



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

**CRIMINAL WRIT PETITION NO.4451 OF 2022**

Jitendra Ramnarayan Rathod

Age 54, Occ : Service

R/o 1702, Auralis Towers,

Louiswadi, Thane (West)

Thane 400 604

... Petitioner

V/s.

1) Central Bureau of Investigation  
Through Inspector of Police  
CBI, SCB, Mumbai

2) The State of Maharashtra

3) Leonard Xavier Valdaris  
Age 51 yrs, Residing at 1/15-16,  
B.R.T. Colony, Reay Road,  
Mumbai

... Respondents

**WITH**

**CRIMINAL WRIT PETITION NO.4104 OF 2022**

1) Archana Maruti Pujari  
Occ. Service, Residing at 32/7,  
PI Building, Dadar (East)  
Mumbai 400 014.

2) Shatrughn Chudappa Tondse,  
Age 66 Yrs, Occ-Retired,  
Residing at B-405, Plot No- 15/16,  
Shreeji Apartment, Sector 6, Kamothe,  
Navi Mumbai 410209.

3) Suresh Bapu Mane, Age 56 yrs,  
Occ-Service, Residing at Anmol Residency,  
Building No 1, B wing,  
Near Devad Grampanchayat,  
New Panvel 410206.

4) Ravindra Sukhdev Mane, Age 44 yrs,  
Occ-Service, Residing at Room No 32,  
B wing, Building No 9, 2nd floor,

Pantnagar, Railway police Quarter,  
Ghatkoper (East) Mumbai 400075.

- 5) Vikas Maruti Suryavanshi, Age 37 yrs,  
Occ-Service, Residing at 20/32,  
Railway police vasahat, Pantnagar,  
Ghatkoper (East), Mumbai 400075.
- 6) Vikas Maruti Suryavanshi, Age 37 yrs,  
Occ-Service, Residing at 20/32,  
Railway police vasahat, Pantnagar,  
Ghatkoper (East), Mumbai, Pin No-400075.
- 7) Tushar keval Khairnar, Age 36 yrs,  
Occ-service, Residing at Room No 28,  
Building No 20, Railway police quarter,  
Pantnagar, Ghatkoper (East) Mumbai 400075. .... Petitioners

V/s.

- 1) Central Bureau of Investigation  
Through Inspector of Police,  
CBI, SCB, Mumbai.
- 2) The State of Maharashtra,  
Through Secretary, home dept,  
Mantralaya, madam kama road, 400032.
- 3) Leonard Xavier Valdaris,  
Age 54, Residing at 1/15-16, B.PT Colony,  
Pravin Nagar, Ray road West, Mumbai. .... Respondents

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Mr. Rizwan Merchant, Advocate with Mr. Sultan Khan i/b Sagar Shete  
for the Petitioner.

Mr. Kuldeep Patil, Advocate with Ms. Saili Dhuru, Mr. Digvijay S. Kachare,  
Mr. Anay Joshi, Mr. Sumitkumar Nimbalkar and Ms. Sanika Joshi  
for Respondent No.1-CBI.

Smt. Prajakta P. Shinde, APP for Respondent No.2-State.

Dr. Yug Mohit Chaudhry, Advocate with Ms. Payoshi Roy, Mr. Anush Shetty  
and Mr. Sidhartha Sharma for Respondent No.3.

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**CORAM : A. S. GADKARI AND  
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 23<sup>rd</sup> FEBRUARY, 2026  
PRONOUNCED ON : 6<sup>th</sup> APRIL, 2026**

**JUDGMENT: [PER- SHYAM C. CHANDAK, J.]**

*“The dead cannot cry out for justice; it is a duty of the living to do so for them.”* This famous quote by author Lois McMaster Bujold emphasizes the moral obligation of the living to seek justice, accountability, and honor for those who have passed away.”

1) The aforesaid quote is very apt to state at the outset as this petition involves a serious controversy as to whether the death of the victim Agnello Valdaris (“Agnello”) was homicidal or accidental, who had allegedly died in the police custody.

2) The Petition is filed under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) impugning the Order dated 17<sup>th</sup> September 2022, passed by the Court of learned Special Judge below (Exh.19) in POCSO Special Case No.85 of 2017. Thereby, the learned Judge directed to frame the charge of the offence of Sections 302 and 295-A of I.P.C. against the Petitioner and co-accused, who are police officers. However, according to the Petitioner, his co-accused and Respondent No.1-CBI, since there is no evidence of the offence of 302 of I.P.C., no charge was leveled for the same.

3) Heard Mr. Merchant, learned counsel for the Petitioner, Mr. Patil, for Respondent No.1-CBI, Smt. Shinde, learned APP for Respondent No.2-State and Dr. Chaudhry, for Respondent No.3. Perused the record.

4) The Petition pertains to assignment of learned Single Judge. It has come up before us by way of a Reference in the following background :-

5) That, in the night intervening of 15<sup>th</sup> and 16<sup>th</sup> April 2014, Agnello s/o Respondent No.3 and three others namely Sufiyan, Mohd. Irfan Hajam and juvenile boy ASK (“the JB”) were arrested by Wadala Railway Police Station for investigation in its FIR bearing C.R. No.49 of 2014, under Sections 392 and 34 of I.P.C., registered on 11.04.2014, on the complaint filed by Mr. Shrinivas Kishan Veeramallu against unknown persons.

5.1) The prosecution case is that, on 18.04.2014, at about 11:20 AM, when escorting police Suresh Mane/A-4 and Ravindra Mane/A-5 were taking Agnello for medical treatment from Wadala Railway Police Station, Agnello tried to escape and flee from the custody of police. In that attempt, Agnello ran along the middle of the railway track. At that juncture, local train No.BR-25 was about to approach Platform No.1 of Wadala Railway Station. Shri Vijay Mahadik, motor man in that train observed Agnello running in a dangerous manner while two individuals (A-4 & A-5) were shouting and chasing him. In that situation, Agnello came under the moving train, sustained injuries and died instantly. Consequently, Suresh

Mane filed a complaint with Wadala Railway Police Station which was registered as FIR bearing C.R. No.52 of 2014, under Section 224 of I.P.C. against Agnello. Separate ADR was registered at Wadala Police Station in respect of Agnello's death. As per prevailing SOP of the DGP Maharashtra, further investigation was transferred to State CID.

5.2) The aforesaid complaint was followed by the complaints dated 30.04.2014, 05.05.2014 and 12.05.2014 filed with different authorities by Respondent No.3. Later on, Respondent No.3 filed Criminal Writ Petition No.2110 of 2014. By Order dated 10.06.2014 passed in that Writ Petition, this Court directed the Crime Branch, Mumbai to register an offence within 24 hours. Before that, following certain SOP, the State CID, Navi Mumbai had already started investigating into the accidental death of Agnello.

5.3) On 11.06.2014, Malojirao Patil, Deputy Superintendent of Police, State CID filed a complaint. Said complaint was registered with the State CID at F.I.R. No.A-73 of 2014, under Sections 118, 119, 166, 166(A), 193, 195(A), 199, 200, 201, 202, 203, 217, 220, 295 (A), 302, 324, 330, 331, 342, 346, 347, 354(B), 355, 365, 367, 376(2), 376(D), 377, 506 along with 34, 107, 114, 120 (B) of I.P.C. and Sections 4,6, 8, 10, 12 and 18 of the Protection of Children from Sexual Offences Act, 2012 and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Section 29 of the Police Act, 1861 against following accused including

Petitioner.

- (i) Jitendra Ramnarayan Rathod, Sr. Police Inspector **(Petitioner)**;
- (ii) Archana Maruti Poojari, Asstt. PI. – I.O.;
- (iii) Shatrughan Chuddappa Tondse, PSI;
- (iv) Suresh Bapu Mane, Head Constable/2388;
- (v) Ravindra Sukhdev Mane, Police Constable/2129;
- (vi) Vikas Maruti Suryavanshi *alias* Ganya Police Constable/1311;
- (vii) Satyajeet Ajit Kamble, Police Constable/2994 and
- (viii) Tushar Kaval Khairnar, Police Constable/1608

5.4) The Writ Petition came up before this Court on 17.06.2014, when Respondent No.3 alleged that the State CID was not properly investigating into the case and therefore the investigation should be transferred to CBI. On 17.06.2014, this Court Ordered to transfer the investigation to the CBI. On completion of the investigation, the CBI submitted charge-sheet before the learned Additional Chief Metropolitan Magistrate, 3<sup>rd</sup> Court, Esplanade, Mumbai on 31.12.2015 for commission of alleged offence under Sections 120B, 218, 223, 323, 342 of I.P.C. and under Section 29 of Police Act, 1861 against the aforesaid accused.

5.5) Later on, supplementary charge-sheet was filed on 03.12.2016 by CBI against (i) Suresh Bapu Mane, (ii) Vikas Maruti Suryavanshi, and (iii) Satyajeet Ajit Kamble under Sections 6 and 12 of POCSO Act and under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with 34 of the I.P.C. before the Sessions Court for Greater

Mumbai being POCSO Special Case No.85 of 2017.

5.6) Thereafter, *vide* Order dated 19.12.2016 passed by this Court, CBI was directed to carry out further investigation for the offence under Sections 302/304 (Part II) and Section 377 read with Section 108 of the I.P.C. and file a supplementary report. Accordingly, supplementary charge-sheet was filed against (i) Suresh Babu Mane, (ii) Vikas Maruti Suryavanshi, and (iii) Satyajeet Ajit Kamble in Sessions Court for alleged offence of Sections 377 read with 108, 330 and 348 of I.P.C. It was treated as CBI Sessions Case No.522 of 2018.

5.7) Since offence of Section 302 of I.P.C. was not incorporated in the supplementary charge-sheet, Respondent No.3 again approached this Court and prayed to include Section 302 of I.P.C. in the matter. This Court by its Order dated 19.12.2019 passed in Writ Petition No.2110 of 2014, directed the Sessions Court to frame charge under Section 302 of I.P.C. The Petitioner-Jitendra Rathod challenged that Order before the Hon'ble Supreme Court and by the Order dated 19.11.2020 the Hon'ble Supreme Court modified the Order dated 19.12.2019 as under :-

“i) The trial Court while deciding the question of framing charge (s) would examine all aspects, including the Section of the Penal Code under which the charges should be framed.

ii) Observations in the impugned order will not be

treated as binding findings or directions on the question of framing of charge and the Section(s) under which the charge would be framed. The Trial Court would independently apply its mind, without being influenced by the observations of the High Court.

iii) The informant/victim – Leonard Valdaris will be at liberty to file protest petition before the trial court, which if filed, would be dealt with in accordance with law. Similarly, Sufiyan Mohammad Khan, Mohammad Irfan, Hajam and JBL also will be at liberty to file protest petition before the trial Court, which if filed, would be dealt with in accordance with law.

5.8) Accordingly, Respondent No.3 filed a Protest Petition bearing Application (Exh.19) in POCSO Special Case No.85 of 2017 before the trial Court and prayed as follows :-

- (a) reject the charge-sheets dated 31.12.2015, 03.12.2016 and 19.09.2018 filed by the CBI on the ground that they did not invoke Section 302 of I.P.C.
- (b) direct the Respondent No.1 to file supplementary charge-sheet under Section 302 of I.P.C. against the Petitioner.

5.9) The Protest Petition was opposed by the Petitioner on the premise that there is no evidence/material to frame the charge under Section 302 of I.P.C. The CBI also filed their reply, contending that there is no material on record *prima facie* to show that the accused police officers have committed the offence of Section 302 or Section 304 (Part II), therefore, said Sections were not added in the supplementary charge-sheet.

5.10) After hearing the parties, the learned Additional Sessions Judge passed the impugned Order dated 17.09.2022 and partly allowed the Protest Petition holding that there is sufficient material against the accused persons under Sections 302 and 295-A of the I.P.C and directed that the accused shall remain present on the next date for framing charge in addition to the charges leveled against them in the charge-sheet.

5.11) Being aggrieved by the Order dated 17.09.2022, the accused Nos.2 to 8 filed Writ Petition No.4104 of 2022 on 06.10.2022 and Petitioner-Jitendra Rathod (A-1) filed the present Writ Petition No.4451 of 2022 on 13.10.2022. Both Petitions prayed to quash and set aside the impugned Order dated 17.09.2022.

5.12) Writ Petition No.4104 of 2022 came to be decided by the learned Single Judge of this Court (Coram : Amit Borkar, J.) *vide* Judgment dated 16.12.2022 thereby upholding the impugned Order dated 17.09.2022. Writ Petition No.4451 of 2022 was decided by the learned Single Judge of this Court (Coram : Smt. Bharati Dangre, J.) *vide* Judgment dated 20.04.2023 but holding that, there is no material to frame the charge for murder of Agnello against accused persons including the Petitioner. As a result, said Order dated 17.09.2022 was set aside.

5.13) The Judgment dated 20.04.2023 was impugned before the Hon'ble Supreme Court in Criminal Appeal No.2198 of 2024. *Vide* Order

dated 22.04.2024, after referring the provisions under Chapter I Rule 8 of the Bombay High Court Appellate Side Rules, 1960 as well as the Judgment in case of *Lala Shri Bhagwan and Anr. vs. Shri Ramchandra and Anr.* reported in (AIR 1965 SC 1767) and *Eknath Shankarrao Mukkavar vs. State of Maharashtra*, reported in (1977) 3 SCC 25, the Hon'ble Supreme Court observed that once the learned Single Judge, while deciding the Criminal writ Petition No.4451 of 2022 formed an opinion that the Judgment/Order dated 16.12.2022 passed by the learned Single Judge was unsustainable and contrary to law, the matter should have been referred to a Division Bench/two-judges Bench instead of passing a conflicting Judgment in the same set of facts. Further, the Hon'ble Supreme Court opined that the impugned Judgment dated 20.04.2023 would be treated as an Order differing with the view expressed in the Judgment/Order dated 16.12.2022. It would be also treated as an Order referring the matter to a larger Bench of two Judges/Division Bench for consideration. Accordingly, the impugned Judgment/Order dated 20.04.2023 was partly set aside and the Appeal was allowed and disposed of in aforesaid terms. Hence, the Petition came to be assigned to this bench.

6) Mr. Merchant, the learned counsel appearing for the Petitioner submitted that, in the Order dated 19.12.2020, the Hon'ble Supreme Court had only directed that while deciding the question of framing the charge,

the trial Court would examine all aspects, including Sections of the penal code under which charge should be framed. While complying with this Order, the trial Court considered the material on record in line with this Court earlier Order to frame the charge of Section 302 of I.P.C. However, the trial Court completely failed to consider that, there is absolutely no evidence to frame the charge of Section 302 of I.P.C. in this case.

6.1) To substantiate the aforesaid submission, firstly, Mr. Merchant submitted that the last medical report of Agnello prior to his death clearly indicates that whatever injuries he had on his person at that time, were simple in nature, therefore, the same cannot be connected to his cause of the death. The statements of the eyewitness clearly demonstrate that, at the relevant time, when the police were taking Agnello for medical, suddenly, Agnello got himself released using force and escaped. Further, Agnello tried to ran away. In that process, Agnello was hit by the running train and the was dragged by it to some distance. This fact is evident from the spot panchnama. Consequently, Agnello suffered fatal injuries and died.

6.2) Mr. Merchant submitted that even though the three associates of Agnello have alleged that they including Agnello were subjected to brutal torture in the custody of the accused persons including the petitioner, their statements were recorded belatedly. The same associates have not complained about said torture when they were produced before the learned

Magistrate for the purpose of remand. As such, in the Judgment under reference, the learned Single Judge observed that there is inconsistency in the statement of the said associates and the last medical report.

6.3) Mr. Merchant submitted that, in the backdrop of the aforesaid circumstances, it is safe to infer that Respondent No.3 and three associates of Agnello have concocted the story of murder only because Agnello had died when the police were carrying him for the medical as a part of their lawful duty. Mr. Merchant fairly submitted that, there may be flaws in the investigation or some mistakes on the part of the accused police while dealing with Agnello and his associates during investigation conducted by them into offence of robbing the property for which they were taken into custody. However, said flaws or mistakes cannot be a foundation for framing the charge of Section 302 and 34 of I.P.C. against the petitioner and the co-accused. He submitted that all these aspects were well considered in the Judgment dated 20.04.2023. Mr Merchant submitted that the Judgment dated 16.12.2022 did not look into the investigation material collected by the CBI and its conclusion based on the statements of independent witnesses which have negated the claim of murder of Agnello. Consequently, Respondent No.3 cannot take support of the Judgment dated 16.12.2022. Therefore, according to Mr. Merchant, in this second round, the final outcome in this Petition cannot align with the view expressed in

the Judgment dated 16.12.2022. Hence, present petition may be allowed.

7) Mr. Patil, the learned counsel for Respondent No.1 submitted that, since the beginning, thorough investigation was conducted in this case by the CBI. However, no evidence was surfaced showing that there was a *prima facie* case of Section 302 r/w 34 of I.P.C. Whatever other offences were made out, the charge-sheets were accordingly filed. Therefore, this is not a fit case to frame the charge of Section 302 and 34 of I.P.C.

8) Dr. Chaudhry, on the other hand, submitted that the material on record clearly show that, after arresting Agnello and his three associates, they were illegally detained for 24 hours or more, but without showing their arrest on record. During this time, the four were tortured but Agnello was tortured the most. They were also sexually abused. Due to the torture, Agnello had sustained simple as well as serious internal injury to chest. The three others had also sustained certain injuries. Agnello was in pain due to said injuries but he was not taken seriously by the accused police. Meanwhile, the four were threatened to kill by throwing on railway track if they were non-cooperative in the investigation. It was only when Respondent No.3 complained to the jurisdictional Magistrate on 17.04.2014 and sought direction for production before evening Court, Agnello was shown arrested. However, Agnello was not produced in stark violation of said Order and instead, he was taken for Medical Examination. Despite the

Medical Officer had directed for x-ray examination of Agnello, that protocol was breached by the accused police officers by reverting Agnello to the police lock-up. Meanwhile, Agnello and Respondent No.3 were threatened to withdraw the complaint of the torture otherwise to face its consequence. Hence, Respondent No.3 withdrew that complaint against the wishes and requests of Agnello. In this background and considering other deliberate flaws in the investigation, the conclusion is inevitable that since Agnello wanted a legal action against the accused police officers, said police illegally took him to different lock-up and killed him by throwing against the running train to save them from the probable legal action. Alternatively, Dr. Chaudhry emphatically submitted that the mental and physical torture caused to Agnello in the police custody was so serious that he was left with no choice except to run in whatever direction he could. He therefore rescued from the police and ran towards a running train. In that situation, he came in contact of the train and dragged to the death point. Thus, in any event the accused were liable for the charge of causing culpable homicide amounting to murder of Agnello in furtherance of their common intention, *i.e.*, Section 300 *1stly* and *4thly* of I.P.C. punishable under Section 302 and 34 of I.P.C.

8.1) To buttress these submissions Dr. Chaudhry relied upon following citations:

- i) *Ghulam Hassan Beigh v. Mohammad Maqbool Magrey*, reported in (2022) 12 SCC 657.
- ii) *State of Bihar v. Ramesh Singh*, reported in (1977) 4 SCC 39.
- iii) *R.S. Mishra v. State of Orissa*, reported in (2011) 2 SCC 689.
- iv) *Basappa v. State*, reported in 1959 SCC Online Kar 124.
- v) *State Of Maharashtra v. Salman Salim Khan*, reported in 2004 (1) SCC 525.
- vi) *Order dated 26.09.25 passed by Hon'ble Supreme Court in In Re : Lack of Functional CCTVs in Police Station, Suo Moto in Writ Petition (Civil) No.7 of 2025.*
- vii) *R v. Halliday* reported in [1886-90] *All ER Rep 1028* [UK Court of Appeal].
- viii) *R v. Kenneth Joseph Roberts*, reported in (1972) 56 Cr. App. R. 95 [UK Court of Appeal].
- ix) *Cartledge v. Allen*, reported in 1973 *Cri LR 530* [UK Queens Bench].
- x) *R v. Pitts*, reported in (1842) *Car & M [174 ER 509]*.
- xi) *Rex v. Valade*, reported in 26 *Can.Cr.Ca.233 (1915)* [Court of King's Bench, Quebec, Canada].
- xii) *People v. Goodman*, reported in 182 *Misc. 585, 44 N.Y.S. 2d 715* (1943) [Supreme Court of New York State].
- xiii) *R v. Boswell*, reported in 1973 *Crim L R 307*.
- xiv) *R v. Robert Mackie*, reported in (1973) 57 Cr. App. R. 453 [UK Court of Appeal].
- xv) *DPP v. Frederick Daley* reported in [1980 AC 237] [Privy Council].

8.2) We have considered the said cases which deal with the principles as to evaluation of the material on record for the purpose of framing the charge and as to when the offence of Section 302 of I.P.C. is made out. However, it is trite that each case is required to be decided on the basis of its own facts and circumstances.

9) In the light of the rival submissions, we have carefully perused the record and examined the impugned Order dated 17.09.2022, the Judgment dated 16.12.2022 in WP No.4104/2022 and the Judgment 20.04.2023 in this WP No.4451/2022.

10) In the impugned Order dated 17.09.2022, the learned Judge of the trial Court has observed that, the statements of the associates of Agnello namely Sufiyan, Mohd. Irfan Hajam and the Juvenile (JB) revealed that, they and Agnello were tortured by the police in the lock-up. They were sexually abused by the police. The station diary record of Wadala Railway Police Station was not properly maintained and it indicated suppression of the lock-up movements of Agnello. The postmortem report supports the case of Respondent No.3. Despite direction of this Court, the relevant CCTV footage was not preserved. Considering the entire material on record, there is a *prima facie* case to frame the charge of Section 302 and 295-A of I.P.C.

11) The Judgment dated 16.12.2022 is on the same line. However, the subsequent Judgment dated 20.04.2023 disagreed with the impugned

Order and the Judgment dated 16.12.2022, mainly, for following reasons.

- a) In their statements before the police, the three associates of Agnello had clearly stated that Agnello was brutally tortured in the police custody. However, statement of Dr Aejaz Husain mentioned that when he had examined Agnello on 17.04.2014, he had found only two injuries, namely (i) Incised clean wound approximately 2 x 0.5 cm on the left wrist, and (ii) Incised clean wound approximately 7 x 0.5 cm on the right wrist. Thus, there is inconsistency in the ocular and medical evidence.
- b) The alleged torture was spread over a period from 16.04.2014 to 18.04.2014. It was within knowledge of Respondent No.3, but, for the first time he filed a complaint on 30.04.2014 alleging the murder of Agnello and requesting to seize the relevant CCTV footage. The three associates were released on bail on 22.04.2014, but, for the first time they made a grievance through their complaints on 12.05.2014. Thus, there was delay in complaining about the murder.
- c) Time to time statements of the witnesses were recorded namely (i) Mukund Rohidas Kokane, Asstt. Commissioner of Police (Railway), Harbour line, (ii) Vijay Mahadik, Assistant, Loco Pilot, (iii) eye witness Kishan Kailash, a welding worker and (iv) eyewitness Mohan Bhavar. However, they have categorically stated that, at the time of the incident Agnello was running through the middle of the railway track and accused Suresh Mane and Ravindra Mane were chasing him. However, before Agnello could be saved, he got hit by the train. Therefore, the Respondent No.1, CBI did not deem it fit to

invoke Section 302 of I.P.C.

d) Inference of murder cannot be drawn on the basis of lacunae in the investigation.

e) Inquest Panchnama does not indicate any injury attributable to the alleged custodial torture but clearly express that the injuries were sustained by the wheels of the train.

f) In the wake of the statement of Dr B.G. Chikhalkar and the post-mortem report, there is no scope to derive a conclusion that because of the injuries caused to Agnello, while he was in custody, his death had occurred. On the other hand, the medical experts have clearly opined that the multiple injuries sustained in train accident was the cause of his death.

12) Having given our anxious consideration to these submissions and the material on record, we are of the view that the Judgment dated 16.12.2022 is in consonance with the facts of the case in hand and the applicable law. The reasons for this conclusion of ours, are as under.

12.1) Admittedly, Agnello, Sufiyan, Mohd. Irfan Hajam and the JB were wanted in the said C.R. No.49/2024 and the accused police officers were searching for them. Statements of Sufiyan, Mohd. Irfan Hajam, the JB and Respondent No.3 indicate that, in the intervening night of 15<sup>th</sup> and 16<sup>th</sup> April 2014, all the four were taken in custody by the police and brought at Wadala Railway Police Station. However, immediately, they were not shown arrested. Statements of Sufiyan, Mohd. Irfan Hajam and the JB noted that, between 16<sup>th</sup> and 17<sup>th</sup> April 2014, the three and Agnello were subjected to

torture and made to sexually abuse amongst themselves in the lock-up by the accused police. The sexual abuse was so disgusting that one would not be able to imagine that such an insult may occur in police station under coercion by police. Considering the central issue, we do not deem it proper to mention that abuse herein to protect the police image in general.

12.2) Collectively, the statements given by Sufiyan, Mohd. Irfan Hajam and the JB show that on 16.04.2014, at 10.00 AM, the petitioner instructed his subordinates to starve all the four for next eight days, do not show them as arrested and to beat them until they confess to the crime. At about 11.30 AM Agnello's hands and legs were tied by A4, A-5 and A-8 with an iron rod at the instance of Petitioner and he was beaten until 1:30 PM by A-4 & A-7 with belt and stick (*Danda*) and was also kicked on his chest by A-7 and A-8. Agnello was screaming with pain. The Petitioner kicked and slapped Sufiyan to make him speak about the stolen property.

12.3) On 16.04.2014, at about 3.52 PM, Respondent No.3 sent a FAX message complaining to the Commissioner of Police about abduction, illegal detention and non-production of Agnello. But it did not work. At 4.00 PM, Agnello and Mohd. Irfan Hajam were again beaten. Thereafter, Agnello, complained of chest pain and requested for medicine. At that juncture, A-2, made fun of Agnello, taunting him "We Are not your slaves and we will not give you any medicines. *Tadap Tadap Ke Mar*". Agnello then started frothing

from mouth and became unconscious. Despite request made by Sufiyan, Mohd. Irfan Hajam and the JB, the police ignored to take Agnello to a doctor. When Agnello regained conscious, he had again complained of chest pain and prayed the police to take him to doctor or else he will die.

12.4) Then Sufiyan, Mohd. Irfan Hajam and the JB were shown arrested on 17.04.2014, at about 00.05 hours. In that night only, they were taken to St. George's Hospital and got medically examined between 2.15 AM to 2.20 AM. Injuries were noticed on both hands and feet of the JB by the Medical Officer. However, they did not complain to the doctor about their torture being threatened by the police. On the same account, Medical Officer Dr. Pooja Khonde did not examine their private parts or local injuries. In our considered view, this was completely against the medical protocol. Thus, said circumstance supports the case of Respondent No.3.

12.5) After the medical check up, when Mohd. Irfan Hajam was brought back to the police station, he had noticed that Agnello was in a very bad condition and could barely walk. Agnello told him that he was severely beaten by police attached to Wadala Police Station. At about 3.30 PM, Sufiyan and Mohd. Irfan Hajam were produced before the learned Magistrate, however before being produced they were threatened by A-4 that if they complain to the learned Magistrate, it would be bad for them. At that time, the two met with Respondent No.3 who had come there to

enquire about Agnello and informed Respondent No.3 about the torture caused to Agnello. Although, Agnello was in police lock-up, he was shown as wanted accused in the remand application.

12.6) Therefore, at about 5.00 PM, Respondent No.3 complained to the learned Magistrate about Agnello's illegal detention. Yet, the police constable on duty informed the Court that Agnello was arrested at 4.00 PM, *i.e.*, just an hour before, but without giving the details thereof. Therefore, the learned Magistrate directed to produce Agnello before the Night Court. The said Order was defied with impunity by the escorting police and the investigation officer. No explanation has been offered by the Petitioner for the aforesaid deliberate contemptuous lapse in his duty.

12.7) Here, it is necessary to note that, had Agnello not been in illegal custody, Respondent No.3, would not have complained to the Police Commissioner on 16.04.2014 by FAX and on 17.04.2014 to the learned Magistrate seeking production of Agnello.

12.8) Statement of Medical Officer Dr. Aejaaz Husain mentions that he had examined Agnello on 17.04.2014, at about 7.10 PM, at LTMNC hospital. Agnello had complained about alleged assault over bilateral wrist with sharp object by police personnel of Wadala Railway Police Station. On examination, he had noted the aforesaid injuries on the body of Agnello. Dr. Aejaaz Husain stated that Agnello had complained about blunt trauma

caused to his chest and therefore he had advised to take x-ray of the chest and prescribed certain medicines for Agnello's injuries. However, the escorting police did not take Agnello to get the x-ray done.

12.9) Dr. Aejaaz Husain also disclosed that, when the police had brought Agnello for the medical check up, said police had pressurised him to give a favourable Medical Report that the said injuries were self inflicted injuries and not caused by the police. However, he issued the medical report as per his findings of the medical examination of Agnello. After half an hour, Respondent No.3 was taken to Dr. Aejaaz Husain by 5-6 police officials of Wadala Railway Police Station. Further, said police and Respondent No.3 told Dr. Aejaaz Husain that Respondent No.3 wanted to tell him something about Agnello. Therefore, he allowed him to talk. Respondent No.3 stated that Agnello had the history of causing injuries to himself and said injuries too were self inflicted by Agnello. Yet, Dr. Aejaaz Husain did not change his findings. Consequently, the said police personnel pressurised Respondent No.3 to write on the OPD paper that, "*I, Mr. X. Leonard Valdaris, father of Agnello, hereby state that injury inflicted on his bilateral wrist by himself, and he simply blaming the police personnel*". This endorsement was not only against Agnello's repeated appeal to his father not to write so but it also amounted to tampering with public record and evidence against the accused. Therefore, said endorsement ought not to have been permitted by

Dr. Aeja Husain. Respondent No.3 was not an eye witness to the torture allegedly caused to Agnello. Therefore, said endorsement is insignificant. As per the record, in this episode, Petitioner, A-5, A-6 and A-7 were involved who had driven Agnello to the hospital. However, the Petitioner has not explained as to how between 4.00 PM to 7.10 PM Agnello had suffered said injuries and why a belated incorrect station diary entry No.39 was recorded at 8.55 PM of 17.04.2014 by A-3 that Agnello's injury were self inflicted.

12.10) Here it is significant to note that Ravindra Mane (A-5) had recorded the arrest of Agnello in said Cr. No.49 of 2014. Both Suresh Mane (A-4), Ravindra Mane (A-5) with A-6 and A-7 had taken and escorted Sufiyan, Irfan and the JB for their medical which was done immediately after their alleged arrest timing that too in the late night. However, that urgency or sense of responsibility was not shown by the police who had taken Agnello for medical where he was advised to undergo an x-ray examination due to his medical complaint. Instead, said police brought him back to the police station even without producing him before the Night Court. Thus, according to the prosecution, the accused police were involved in getting their act of torture washed away in an illegal manner and by pressurising Respondent No.3 to make that false endorsement.

12.11) It is surprising that, after lodging Agnello back to the lock-up at about 1.10 hours of 18.04.2014, he was taken to Kurla Railway Police

Station by A-4 and A-6 and kept in the lock-up there. At about 7.30 AM, Agnello was allegedly brought back to Wadala Railway Police Station by the A-4 and A-6. However, the Kurla lock-up register does not reflect that Agnello was kept there nor Wadala Railway Police Station diary entry was produced showing Agnello was back to that Police Station. We are not able to see any justifiable reason behind this suspicious movement of Agnello in the night.

12.12) On 18.04.2014, at about 11:10 AM, only A-4 and A-5 were on duty to take Agnello for medical treatment from Wadala Railway Police Station, when Agnello had tried to escape and flee from the custody of police. In that attempt, Agnello ran through the middle of railway tracks, towards a running train No.BR-25 approaching Platform No.1 of Wadala Railway Station and was hit by that train, thus making him fall and come under the wheels of the train. He was then dragged by the train for some distance. As a result, he suffered various injuries and died. Neither the accused police nor the prosecution has explanation as to why Agnello was required to be taken for medical after a couple of hours of removing him from Kurla lock-up, more particularly when he was already medically examined in the last evening and according to the prosecution/Petitioner, he had only two simple injuries as noted by Dr. Aeja Husain.

12.13) As against this, the postmortem team of doctors had noted

several injuries on Agnello's body which in their opinion were about 12 hours before the death and some were 24 to 96 hours old. According Dr. Chaudhry, said injuries were as under :-

A) External Surface Injuries (approximately 24 hours before the death):-

I. Injuries on right upper limb:-

1) Contusion on whole of deltoid region of size 14 x 16 cm, bluish red in colour, on dissection, muscle deep with infiltration of blood in muscle tissue.

2) Contusion on right forearm, flexor aspect, middle 1/3rd region of size 6 x 4 cm, bluish red in colour, on dissection muscle deep with infiltration of blood in muscle tissue.

II) Injuries on left upper limb:-

1) Contusion on left forearm, proximal 1/3rd region, of size 15 x 8 cm, bluish red in colour. On dissection muscle deep with infiltration of blood in muscle tissue.

2) Incised wound over left wrist, flexor aspect transverse in direction, of size 5 x 0.2 x 0.2 cm, subcutaneous deep, bluish red in colour, margins sharply cut.

III Trunk Posterior:-

1) Contusion on posterior part of trunk over right lumbar-region of size 17 x 15 cm, bluish red in colour, subcutaneous deep, with infiltration of blood in tissue.

IV Right Lower Limb:-

1) Contusion over right thigh lower 1/3 rd region of size 14 x 16 cm bluish red in colour, on dissection muscle deep, with infiltration of blood in tissue.

2) Contusion over right knee, medial aspect of size 5 x 4 cm, bluish red in colour, on dissection muscle deep, with infiltration of blood in tissue.

V Left Lower Limb :-

1) Contusion on left foot, dorsally of size 18 x 8 cm, bluish red in colour, on dissection subcutaneous deep with infiltration of blood.

2) Contusion on left lower limb above ankle region and below knee, medially of size 16 x 12 cm, bluish red in colour, on dissection muscle deep with infiltration of blood in tissues in middle 1/3rd.

The post-mortem report also found, inter alia, the following fatal internal head injuries which are only attributable to torture during illegal custody:

B) Internal Head Injuries (approximately 12 hours before the death):-

1) Under scalp contusion over fronto parietal region of size 6 x 8 cm, dark red in colour, scalp deep.

2) Brain was edematous with patchy diffuse subarachnoid hemorrhage over left frontal lobe, over area of 2 x 1 Cm , reddish colour on cut section, petechial hemorrhage in white matter.

12.14) There is no explanation by the prosecution or the Petitioner about the mismatch in the medical report issued by Dr. Aejaaz Husain and the postmortem report and as to why said old injuries were appeared on Agnello's body within short time after his arrest. On 18.04.2014, at about 10:30 AM, Agnello had informed his brother Reagan Valdaris on phone that throughout the night he was beaten very badly by the police; he was feeling giddy; in severe pain and needed Glucon-D and clothes. No document is

produced by the prosecution or the Petitioner to show that, at the time of the arrest, the police concerned had noted the said old injuries on the body of Agnello.

12.15) Record indicates that after the death of Agnello, Sufiyan and Mohd. Irfan Hajam were medically examined between 19<sup>th</sup> to 23<sup>rd</sup> April 2014 and certificates were issued that there were certain injuries on their person which were 3-4/5-7 days old. It cannot be lost sight of the facts that all the four were arrested around the same time. Their official arrest was shown belatedly and they all had suffered injuries on their person/body during the same time. The threatening to these witnesses was the reason for the delay in disclosing the torture suffered by them in police custody. Therefore, at this stage any inconsistency between the statement of Sufiyan, Mohd. Irfan Hajam and the JB on one hand and the medical report issued by Dr. Aejaz Husain on the other, cannot be accorded undue weight so as to reject the claim of Respondent No.3. That apart, the statements of the three are backed by the postmortem report and the adverse inference to be drawn on account of not taking Agnello for his x-ray against medical advice. Since, the postmortem report was recorded by the team of Expert Medial Officers, the police opinion in the Inquest Panchanama cannot prevail over that of experts' opinion. In other words, expert evidence based on scientific method will prevail over knowledge of ignorant men in that field.

12.16) No doubt, the witnesses namely (i) Mukund Rohidas Kokane, Asstt. Commissioner of Police (Railway), harbour line, (ii) Vijay Mahadik, Assistant, Loco Pilot, (iii) eye witness Kishan Kailash, a welding worker and (iv) eyewitness Mohan Bhavar have categorically stated that, at the time the incident, Agnello was running through the middle of the railway track towards the train and accused Suresh Mane and Ravindra Mane were following him. In that event, Agnello came in contact of the train and was hit by it. However, according to us, this circumstance will not rescue the Petitioner. Because if the Court is willing to ignore or doubt the statements of Sufiyan, Mohd. Irfan Hajam, the JB and Respondent No.3 because they were made late, then the same standard should also apply to the four eyewitnesses. Understanding the scope of Section 228 of Cr.P.C., making distinction in the two sets of the witnesses is not possible while dealing with the question of framing the subject charge in the case in hand.

12.17) In this context, in the Judgment dated 16.12.2022, reference was made to the legal position enunciated in the case of *State of Bihar vs. Ramesh Singh (supra)*. Therein, it has been observed and held that, "... The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or 228 of the Code. At that stage the Court is not to see whether there is

sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. ... If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

12.18) As held in case of *Trimukh Maroti Kirkan vs. State of Maharashtra*, reported in (2006) 10 SCC 681, “A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.” Therefore, the trial Court is not precluded from modifying the charges by including or excluding the sections at the appropriate stage during trial. This is what has been held in the decision in *State Of Gujarat vs. Girish Radhakishan Varde*, reported in AIR 1968 SC 117.

13) In the wake of above, *prima facie* it appears that since Agnello was severally beaten up in the illegal police custody, he had sustained various injuries which were opined as more than 12 hours and 24 to 96 hours old. At the cost of repetition, Petitioner was involved in this episode. Since Agnello had complained to Dr. Aejez Husain about his torture, there was apprehension in the mind of accused police officers of some legal action against them. Therefore, somehow the accused persons wanted to control Agnello to prepare him to withdraw his complaint of torture made to Dr. Aejez Husain or not to take the matter further. But the tide did not turn in favour of the accused police officers as Agnello died in the circumstances which were within the knowledge of the Petitioner, Suresh Mane, Ravindra Mane and their co-accused. Meanwhile, Agnello and his associates were threatened to kill by throwing on railway track. Since beginning, only the accused persons were present around Agnello and his three associates and were involved in the circumstances that lead to his death. Despite it was possible to collect, though repeatedly requested for and directed by this Court, the Investigating Officer, with audacity, failed to collect the requisite CCTV footage of Wadala Railway Police Station and the site of the accident. In fact, that act of not following the directions of this Court was replica and/or repetition of the previous two occasions when the learned Magistrate's direction to produce Agnello before the Night Court

and Dr. Aejez Husain's reference for his x-ray examination were gone against. Therefore, adverse inference is permissible against the police whomsoever he/she may be. In the backdrop, even if for the sake of argument we agree with Mr. Merchant, the learned counsel that the old injuries of Agnello had no nexus with his death, the fact remains that Agnello has died in the circumstances otherwise than normal while he was in the police custody. Additionally, as pointed by Dr. Chaudhry, Agnello was tortured to such an extent that, he ran towards a moving train to save further torture by the accused police and therefore Section 300 4thly of I.P.C. will be attracted. As such, liberty must remain with the trial Court to frame the charge under Section 300 of I.P.C.

14) In *Prithipal Singh and Othrs. vs. State Of Punjab & Anr.*, reported in (2012) 1 SCC 10, the Hon'ble Supreme Court observed that in *Munshi Singh Gautam & Ors. vs. State Of M.P.* reported in (2005) 9 SCC 631, the Apex held that peculiar type of cases must be looked at from a prism different from that used for ordinary criminal cases for the reason that in a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died.

15) In this backdrop we hold that, the trial Court has considered the material on record as expected in law and by recording proper reasons, arrived at just conclusion that the said material if not rebutted would entail in conviction of the accused persons in the case. Accordingly, the trial Court has passed the impugned Order. Having reached to this conclusion, we see no reason to treat the impugned Order as illegal or erroneous. As a corollary, we are in unison with the view taken in the Judgment dated 16.12.2022 in Writ Petition No.4104 of 2022 that, the learned Judge of the trial Court has applied correct test while directing framing of charge under Sections 302 and 295-A of I.P.C.

16) The Reference is answered in aforesaid terms and accordingly stands disposed off.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)