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**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, PALI,  
DISTRICT RAIGAD**

(Presided over by Shri.R.A.Shivratri )

**Regular Criminal Case No.1/2020.**

**Exh.No.58/B.**

(FIR No.04/2019 of Pali Police Station,  
Taluka Sudhagad, District Raigad.)

<b>Prosecution</b>	:: <b>The State of Maharashtra.</b>
<b>Represented by</b>	:: <b>Smt.V V. Mhatre</b> , learned A.P.P. for the State.
<b>Accused</b>	:: <b>01) Ahmed Mohammad Umar Shaikh</b> , Age-22 years,Occupation –Scrapper, <b>02) Abdul Kadir Mohammad Sakir Khan</b> , Age-29 years,Occupation -Scrapper, Both R/o- Jambrung Phata, Tal- Khalapur, Dist-Raigad
<b>Represented by</b>	:: <b>Shri.S.A.Ambolkar</b> , learned Advocate for the accused.

Date of Offence	08.01.2019
Date of FIR	08.01.2019
Date of Chargesheet	07.01.2020
Date of Framing of Charges	22.07.2024
Date of commencement of evidence	15.10.2024
Date on which Judgment is reserved	-----

Date of the Judgment	14.10.2025
Date of the Sentencing Order, if any	-----

**Accused details**

Name of Accused	Date of arrest (Formal)	Date of Release on Bail	Offences Charged with	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P.C.
01) Ahmed Mohamm ad Umar Shaikh,	20.03.2019	---	U/Secs. 379,411, r/w.34 of the IPC.	Acquitted	-
02) Abdul Kadir Mohamm ad Sakir Khan,	20.03.2019	---		Acquitted	

**A. List of Prosecution witnesses:-**

Rank	Name	Exh. Nos.	Nature of Evidence
PW-01	Sadhuram Laxman Mahabale	24	Panch
PW-02	Sandip Ashok Jadhav	30	Panch
PW-03	Mahesh Bhau Gavari	31	Complainant
PW-04	Bhavesh Ganesh Patil	34	Witness
PW-05	Ram Sabhaji Bansode	35	Witness
PW-06	Sushil Manohar Mhatre	38	Panch

PW-07	Gajanan Padaji Mhatre	42	First Investigating Officer
PW-08	Subhash Laxman Patil	47	Second Investigating Officer

**B. Defence witnesses, if any :-**

Rank	Name	Nature of Evidence
NIL		

**C. Court witnesses, if any :-**

Rank	Name	Nature of Evidence
NIL		

**A. Prosecution Exhibits :-**

Sr. No.	Exh. Nos.	Description of Documents.
01.	P-25/PW-01	Panchnama
02.	P-32/PW-03	Complaint
03.	P-39/PW-04	Seizure Panchnama
04.	P-40/PW-14	Seized Panchnama
05.	P-48 to 51/PW-08	Cr.PC 41-A 1 notices
06.	P-52 and 35/PW-08	Muddemal receipt
07.	P-54/PW-08	Notice to Informant

**B. Defence Exhibits :-**

Sr. No.	Exh. Nos.	Description.
NIL.		

**C. Court Exhibits :-**

Sr. No.	Exh. Nos.	Description.
NIL.		

**D. Material Objects :-**

Sr. No.	Exh./Art. Nos.	Description.
01	01	Iron rod

**:: J U D G M E N T ::**

( Delivered on 14<sup>th</sup> October, 2025 )

The accused nos.1 and 2 are prosecuted for the offences punishable under section 379 read with 34 of the Indian Penal Code, 1860.

**The case of the prosecution, in brief, is as under:**

02. Informant was working as a Deputy engineer of Maharashtra State Electricity Distribution company, Branch at Pali-2. He was working there along with some employees at M.S.E.D.C., Branch at Pali. They were assigned to control, maintain, distribute electricity properly at village Pali. On 08.01.2019 at 10.00 am. He received a phone call from manager, HP Petrol Pump situated at

Khurawale Phata and lodged complaint of electricity off. Accordingly, informant and Bhawesh Patil went at Khurawale, Petrol Pump and went behind the Petrol Pump at transformer. They conducted test they did not find electricity supply and observed "DO" wires were cut off they also found coil frame in which coil kept inside the transformer was lying on the ground. Therefore, they went upside, they do not find nuts, and copper coil inside transformer. He found theft of copper coil was made. Therefore, he lodged report of theft against unknown persons at Pali Police Station on 08.01.2019.

03. In response to report, Crime No.04/2019 came to be registered on 08.01.2019 for the offence punishable under Section 379 r/w Section 34 of the Indian Penal Code at Pali Police Station against unknown persons. Incharge of police station handed over investigation to PHC, S.L.Patil. He visited the spot of incidents and prepared spot panchnama. Local Crime Branch, Alibag arrested two suspects and they admitted their involvement in the present crime. In presence of panch witnesses Police Constable S.L.Patil, recorded statements of accused under Section 27 of Indian Evidence Act and, discovered tools and instruments used for removing transformer coil. Besides that, upon information they arrested accused no.3 who purchased the copper wire from accused nos.1 and 2 and also recovered 75 kg. copper coil from accused no.3. He prepared memorandum panchnama. He recorded statement of witnesses. Besides that, he also found a person namely Hemant Thakur was also involved in the crime. But during the period investigation and till

filing of chargesheet not able to arrest such person.

04. After completion of investigation, P.H.,S.L.Patil found sufficient evidence against the accused nos. 1 to 3. Therefore, he submitted report under Section 173 read with Section 170 of Code of Criminal Procedure against accused nos. 1 to 3 for the offence punishable under Section 379 and 411 read with 34 of Indian Penal Code.

05. During the trial accused nos. 1 to 3 appeared in the Court. However, accused no.3 remains absent despite of his appearance in the Court. Hence, trial of accused nos. 1 and 2 separated under section 317(2) of Criminal Procedure Code from trial of accused no.3.

06. Charge was framed against accused nos.1 and 2 at Exh.20 to 22 for the offence punishable under Section 379 read with 34 of Indian Penal code. Contents of charge was read over and explained to them in vernacular. The accused pleaded not guilty and claimed for trial.

07. The prosecution has examined in all nine witnesses. On completion of the prosecution evidence, the statement under Section 313(1)(b) of the Code of Criminal Procedure has been recorded. The defence of the accused is of total denial and falsely implicated.

08. Heard A.P.P for the State and advocate for the accused at length. Following points arises for my determination. I have recorded my findings against it for the reasons as follows :

Sr. No.	Points	Findings
1	Whether prosecution proves that, on 08.01.2019, within the vicinity of village Khurawale, before 10.00 am. Accused nos.1 and 2 and absconded accused in furtherance of their common intention, committed theft of copper coil from transformer situated behind the HP petrol Pump ?	<b>No</b>
2	What Order ?	<b>Accused Nos.1 and 2 are Acquitted.</b>

### **REASONS**

#### **Point No.1 :**

09. It is the specific case of prosecution that accused nos. 1 and 2 and absconded accused persons committed theft of copper coil from the transformer which was fixed on pole behind the HP Petrol Pump, situated at village Khurawale.

10. Informant Mahesh Gaware (Pw-3) deposes that on 08.01.2019 he received a phone call from manager Jadhav of HP Petrol Pump he lodged a complaint of non availability of electricity. Therefore he along with Bhawesh Patil went at Khurawale Petrol

pump. After inspection they do not find electricity. As a result they went at the back side of the petrol pump and after inspection they found cable wires were broken, Nut bolts of Transformer were removed. They found cover of transformer opened they did not find copper wire inside the transformer. Therefore he assured copper wire stolen. After consultation with higher authority he lodged report at Pali Police Station.

11. During his cross-examination question regarding responsibility of repair of transformer was raised and he answered if company is having transformer in a company they themselves make arrangement for repair. It appears he received a phone call at 10.00 to 10.30 am. and before proceeding towards petrol pump he did not make any entry in concerned register. It transpires from his cross-examination it is not necessary to shutdown electricity of transformer entirely to open transformer. He answered to open transformer it requires to remove DO Fuse wire. He deposes wire inside the transformer wraps inside the transformer and it is not possible to remove copper wire mere by hands. It appears during the inspection only Bhavesh and he was present their.

12. Bhavesh Patil (Pw-4) deposes his superior directed him to inspect electricity of Petrol Pump at Khurawale. After inspection he did not find electricity. He found nut bolts of transformer were removed. He gave information to his superior. Mahaesh Gaware arrived there thereafter climbing on a pole they found transformer was opened and did not find a copper wire inside transformer.

13. During his cross-examination he deposed 25 to 30 nut bolts were fastened to the transformer and they did not find oil poured around. It requires special hand gloves to remove DO fuse. He deposes police did not call him for investigation.

14. Ram Bansode (Pw-5) deposes his superior and a lineman went for inspection of HP Petrol Pump at Khurawale. They found transformer was opened.

15. Ld. App for the State submitted complaint regarding theft was registered by the Mahesh Gaware (Pw-3). He proved complaint.

16. Ld. Advocate for the accused submitted discrepancies in evidence of informant not proved the complaint.

17. It is settled that, first information report set the criminal law into motion. It initiates the investigation. In this regard informant is the employee of State Electricity company. He entrusted with electricity supply at Sudhabagd-Pali. Besides that, he is entrusted with regular supply of electricity. Informant deposed he went there along with Bhavesh Patil and after inspection they found transformer was opened and copper wire was removed. Accordingly he proved the complaint (Ex.32) and Bhavesh Patil (Pw-4) corroborates his version. It appears at that moment he was accompanied by the lineman Bhavesh Patil(Pw-4). Thus, he proved the complaint (Ex.32) filed by the complainant 08.01.2025.

18. Besides that, it appears upon very next day of registration of offence spot panchnama was prepared. In this regard it appears Sandip Jadhav (Pw-2) proved the spot panchnama (Ex.25). During

his cross-examination it was suggested that panchnama was not prepared in his presence which he denied. Investigating officer Gajanan Mhatre (Pw-7) in his evidence proved the spot panchnama.

19. It is the case of the prosecution copper coil inside transformer was stolen by the accused and sold it to abscond accused. During the investigation accused nos.1 and 2 gave information and upon such information discovered copper coil from accused. Thus, entire prosecution entirely relied upon the statement under Section 27 of Indian Evidence Act.

20. Ld APP for the State submitted prosecution proved statement of accused under Section 27 of Indian Evidence Act. Spot panchnama (exh.25) and memorandum panchnama (exh.39) from Investigating Officer. The prosecution has connected all essential chain of evidence and proved seizure of stolen copper wire.

21. Ld advocate for the accused argued prosecution failed to prove statement under Section 27 of Indian Evidence Act, beyond reasonable doubt. Prosecution failed to prove seizure of copper wire. Thus, he requested to acquit accused persons.

22. Present offence is in respect of theft and it has been defined in Section 378 of Indian Penal Code as:-

*“whoever intended to take movable property out of possession of any person without his consent”*

can be termed as theft. However, it appears incident of theft happened between the period of 08.01.2019 to 09.01.2019.

Informant being the Deputy Engineer was in possession of transformer kept behind the HP Petrol Pump at Khurawale. He was assigned to take care of transformer and its maintenance.

23. The prosecution has to prove copper wire being movable properties were in possession of informant. Furthermore, prosecution has to prove copper coil taken away without his consent of informant. In order to prove prosecution case they relied on evidence of Mahesh Gaware (Pw-3). Prosecution relied on these witnesses Sunil Mhatre (Pw-6) and the Investigating Officer Subhash Patil (Pw-8) being witnesses to the statement given by the accused under Section 27 of Indian Evidence Act.

24. It is the case of prosecution in consequence with statements given by accused no.2 Abdul Kadir Mohammad Safir Khan in presence of panch witnesses stolen article copper wire discovered. During investigation Local Crime Branch, Raigad received information and they investigated present case and interrogated accused nos.1 and 2. They received credible information and upon that information they arrested accused persons. The prosecution took extensive efforts to connect act of theft with present accused persons using discovery of copper wire. In this regard, prosecution relied on statement of accused under Section 27 of Indian Evidence Act.

25. It can be observed, present offence is in respect of theft of a copper wire from the transformer which was fastened to the electric pole behind HP Petrol Pump situated at Khurawale. It is the

Manager of the Hp Petrol Pump who complained at M.S.E.B. Office regarding power off. Being the Deputy Manager informant and lineman, Bhavesh Patil went there they found transformer was opened and found somebody took away copper wire inside transformer. Being the Deputy Engineer of Pali Division, informant was the custodian and responsible for the transformer and its maintenance. Thus, informant registered offence.

26. Statement recorded under Section 27 of Indian Evidence Act, necessary to prove from independent witnesses because these statements are recorded during the period of custody and it appears if seizure of theft articles were made in accordance with the statement given by accused if those statements are proved mere absence of independent witnesses would not create doubt. However, it appears from oral evidence of panch witness Sushil Mhatre (Pw-6)

27. Considering entire evidence on record it appears Sadharam Mahabale (Pw-1) panch witnesses of spot panchnama not supported the prosecution case. However, Sandip Jadhav (Pw-2) proved spot panchnama. Thus, it indicates that, spot of incident is situated behind the HP Petrol Pump, at Khurawale on Pali-Khopoli road. After considering evidence of informant it appears he was responsible for maintenance of transformer situated behind the HP Petrol Pump. Thus, being the Deputy Engineer of Pali Division and spot of incident inside the jurisdiction of Pali Division informant appears to be custodian of transformer. Thus, informant was the person in possession of such transformer. During his cross-

examination it was suggested to the informant transformers kept in private company they are responsible for it. However, it appears transformer was kept behind the HP Petrol Pump. It is not the case that transformer was private. It was the property of Maharashtra State Electricity Transmission Company. Thus, answers in cross examination not able to shake the credibility of informant and found he was the person in possession of transformer and its copper wire.

28. It is the case of the prosecution they proved statement under Section 27 from the panch witness. In this regard Sushil Mhatre (Pw-6) deposes Subhash Patil called him at LCB, Alibag. He shown him a person and told him he committed theft of transformer coil. He asked to seize accessories used for theft and also told him accused will take them at Khalapur. Accused took them at Jambhrung Phata Tal. Khalapur near his house. Behind his house there was a auto rickshaw and shown screwdriver and pan (पाने). Those accessories were seized and panchnama was prepared.

29. He deposes that on 22.03.2019 he was called by Patil police at LCB office. He shown him a person. That person told him he resides at Gawandi and muddemal is at Gawandi. His house was 300 meters away from New Gautam Nagar, Gawandi. He stationed vehicles and drew two bags from behind the bed. Those bags were having 35 to 40 kg. copper wire.

30. Besides that, prosecution relied on evidence of investigating officer for proving the statement under section 27 of Indian evidence Act. After considering chief examination and cross-

examination of witnesses it appears Sushil Mhatre (Pw-6) is the police patil and assist police by signing as a panch witness. He able to tell name of one accused Abdulla Shaikh. It appears accused gave accessories from the auto rickshaw which was kept behind the house in a jangal. However, accessories and tools used to unfastened transformer coil are the facts-in-issue. Thus, information regarding such tools and discovery of tools in accordance with disclosure of information is relevant. It will be too early to rely on such evidence, to find out the truth from entire evidence needs to scrutinize from every aspect of evidence. In this regard after considering chief-examination of Sushil Mhatre (Pw-6) it appears he was called by Patil police, they told them person committed theft and that person will took them at Khalapur. Considering minutely evidence it appears it was not the accused who gave the information regarding fact before the panch to the investigating officer.

31. Tools used to commit theft can be a fact-in-issue. Certainly articles of theft and any tools, vehicles used in crime can be a fact relating with the real incident. Thus, tools used to remove transformer can be a fact. After considering evidence of Sushil Mathare It appears information regarding tools used in the crime were given by The police themselves. Therefore even though Statement of accused under section 27 of Indian Evidence Act recorded at exhibit 39. It is crystal clear that information given by the accused in police custody is not admissible however, merely to extent of information regarding discovery of fact is admissible.

However, it appears police were given the panch information regarding tools and it was not the accused who gave police such information before the panch witness.

32. Besides that On 22<sup>nd</sup> march 2019 Mhatre (Pw-6) not able to depose name of accused who disclosed information. He failed to depose how the articles of theft were came in possession of a person who gave information regarding copper wire. It can be observed from evidence of Subhash Patil (Pw-8) he deposes accused Kadir gave statement u/s.27 they went through Alibag-Pen, Jambrung Phata and he shown red color tempo and submitted that vehicle was used in crime for transportation. He identified tools used in the crime. The investigating officer also failed to depose what exactly accused told them in evidence. Thus, entire statement u/S.27 is not admissible in evidence. No doubt tools and copper wire were recovered. It can be observed chain regarding evidence shattered and not completed. Thus prosecution failed to prove statement of accused, memorandum panchnama from independent witnesses. The prosecution entirely relied on evidence of Investigating Officer. On the Contrary, it appears the investigating officer seized 5 tools. It appears transformer was fastened on a electric pole behind Petrol Pump. It is not easily possible to open the transformer and took away copper wire easily. It requires special tools including special hand gloves.

33. In this regard, prosecution case entirely depends upon evidence of Panch witness and Investigating Officer it is alleged

before whom present accused person gave statement under Section 27 of Indian Evidence Act and upon such information Investigating Officer discovered facts related with present case. It can be observed statement of accused in respect of fact-in-issue of case is a type of confession. Utmost important aspect is confession during police custody is not admissible. However, confirmation of discovery of fact in accordance with statement given by accused is relevant. But such relevancy of evidence is subject to proof of evidence.

34. From complete testimony of witnesses it can be observed informant lodged report against unknown person. However, upon some information investigating officer arrested accused.

35. The investigating officer turned into the court and deposes about recording of statement of accused, recovery, seizure and discovery of fact, confirmation of fact according to statement of accused. According to learned advocate for the accused statements were recorded in the custody and recorded by using force thus, not admissible in evidence. Normally, statements made in the police custody is not taken into consideration in the evidence. But Section 27 of the Indian Evidence Act is exception to it. Accordingly, though the statement of accused in police custody is admissible upto the extent of discovery of fact. As the discovery of fact is relevant under the Indian Evidence Act. The discovery of fact distinctly relates with accused with the crime. However, it has no where came in evidence accused gave information regarding tools.

36. It is pertinent to note that, statement and memorandum

needs to be proved by witness i.e. panch. It is the prior condition precedent for proving the memorandum. In consequence of statement made by the accused discovery of fact should be made in presence of the panch witness.

37. No doubt investigating officer can prove statement under section 27 of Indian Evidence Act. However witnesses to statement of accused, memorandam panch, seizure panch denied anything happened before them. It raises doubt over investigation. It can be observed from testimony of informant. Prosecution failed to prove copper wire/ coil is same which was stolen from transformer which was fastened behind HP Petrol Pump situated at Khurawale. Besides that, prosecution failed to connect chain of evidence of fact in issue with the accused no.1 and 2.

38. Prosecution failed to establish chain of statement given by accused and discovery of distinct fact, and it was the same which was stolen. In absence of it therefore, the prosecution failed to prove that, seized muddemal articles were recovered due to information received from the accused, and moreover, prosecution failed to prove that, discovery of fact was made due to information received from the accused in presence of the panch witness. Therefore, it raises doubt over the prosecution case. Cardinal principal of law that, there should not be a single doubt in mind. Prosecution needs to prove its case beyond reasonable doubt. However, prosecution evidence raises doubts.

39. It appears present trial and judgment is regarding

accused nos. 1 and 2. Trial for absconded accused nos. 3 separated under Section 317(2) of Code of Criminal Procedure. Thus, trial for the accused will continue and it is necessary to preserve seized muddemal i.e. copper wire till the conclusion of trial of accused no.3. Therefore, answer point no.1 in negative.

**Point no. 2 :**

40. Already answered point no.1 in negative. Thus, proceed to pass following order.

**:-O R D E R:-**

- 1 Accused No.1 Ahmed Mohammad Umar Shaikh and accused no.2 Abdul Kadir Mohammad Sakir Khan are acquitted of the offence punishable under sections 379 r/w 34 of Indian Penal Code vide section 248(1) of Code of Criminal Procedure.
- 2 Their bail bonds of accused stand canceled.
- 3 Trial for absconded accused no.3 will remain continue and directed to preserve muddemal for the trial of absconded accused no.3.
- 4 Accused are directed to furnish surety bond of Rs.10,000/- for compliance under section 437-A of the Code of Criminal Procedure.

**(Dictated and pronounced in open Court)**

**Pali**

**(R.A.Shivratri)**

**Date 14.10.2025**

**Judicial Magistrate, First Class Pali**

Judgment

Reg.Criminal Case No.1/2020

State Vs. Ahmad Mohammad Umar Shaikh ors 1

CERTIFICATE

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer Ankush S. Waghmare
- (b) Court Name CJJD & JMFC, Pali
- (c) Judgment signed by P.O.on 14.10.2025
- (d) Judgment uploaded on 17.10.2025