to remand back the matter for fresh consideration. The objective is that the trial Court, on this occasion, shall not be influenced by any direct or indirect observation made

by us in this order.

47. Shri Holambe Patil appearing for the accused Nos.3 & 4 argued that the charge under Section 201 of IPC was not even framed and yet, those accused were convicted under Section 201 of IPC. This was not permissible. Even otherwise, there is no direct or indirect evidence against the accused Nos.3 & 4.

48. Dr. Yug Mohit Chaudhary elaborately took us through the Roznama and the record to demonstrate as to how the trial proceeded.

49. Dr. Chaudhary vehemently argued that there was miscarriage of justice because it was not a fair trial. The accused No.1 was not represented for the major part of the trial. The examinations-in-chief of many important witnesses were conducted in the absence of any advocate for the accused No.1. Till late in the trial, no Advocate was representing the accused No.1. Even the charges were framed without any Advocate having been appointed for the accused No.1. At least on three occasions, the Legal Aid Counsel were changed. They were not given sufficient opportunity to collect and study the papers. Ultimately, the accused No.1 was forced to engage a private Advocate who he could afford in the

background of his poor financial status. After much later, the witnesses were recalled for cross-examination but one of the most important witnesses PW-9 did not attend the Court for cross-examination and thus the accused No.1 was denied the opportunity to cross-examine that witness. That cross-examination would have established that the accused No.1 was not connected with that house at all.

50. Dr. Chaudhary submitted that no advocate was present for examinations-in-chief for ten witnesses. He could have objected to leading questions. The examination-in-chief was going on even while the application made by the accused No.1 for providing Legal Aid Lawyer was still pending. On one occasion, the appointed Advocate adopted the cross-examination conducted on behalf of other accused though he did not have the papers. Finally a private advocate was appointed by the accused No.1 as he was left with no other choice. That time, eight witnesses were recalled and were examined over only two days and the cross-examination was merely in the nature of suggestions. Two witnesses were further examined in the presence of a private advocate who were later recalled. The crucial witness i.e. PW-9 was not cross-examined.

51. Dr. Chaudhary submitted that no time was given to the advocate to prepare for the matter and the evidence was recorded even on the date of his appointment. Many prosecution witnesses were examined in the absence of accused No.1's advocate. On two separate occasions, one of the appointed Advocates i.e. Advocate Gite had sought time to prepare in the matter after he received the documents, but the papers were not made available to him. Hence, he withdrew from the case. PWs-6,7 & 8 were examined when no advocate was appointed for the accused No.1. After that, the third Advocate Smt. Pramila Jadhav was appointed to represent the accused No.1 but even then PWs-9, 10 and 11 were examined in absence of the accused No.1's Lawyer.

52. Dr. Chaudhary referred to the provisions in Criminal Manual mentioned in Chapter-V regarding how Legal Aid has to be provided. He also referred to the Rules mentioned in Appendix-B of the Criminal Manual. In support of his contentions, Dr. Chaudhary relied on various judgments. However, the important judgments referred by him are as follows :

[i] *Anokhil Vs. State of Madhya Pradesh*¹

[ii] *Ashok Vs. State of Uttar Pradesh*²

1 (2019) 20 SCC 196

2 (2025) 2 SCC 381

- [iii] ***Sovaran Singh Prajapati Vs. State of Uttar Pradesh***³
- [iv] ***Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh***⁴
- [v] ***Bashira Vs. State of U.P.***⁵

53. Dr. Chaudhary submitted that since there was gross violation of the fair trial under Article 21 of the Constitution of India, there were two possible reliefs which the Court can consider granting to the accused; (i) acquitting the accused or (ii) remanding back the matter to the learned trial Judge for *de novo* trial.

54. Apart from the submissions on these issues, Dr. Chaudhary addressed the merits of the matter. He expressed that he was handicapped in making submissions on merits because there was hardly any competent cross-examination and the two important witnesses were not even cross-examined. Therefore, he could only point out the inherent weaknesses in the prosecution case which can be seen from the examination-in-chief of the prosecution witnesses. He submitted that there was complete absence of forensic evidence that could link the accused No.1 to the offence. His semen stains or DNA was not found on the victim or her clothes. The victim's blood or DNA was not found on the

3 2025 SCC OnLine SC 351

4 (2023) 16 SCC 510

5 1968 SCC OnLine SC 84

accused No.1's body or clothes. The circumstantial evidence is not complete in the absence of the forensic link completing the chain of circumstances.

55. The most important witness PW-9 was not available for cross-examination. Therefore, the prosecution could not establish that the accused No.1 was occupying the house of PW-9 where the incident had taken place. Another circumstance of extrajudicial confession is not proved. PW-7 was not a reliable witness. There was no reason for the accused No.1 to have confessed to him. There is nothing to show that PW-7 was in a position of trust as far as the accused No.1 is concerned.

56. Learned counsel appointed for the Respondent No.2 submitted that in all fairness the matter has to be remanded back for *de novo* trial and on merits of the matter she supported the submissions of learned APP Smt. Shinde.

57. After all these submissions were made, in response, the learned APP Smt. Shinde submitted that this was a fit case where the matter had to be remanded back before the trial Court. We reminded her that she had argued the case on merits and had also argued for confirmation of the death sentence. However, after

giving thoughtful consideration to the submissions advanced before us by all the other learned counsel, she also submitted that the matter be remanded back for *de novo* trial.

58. We have considered these submissions. For the reasons mentioned hereinbelow, we propose to remand back the matter before the trial Court.

59. Before referring to the situation as to how the trial progressed, we may refer to the provisions in the Criminal Manual for providing Legal Aid. The relevant provisions under Chapter (V) of the Criminal Manual are as follows :

“Chapter (v)

Legal Aid

Engagement of Advocate or Pleader appointed for the defence of persons accused of offences punishable with death

1. Legal Aid for the defence of persons accused of offences punishable with death :

(1)(a) Notwithstanding anything contained in the rules made by the High Court under sub-section (2) of Section 304 of the Code of Criminal Procedure, in all cases tried before a Sessions Judge in which any person is liable to be sentenced to death, the accused shall be informed by the committing Magistrate at the time of committal that unless he intends to make his own arrangements for legal assistance, the higher Court i.e. Sessions Court will engage a legal practitioner at Government expense to appear before it on his behalf;

(b) in confirmation cases and in appeals against acquittals or for enhancement of sentence filed on the Appellate Side of the High Court in which the accused is liable to be sentenced to death, the accused shall be informed similarly by the trial Court;

(c) if it is ascertained that he does not intend to engage one, a legal practitioner shall be engaged by the higher Court concerned to undertake the defence and his remuneration shall be paid by Government in the Law and Judiciary Department.

(2) xxxxxxxx

(3) xxxxxxxx

(4) The appointment of a defence counsel shall not be deferred until the accused has been called upon to plead. The defence counsel shall always be appointed sufficiently in advance to enable him to take copies of the depositions and other necessary papers which shall be furnished free of cost before the commencement of the trial or other proceeding. If after the appointment of such legal practitioner the accused appoints another counsel, the defence counsel appointed by the Court may still in the discretion of the Remembrancer of Legal Affairs, the Registrar or Additional Registrar or Deputy Registrar of the High Court or the Sessions Judge as the case may be, be allowed his fee for the case, but the copies already prepared shall be made available only upon payment for the use of the counsel privately appointed by the accused.”

60. Rule 6(a) of the Appendix “B” is also relevant, which reads thus :

“APPENDIX B**Rules regarding legal aid to unrepresented accused person
in cases before the Court of Sessions**

No.P.1630/57.- In exercise of the powers conferred by sub-section (2) of Section 304 of the Code of Criminal Procedure, 1973 (II of 1974) and with the previous approval of the Government of Maharashtra the Honourable the Chief Justice and Judges of the High Court of Judicature at Bombay are pleased to make the following rules :-

1. xxxxxxxx
2. xxxxxxxx
3. xxxxxxxx
4. xxxxxxxx
5. xxxxxxxx

6. Panel of Legal Practitioners for Legal Aid :- (a) The appointment of a Legal Practitioner for the unrepresented accused person under these Rules shall be made from a panel of Legal Practitioners constituted for each Court by the Presiding Officer of the Court in consultation with the President and the Office bearers of the Bar-Association, if any. Where there is no Bar Association, the Presiding Officer shall draw up the panel in consultation with the Senior Advocates of the concerned Bar. The panel may include the President of the Bar Association, Senior Advocates of the Bar and the junior members of the Bar having a standing of at least five years as practising lawyer. In every case where an offence is punishable with sentence of death or imprisonment for 7 years or more a Senior Advocate with a Junior Advocate from the panel shall be appointed for defending the unrepresented accused. As far as possible, the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

61. In the background of the facts which are presented before us, it is necessary to remind all the Courts under the jurisdiction of this High Court to follow these Rules. A copy of this judgment shall be circulated to all the District Legal Services Authority and all the Sessions Judges under the jurisdiction of this High Court.

62. This is a case which highlights that not providing legal assistance to the accused who is entitled for Legal Aid Counsel results in miscarriage of justice. From the facts of the case it can be seen that it is a very grave and serious offence and yet because of failure to conduct the trial in a fair manner no decision can be arrived at even after about nine years from the date of offence. This is a case where till today justice was not given to the victim and her family. On the other hand, the accused No.1 is facing death penalty without proper legal assistance before the trial Court. We reiterate that we are refraining from making any observations on the merits of the matter so that the learned trial Judge on this occasion is not influenced while deciding the case.

63. At this stage it is necessary to refer to the manner in

which the trial proceeded.

64. In this case, the charges were framed on 9.8.2017. The Roznama mentions that the learned Judge asked the accused No.1 whether he wanted Legal Aid. At that time, the accused No.1 had answered in negative. The matter was adjourned to 23.8.2017, but on 11.8.2017 he made an application before the learned trial Judge for appointment of a Legal Aid Counsel. Accordingly the trial Court had issued letter Exhibit-7 on 11.8.2017. But for a long time, there is no reference as to whether any Legal Aid Counsel was appointed for the accused No.1. In the meantime, the accused Nos.2 to 4 engaged their own private Advocate and the Vakilpatra was filed on their behalf on 3.10.2017.

65. On 5.1.2018, the prosecution started examining PW-1 i.e. mother of the victim. However, the noting of the learned Judge below the examination-in-chief conducted on 5.1.2018 mentions clearly that the Court had issued letter Exhibit-7 on 11.8.2017 to the Legal Aid Office and till 5.1.2018 no Legal Aid Counsel was provided for the accused No.1. Therefore, for making enquiry, further examination-in-chief was deferred till the next date and the matter was adjourned to the very next date i.e. on 6.1.2018. On

6.1.2018 the examination-in-chief continued. There was no sign of any Advocate having been appointed for the accused No.1 even on that day.

66. On 8.1.2018, the accused No.1 made an application praying for time to engage a Lawyer and, therefore, further examination-in-chief was deferred till 12.1.2018. It appears that even till then the Legal Aid Counsel was not provided to the accused No.1. The examination-in-chief continued on 17.1.2018 without there being any Lawyer representing the accused No.1. Same situation continued on 29.1.2018, 13.3.2018 and 14.3.2018. The Court noted that the matter was adjourned for cross-examination on behalf of the accused No.1. It was to be conducted by advocate Gharate. The matter was next conducted on 27.3.2018. The learned Judge's noting on 27.3.2018 mentions that the Advocate Gharate at Exhibit-35 made an application saying that he was refusing to appear on behalf of the accused No.1. It was also noted that the accused No.1 had submitted that he wanted to engage a private Lawyer but till 27.3.2018 he had not engaged any Lawyer and had also refused legal aid. The learned Judge observed that an opportunity was given to the accused No.1

to cross-examine the witnesses but the accused No.1 declined to conduct the cross-examination and, therefore, the noting further says "No Cross". However, the cross-examination was conducted on behalf of the accused Nos.2, 3 & 4. The cross-examination of PW-1 continued on 12.4.2018, 20.4.2018 and was completed on 21.4.2018. This cross-examination was conducted on behalf of the accused Nos.2 to 4. The cross-examination on behalf of the accused No.1 was closed. He had not personally cross-examined PW-1. It is pertinent to note that even till the evidence of PW-1 was over, no Legal Aid Counsel was provided to the accused No.1.

67. On 11.5.2018, the accused No.1 made an application vide Exhibit-46 praying for services of Legal Aid Counsel. The case was adjourned to 17.5.2018. On that day, the appointment letter of Advocate Gite was produced before the Court. On that day, examination-in-chief of PW-2 started. It was over on 23.5.2018. The learned trial Judge's noting on that day mentions that the appointed counsel Shri Gite was repeatedly called but he was absent. The accused No.1 was brought from jail. An opportunity was given to the accused No.1 to cross-examine and he had declined. Hence, his cross-examination was closed. Thus, on that

day also nobody represented the accused No.1 though the Legal Aid Counsel was appointed for him.

68. The trial proceeded further. The same situation continued till June, 2018. On 8.6.2018 PW-3 was examined. Advocate Gite, learned appointed counsel was absent and no cross examination was conducted on behalf of the accused No.1. The trial Court's noting dated 8.6.2018 mentions that the accused No.1 was brought from jail. Advocate Gite was repeatedly called. Even the concerned Clerk had called the Legal Aid office and had informed about the absence of the Legal Aid Counsel. No reply was given by the Legal Aid Office. The learned Judge observed that since it was a matter under POCSO Act it be proceeded further. An opportunity was given to the accused No.1 to cross-examine PW-3 but he declined. On 12.6.2018, after the cross-examination by the accused Nos.2 to 4 was over, Advocate Gite appeared before the Court and orally submitted that he was adopting the cross-examination taken by the Advocates for the accused Nos.2 to 4 as it was, for the accused No.1. On 8.6.2018 itself the examination-in-chief of PW-4 was recorded. At that time the appointed counsel Shri Gite had not conducted the cross-examination. It was

conducted on behalf of the accused Nos.2 to 4 and on 12.6.2018 Advocate Gite adopted the cross-examination conducted on behalf of the accused Nos.2 to 4 as it was for the accused No.1 as well.

69. The record shows that the Advocate appointed through the Legal Aid Services did not have the papers to study. And, therefore, he moved an application at Exhibit-65. On 12.6.2018, PW-5 was cross-examined on behalf of the accused Nos.2 to 4 but Advocate Shri Gite filed purshis at Exhibit-68 that he was withdrawing his appearance since despite repeated attempts he had not received the charge-sheet and the other relevant papers and he was unable to prepare for the matter without necessary papers. The learned Judge passed an order intimating the Legal Aid Services Authority regarding that situation. Resultantly, the trial proceeded further without the accused No.1 being represented by a Legal Aid Counsel. On 26.6.2018, the evidence of PW-6 was recorded and the cross-examination on behalf of the accused No.1 was reserved. On 9.7.2018, PW-7 was examined. Even at that time nobody was representing the accused No.1. The trial proceeded and PW-8 was examined in the absence of any Lawyer representing the accused No.1.

70. On 11.7.2018, the District Legal Services Authority appointed Advocate Pramila Jadhav to represent the accused No.1 vide Exhibit-87. The matter proceeded on 13.7.2018. The learned trial Judge received the appointment letter of Advocate Pramila Jadhav to represent the accused No.1. Since Advocate Pramila Jadhav was appointed on 11.7.2018 it was expected that she was given sufficient time to prepare herself but on 13.7.2018, PW-9 who was an important witness was examined and the learned Judge noted that Advocate Smt. Pramila Jadhav appointed by the DLSA was called repeatedly till 4.15 p.m.. The accused No.1 was asked to cross-examine. He had declined. Hardly any fair opportunity was given to the learned appointed counsel. Though she had also not attended the Court though repeatedly called, but this could not be fault of the accused No.1.

71. On 25.7.2018, PW-10 was examined. Even on that day, the appointed Advocate Pramila Jadhav did not attend the Court and the cross-examination on behalf of the accused No.1 was concluded.

72. On 21.8.2018 Advocate Pramila Jadhav remained present before the Court and produced the appointment order at

Exhibit-87 and filed her Vakilpatra at Exhibit-88. A very short cross-examination of PW-6, who was recalled was conducted. On 3.10.2018, PW-11 was examined and the trial Court's noting shows that the Counsel for the accused No.1 was not present. The accused No.1 was asked to cross-examine. He declined to cross-examine PW-11.

73. In this situation, left with no other alternative the accused No.1 decided to engage a private Advocate and filed an application at Exhibit-97 on 12.11.2018 through a private Advocate Shri S.R. Gadade. On 17.11.2018, Advocate Gadade filed Vakilpatra on behalf of the accused No.1. On 26.11.2018, Advocate Gadade made an application on behalf of the accused No.1 for recalling witnesses for cross-examination whose cross-examination was closed when nobody was representing the accused No.1. On 18.12.2018, PW-1 was recalled and her cross-examination was conducted by Advocate Gadade. We have perused that cross-examination. It is a four paragraph cross-examination mostly consisting of suggestions which she had denied. On 1.1.2019, PWs-2, 3 & 5 were recalled for cross-examination on behalf of the accused No.1 and their cross-examination was completed within

one day. Again the cross-examination was very cryptic and was not of more than one paragraph. It consisted only of suggestions.

74. On 9.1.2019, PWs-7, 8, 10 & 11 were recalled for cross-examination on behalf of the accused No.1. Their cross-examination was conducted on a single day. Again it consisted of hardly one paragraph each and it consisted mainly of suggestions. It can hardly be called proper cross-examination.

75. On 15.1.2019, PW-12 was examined and this time he was cross-examined on behalf of the accused No.1 by Shri Gadade.

76. PW-12 was also an important witness as he was a pancha for seizure of clothes of the deceased.

77. PW-13 was a pancha for seizure of clothes of the accused. His cross-examination was declined. On 24.1.2019, PW-14 who was an autopsy surgeon was examined, but Advocate Shri Gadade was absent. There was no cross-examination on that day, but, he was recalled and the cross-examination was conducted by Advocate Gadade on 11.2.2019.

78. PWs-15 to 20 were examined after that. PW-20 was the Investigating Officer. His examination-in-chief continued in the absence of accused No.1's Lawyer. After that, the prosecution

evidence was completed by examining PWs-21 & 22.

79. On 24.4.2019, learned Public Prosecutor started her arguments. On 26.4.2019, the accused were not produced from jail. Advocate Gadade, who now was representing not only accused No.1 but all the accused by filing separate Vakilpatra for them, was not present. He made an application for adjournment, but, it was not granted and the learned Public Prosecutor continued her arguments. This argument was continued in the absence of not only the counsel for the accused but even in the absence of the accused. On 2.5.2019, written arguments were given on behalf of the accused Nos.1 to 4 and then the trial was taken to its conclusion.

Reasons and conclusions :

80. At the outset, we may point out that we are specifically refraining from making any observations on the merits of the matter because for the reasons mentioned below we are inclined to remand back the matter. Dr. Chaudhary relied on a few judgments of the Hon'ble Supreme Court. In our opinion those judgments are very relevant in the background of the facts of the present case.

81. Dr. Chaudhary referred to the observations of the Hon'ble Supreme Court in the case of **Anokhilal**. In this case the trial Court had imposed death penalty on the accused, which the High Court had confirmed. The Hon'ble Supreme Court was testing those decisions. It was a case mainly under Sections 302, 366, 376(2)(f) and 377 of IPC along with other offences and under Sections 4, 5 & 6 of the Protection of Children from Sexual Offences Act, 2012. The accused was denied opportunity of fair trial and there was no adequate representation through Legal Aid Counsel. After considering various judgments, in paragraph-20 important principles were noted by the Hon'ble Supreme Court. It was observed that Article 39-A inserted by the 42nd Amendment to the Constitution effected in the year 1977, provided for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place included the enactment of the Legal Services Authorities Act, 1987 which was designed to achieve the mandate of Article 39-A. The right to Free Legal Services was an essential ingredient of 'reasonable, fair and just' procedure for an accused and it must be held implicit in the right guaranteed by

Article 21. The object of criminal trial was to search for the truth and the trial was not a bout over technicalities and must be conducted in such manner as will protect the innocent and will punish the guilty. When the time granted to the amicus curiae in to prepare for the defence was completely insufficient resulting in imposing death penalty amounted to breach of the procedure established by law.

In the facts of the case before the Hon'ble Supreme Court, the charges were framed on the same day when the amicus curiae was appointed and, therefore, the Hon'ble Supreme Court observed that the *amicus curiae* did not have sufficient time to go through even the basic documents nor he could have discussion or interaction with the accused and time to reflect over the matter. Thus, right under sections 227 and 228 of Cr.P.C. were denied to the accused. It was also observed that in such a case the trial Court on its own ought to have adjourned the matter for some time so that the *amicus curiae* could have the advantage of sufficient time to prepare the matter. The approach adopted by the trial Court might have expedited the conduct of trial but did not further the cause of justice.

In paragraph-28, the Hon'ble Supreme Court observed that in the matters where death sentence is one of the alternative punishments, the Courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused. Having observed thus, the judgments of conviction and orders of sentences passed by the trial Court and the High Court were set aside directing *de novo* consideration. It was held that the learned Counsel representing the accused in the trial Court could make submissions touching upon the issues (i) whether the charges framed by the trial Court are required to be amended or not; (ii) whether any of the prosecution witnesses need to be recalled for further cross-examination; and (iii) whether any expert evidence is required to be led in response to the FSL and DNA reports; and it was directed that the matter be considered on the basis of available material on record in accordance with law. The Hon'ble Supreme Court laid down certain norms to avoid repetition of these infirmities. Those norms are reproduced from paragraphs-31.1 to 31.4 as follows :

“31.1. In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be

considered to be appointed as amicus curiae or through legal services to represent an accused.

- 31.2. In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as amicus curiae.
- 31.3. Whenever any learned Counsel is appointed as amicus curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.
- 31.4. Any learned Counsel, who is appointed as amicus curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned.”

82. Dr. Chaudhary then relied on another judgment of the Hon'ble Supreme Court in the case of **Ashok**. In that case the accused was sentenced to death penalty by the trial Court. The offence was under Sections 376, 302 and 201 of IPC. The High Court had confirmed the conviction, but the death penalty was set aside and the accused was sentenced to undergo life imprisonment for the remainder of his natural life. The Hon'ble Supreme Court, in this case, considered the entire evidence on record and after discussion of the evidence, recorded the finding in paragraph-18

that the accused's guilt beyond reasonable doubt was not established. Ultimately, the accused in that case was acquitted by the Hon'ble Supreme Court. However, the Hon'ble Supreme Court noticed the other infirmities and lapses. The relevant discussion is under the heading "**Failure to provide legal aid to the accused**". In paragraph-36 it was observed that at the stage of framing the charge, the accused was not represented by an advocate. The examination-in-chief of PW-1 was allowed to be recorded without giving legal aid counsel to the accused, who was not represented. It was observed that if the examination-in-chief was recorded in the absence of the advocate for the accused, a very valuable right of objecting to the questions asked in examination-in-chief is taken away. The accused was also deprived of the right to object to leading questions. In the concluding part of the judgment, the Hon'ble Supreme Court laid down the guidelines in paragraphs-38.1 to 38.12 as follows:

- “38.1. It is the duty of the Court to ensure that proper legal aid is provided to an accused;
- 38.2. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is

conducted fairly and lawfully;

- 38.3. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the Accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;
- 38.4. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the Accused Under Section 313 of the Code of Criminal Procedure. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the Accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;
- 38.5. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;
- 38.6. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the trial Court must ensure that a legal aid advocate is appointed to represent the accused;
- 38.7. As held in the case of Anokhilal : (2019) 20 SCC 196, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a

minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

- 38.8. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;
- 38.9. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the Accused appoints an advocate of his choice;
- 38.10. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the Accused gets best possible legal assistance;
- 38.11. The right of the Accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it

will amount to infringement of his fundamental rights guaranteed by Article 21;

- 38.12. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.”

83. Dr. Chaudhary then relied on the judgment of the Hon'ble Supreme Court in the case of **Sovaran Singh Prajapati**. In this case the Hon'ble Supreme Court considered the case in which the death sentence was confirmed by the High Court. In this case also during the examination-in-chief of the primary witnesses of the prosecution i.e. PWs-1 & 2, the accused was not represented. It was observed that if a trial was conducted in such a manner, the argument of prejudice would be available to the accused. The presence of the accused's counsel at the time of recording of the statement was necessary. It was also observed that sufficient time should be given to the counsel to prepare the same and conduct the

case on behalf of his client. It was also observed that frequent change of counsel loses out the continuity of thought process. In this case also the matter was remanded to the trial Court and restored on the respective docket. The trial Court was directed to proceed afresh from the stage of framing of charge. It was observed that there is importance of compliance with the principles of law and procedural rigours. Due to non-compliance, all parties were required go through the process of trial once more and relive the horrific offence committed against the deceased.

84. The judgment referred to by Dr. Chaudhary in the case of **Ramanand** also took a similar view. It was observed by the Hon'ble Supreme Court that it was the duty of the Court to see and ensure that the accused put on a criminal trial was effectively represented by a defence counsel, and in the event of indigence, poverty or illiteracy or any other disabling factor, he was not able to engage a counsel of his choice, it becomes the duty of the court to provide him appropriate and meaningful legal aid at the State expense. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent.

85. Coming back to the facts of the present case, we have elaborately reproduced the manner in which the trial had proceeded. The observations made by the Hon'ble Supreme Court in the above judgments are squarely applicable to the facts of the present case. The accused No.1 was not represented by any Advocate at the time of framing of the charge. The examination of eleven important prosecution witnesses was recorded in the absence of any Advocate. In fact, no Advocate was appointed for him during that period.

86. On 20.6.2018, the appointed Advocate had made an application vide Exhibit-65 stating that the necessary papers were not available and, therefore, adjournment was sought for conducting the cross-examination. The prosecution objected to this application by mentioning that since the accused had taken a copy of the charge-sheet, this application should not be granted. The learned Judge, however, granted adjournment till the next date. On the same day, Legal Aid Counsel made another application vide Exhibit-68 that copy of the charge-sheet and other important documents were not made available. In spite of his efforts, the Legal Aid Counsel was not able to conduct the trial. He sought

retirement from the trial. The learned trial Judge passed an order that the Legal Aid Office be informed about this development. Immediately the matter was taken up on 26.6.2018 and PW-6 was examined by the prosecution. The learned Judge noted that the Legal Aid Counsel Gite had withdrawn his Vakilpatra. Observing thus, the cross-examination on behalf of the accused No.1 was reserved. After that Advocate Pramila Jadhav was appointed by the District Legal Services Authority on 13.7.2018. The appointment letter was produced along with Exhibit-82. She filed her Vakilpatra on 21.8.2018 and then she made an application for recalling of the witnesses for cross-examination. Thus, it can be seen that throughout the trial right from the time of framing of the charges and examination of the important witnesses, the accused No.1 was not represented by any Advocate. Even the documents were not made available to the Legal Aid Counsel. Therefore, there is a clear violation of the principles of fair trial. The accused No.1 was denied an opportunity to defend himself. This is in violation of his rights under Article 21 of the Constitution of India.

87. As held in the case of **Ashok** presence of learned counsel for an accused at the time of recording of examination-in-

chief is not an empty formality but it is a valuable right available to the accused. Even that right was denied to him. At every single stage, there was violation of the procedure of fair trial. Without commenting on the quality and capacity of the Legal Aid Counsel and the private Advocate appointed by the accused No.1, we are constrained to observe that in such a serious case the cross-examination did not meet the basic standard required in such serious cases. The learned Judge showed unnecessary hurry to conclude the trial. Undoubtedly it was a serious case and the trial needed to be expedited; but that could not be done at the expense of principles of fair trial. In all this process, at least for appointment of Legal Aid Counsel we do not find any fault on the part of the accused No.1.

88. As mentioned earlier, the offence is grave and extremely serious. The victim's family is still waiting for justice but at the same time the accused also has his right of fair trial which cannot be deprived. Since we are proposing to remand back the matter, we are not making any observations on the merits of the matter. This time we expect that the learned trial Judge takes all the precautions to see that the trial is conducted in a manner which

is fair to both the accused and the prosecution. The family of the victim, and in particular the mother and the grandmother of the victim who were examined during the trial, will have to undergo trauma and relive the horrific experience, reminding themselves of the incident. In this case, this is unavoidable. We expect the learned trial Judge and the defence counsel to be alive to this fact and be sensitive while conducting the trial and while conducting the cross-examination.

89. With the result, we pass the following order :

:: O R D E R ::

- i. The judgment and order dated 15.05.2019 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.209 of 2017 convicting and sentencing all the Appellants – Accused is set aside. Specifically, the death sentence imposed on the accused No.1 is not confirmed.
- ii. The Sessions Case No.209/2017 is remanded back and restored on the file of the learned Additional Sessions Judge, Nashik. The record and proceedings be sent to the said Court, forthwith.
- iii. The learned trial Judge shall conduct the trial *de novo* from the stage of framing of the charge. Before that stage, the learned trial Judge shall ensure that all the accused are properly represented and

if any of the accused requires Legal Aid Counsel, that assistance may be provided to such accused before framing of the charges.

- iv.** The Legal Aid Counsel, if required, shall be appointed by the District Legal Services Authority, in consonance with the guidelines referred to hereinabove.
- v.** Since it is a *de novo* trial, the prosecution is free to examine any of the witnesses who were earlier examined and the prosecution can also examine any other witnesses who were not earlier examined, if found necessary.
- vi.** The accused Nos.3 & 4 are on bail. They shall continue to remain on bail till the conclusion of the trial on the same terms and conditions on which they were granted bail by this Court by executing fresh bonds.
- vii.** It is needless to add that the accused No.1 is still in custody and that position has not changed by remanding the matter before the trial Court.
- viii.** The trial is expedited and the learned trial Judge is requested to conclude the trial as far as possible within ten months from today. The matter shall be listed before the trial Court on 6.4.2026. The accused No.1 shall be produced before the trial Court on that day. The other two accused shall remain present before the trial Court on

that day. They shall be given sufficient time and opportunity to engage a private Lawyer or they be given Legal aid if they so require urgently. The appointed counsel shall be given the papers urgently and be given sufficient time to prepare in the matter.

- ix. The trial Court shall decide the trial on its own merits in accordance with law, based on the evidence before it and without being influenced by the judgment and order recorded by the learned Additional Sessions Judge, Nashik in Sessions Case No.209 of 2017 vide the judgment and order dated 15.5.2019.
- x. The judgments of the Hon'ble Supreme Court in the cases of ***Anokhilal Vs. State of Madhya Pradesh, (2019) 20 SCC 196*** and ***Ashok Vs. State of Uttar Pradesh, (2025) 2 SCC 381*** be circulated to all the trial Court Judges as well as the District Legal Services Authorities under the jurisdiction of this Court.
- xi. Confirmation Case and the Criminal Appeals are disposed of accordingly. All pending Interim Applications are also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)