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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.336 OF 2010

Sandeep Anant Pawar,	]	
age: 24 years,	]	
serviceman by profession	]	
r/o room NO.17, Saidham Nagar,	]	
Fitwada Road, Elphinston	]	
Mumbai	]	
	]	 <u>Appellant</u>
Presently lodged at Arthur Road	]	Orig. accused No.1.
Central Prison	]	

-VS-

The State of Maharashtra	]	
At the instance of Malbar Hill Police	]	
Station	]	... Respondent.

CRIMINAL APPEAL NO.385 OF 2010

Vinod @ Shambhu @ Angholys	]	
Sakharam Shivthuvarkar	]	
age 38 years,	]	
r/o Kamgar Nagar No.2, Room No.111,	]	... <u>Appellant</u>
Zopadpatti, Parel,	]	Ori. accused No.3
New Prabhadevi,	]	
Mumbai 400 025.	]	

V/s.

The State of Maharashtra	]	 Respondent
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CRIMINAL APPEAL NO.429 OF 2010

Sunil Tukaram Narkar,	]	
age: 35 years,	]	
serviceman by profession	]	
r/o Turner Cenatorium colony	]	
room No.FSM-48, Near Ram mandir	]	... <u>Appellant</u>
Balaji Co-op Hsg. Society	]	Orig. accused No.2
Bhoiwada, Mumbai 400 012.	]	
	]	
Presently lodged at Nasik Road	]	
Central Prison	]	

-VS-

The State of Maharashtra	]	... Respondent
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Mr. Swapnil Ovalekar, appointed advocated for the Appellant in Criminal Appeal No.385 of 2010

Ms. Naima Shaikh i/by Khan Abdul Wahab, for the appellants in Criminal Appeal Nos.336 of 2010 and 429 of 2010.

Mrs. Sangeeta Shinde, A.P.P., for the Respondent-State in all the appeals.

**CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 10TH MARCH, 2015.

ORAL COMMON JUDGMENT: (Per: Dr. Shalini Phansalkar-Joshi, J.)

1. All these three appeals are arising out of the judgment dated

3.4.2010, in Sessions Case No.79 of 2009, delivered by 4th Ad-Hoc Additional Sessions Judge, City Civil and Sessions Court, Sewree, Bombay. By the said judgment the appellants are convicted for the offences punishable under Sections 302 read with Section 397 Indian penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two months.

2. As all the three appeals are arising out of one and the same judgment, they are being decided by this common judgment.

3. The facts as are necessary for the decision of these appeals can be stated thus :-

On 18.10.2008, P.W.17 API Shankar Shirsat was on PSO duty at night at Malbar Hill Police Station alongwith P.W.18 PI Ashok Kinge. At about 10.30 p.m., they received information that at Maker Apartment, Walkeshwar, on 6th floor, in Flat No.6B, one Induben was residing and she is not opening the door of the flat and the Television and light was on, in the flat. Hence suspecting some foul play, both P.W.17 API Shirsat and P.W.18 PI Kinge, went to the spot alongwith the staff.

There the neighbours were assembled in the porch. P.W.1 Jayaben Kapadia the sister-in-law of deceased Induben and P.W.2 Prithwiraj Jetmal Merchant, an adopted son of the deceased Induben were also present. P.W.17 API Shirsat opened the lock of the flat with duplicate key provided by P.W.2 Prithwiraj. All of them went inside the flat and found Induben lying in dead condition on the sofa bed with one handkerchief tied around her neck. The blood was oozing from her nose and there were blood stains on her blouse and saree. Blood stains were also spread on the floor and the wall. P.W.18 PI Kinge, then made inquest panchnama and sent the dead body of Induben for postmortem. He also recorded the complaint of P.W.1 Jayaben vide Exh.34. On her complaint C.R. No.89 of 2008 came to be registered at Malbar Hill Police Station. Investigation of the said crime was continued with P.W. 17 API Shirsat and P.W.18 PI Kinge.

4. On the very night P.W.17 API Shirsat, drew the inquest and scene of offence panchnama vide Exh.68 in the presence of P.W.14 panch Virendra Shah. From the spot he seized various articles like handkerchief, LIC receipt, pen etc. The photographs of the scene of offence were also taken. The finger print expert was called and the relevant finger prints were collected. The dead body was sent to J.J.

Hospital for postmortem examination. P.W.5 Dr. Ganesh Rathod conducted the postmortem examination and found the death to be unnatural due to asphyxia as a result of compression of the neck. He issued postmortem report Exh.48 accordingly. After the postmortem examination, the blood stained clothes of deceased Induben were seized under panchnama. During the course of investigation, statements of neighbors and other witnesses came to be recorded.

5. On 19.10.2008, accused No.1 Sandeep Pawar and accused No.2 Sunil Narkar came to be arrested under arrest panchnamas Exh.63 and 65. During the police custody, accused No.2 Sunil gave disclosure statement that the gold ornaments i.e. two bangles and a pair of ear-ring which he has snatched from the person of deceased Induben, were sold by him in the jeweller shop. He showed his readiness to show the said shop and produce the same. P.W.17 API Shirsat made memorandum panchnama Exh.50 of the disclosure of the statement of accused No.2 Sunil in the presence of P.W.7 panch, Gangaram Shinde. Thereafter accused No.2 Sunil guided the police and panchas to the shop of Suvarnadeep Jewellers. In the said shop, P.W.8 Gaurishankar Sohanlal Chaplot was present. He admitted that he has purchased the said gold articles from accused No.2 Sunil Narkar when the accused No.2 Sunil had

come to his shop alongwith accused No.3 Vinod. It was further transpired that at that time accused No.2 Sunil was introduced by accused No.3 Vinod with false name as Prakash Chavan. P.W.8 Gaurishankar, however, informed that those ornaments were stored in the shop by his son Sunil who was out of station and he will produce those ornaments on arrival of his son. P.W.8 Gaurishankar, however, produced receipt book containing Receipt Nos 421 and 422, vide Exh. Nos 55 and 56 under which he has purchased the said gold ornaments. His statement came to be recorded accordingly. On the next day 23-10-2008, he produced those gold ornaments in the police station which came to be seized under panchnama vide Exh.53 in presence of panch P.W.7 Gangaram. The supplementary statement of P.W.8 Gaurishankar was recorded accordingly.

6. On 25.10.2010, at the instance of accused No.2 Sunil, his clothes and white stones/diamonds from the ear-rings came to be seized under panchnama Exh.41 in presence of panch P.W.4 Nagendra Yadav. On the same date, at the instance of accused No.1 Sandeep, his clothes with blood stains thereon came to be seized under panchnama vide Exh.38, in presence of panch P.W.3 Umesh. The blood stained clothes of accused No.3 Vinod came to be seized under panchnama on 30.12.2008

in presence of panch P.W.16 Santosh Chalke. All the seized articles and the clothes of the accused were sent to Chemical Analyzer. The C.A. reports are produced at Exh.77 to 84. Meanwhile during the course of investigation, test identification parade of the accused also came to be held by P.W.11 Special Executive Magistrate Sharad Vichare on 21.11.2008. The memorandum of test identification parade is produced at Exh.60. Further, on completion of investigation, chargesheet came to be filed against all the three accused, for the offences punishable under Sections 302, read with Section 397 and section 120B and 201 of the Indian Penal Code.

7. On the case being committed to the Sessions Court, the trial Court framed charge against all the three accused vide Exh.6. The accused abjured the guilt and claimed trial, raising the defence of total denial and false implication.

8. In support of its case, the prosecution examined in all 18 witnesses and relied on the three incriminating circumstances viz i) the deceased Induben last seen alive in the company of the accused, ii) the recovery of stolen gold ornaments at the instance of accused and iii) recovery of their blood stained clothes.

9. On appreciation of the evidence, the trial Court held the guilt of the accused to be proved beyond reasonable doubt for the offence punishable under Section 302 read with 397 of the IPC and convicted and sentenced them as aforesaid. The trial Court, however, acquitted them of the offences under Section 120B and 201 of IPC.

10. This judgment of the trial Court is the subject matter of these three appeals. We have heard learned counsel Ms. Naima Shaikh for the appellants in Criminal Appeal Nos. 336 of 2010 and 429 of 2010, learned counsel Mr. Swapnil Ovalekar for the appellant in Criminal Appeal No.385 of 2010. Learned Additional Public Prosecutor Mrs. S.D.Shinde, for the State, has also advanced her submissions in support of the judgment.

11. In our considered opinion, in order to effectively deal with rival submissions advanced by them, it would be useful to refer to the evidence on record.

12. This case is based entirely on the circumstantial evidence. The law is well settled that to base the conviction on circumstantial

evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than the one of the guilt of the accused. It is also expected that the circumstances cannot be explained on any other hypothesis. It is also time honoured principle that the suspicion howsoever grave cannot be a substitute for a proof and Courts shall take utmost precaution in finding the accused guilty only on the basis of the circumstantial evidence. Bearing in mind this legal position, we proceed to appreciate the evidence on record.

13. In the instant case as aforesaid, the prosecution has relied upon the three incriminating circumstances.

14. The first and foremost is the *deceased last seen in the company of the accused*. To prove this circumstance the prosecution has relied upon the evidence of three eye witnesses viz P.W.9 Chatradari Yadav, the watchman and P.W.10 Govindkumar Jha- the lift-man and P.W.15 Santkumar Mandal Supervisor of the Maker Apartment in which deceased Induben was residing in flat No.6B.

15. As per evidence of P.W.9 watchman Yadav, on the date of incident i.e. on 16.10.2008, he was on night duty from 8.00 p.m. onwards. At about 8.45 p.m., three boys come on the gate. He made inquiries with them and they told him that they want to go to 6th floor to meet Induben. They further informed him, on enquiry, that they had come from the Insurance Company's Office. He told them to talk with Induben on the intercom. Accordingly he called Induben on intercom and told her that those persons want to meet her. One of those persons then talked on intercom with Induben. Thereafter Induben told P.W.9 Yadav to allow those persons to visit her. As per evidence of P.W.9 Yadav, all the three boys then went to 6th floor in the lift with lift-man P.W.10 Govindkumar Jha and he continued with his duty at gate. Then he relieved P.W.10 Govindkumar Jha from the duty of lift-man for dinner and he himself proceeded to do the duty of lift-man. After half an hour, according to his evidence, he brought those three persons in the lift from the 6th floor to ground floor. While leaving building, one of those three persons told him that he would come again on the next day or the day after and he should be allowed to meet again Induben. It is the evidence of P.W.9 watchman Yadav that thereafter he continued his duties on the next two days. However, on 18.10.2008 at 8.00 p.m., he came to know that Induben was not opening the door from inside and hence the police were informed.

Then the police came and they found Induben lying dead in the flat. P.W.9 watchman Yadav, has identified those three persons as accused Nos 1 to 3, in the test identification parade conducted at Arthur Road Jail and also in the evidence before the Court.

16. Similar is the evidence of P.W.10, lift-man Govindkumar Jha. According to him on 16.10.2008, while he was on night duty, at about 8.45 p.m., three persons came at the lift and told him that they want to go to flat No.6B of deceased Induben. He took them in the lift to 6th floor. When the lift reached that floor, he saw that those three persons went to flat of Induben. One of the persons pressed the door bail and then Induben opened the door of the flat. He even asked her whether everything was fine. Then Induben told him that he can go. Accordingly, he returned to ground floor. Thereafter at about 9.30 p.m. he went to take dinner handing over the charge of lift to P.W.9 watchman Yadav. After two days, he came to know about the death of Induben. He has also identified these three accused in test identification parade and also in the evidence before the Court.

17. Lastly, there is evidence of P.W.15 Supervisor of the Maker Apartment, Shri.Santkumar Mandal. According to him, one Bachan was

working with Induben as her servant and rendered services daily for an hour or two in the morning and in the evening. He has deposed that he had seen Induben on 15.10.2008 in the morning when she was going to temple. Thereafter on 16.10.2008, he saw these three accused going to the flat of Induben at around 8.30 p.m. and thereafter leaving within half an hour. Ultimately on 18.10.2008, when he resumed his duties at 8.00 p.m., driver Suresh told him that foul smell was coming through the flat No.6B, then the driver gave information to the police, police came there and the dead body of Induben was found in the flat. This witness has also identified all the three accused in the test identification parade conducted at Arthar Road Jail on 21.11.2008 and also in the Court as the same three persons who had come on that night to the flat of deceased Induben.

18. The prosecution has then led evidence of P.W. 1 Jayaben and P.W.2 Prithwiraj. P.W.1 Jayaben is sister-in-law of deceased Induben. According to her evidence, after the death of her husband deceased Induben was residing alone in the flat No.6B at Maker Apartment. P.W.2 Prithwiraj, who is the son of her husband's sister and thus the nephew of Induben was looking after the deceased Induben and was assisting her in the work of income tax. The deceased Induben has no issue and she has entered the name of P.W.2 Prithwiraj alongwith her in her flat No.6B.

19. It is the evidence of P.W.1 Jayaben and P.W.2 Prithwiraj that Induben was dealing with the work of LIC. There used to be phone calls every day between them. P.W.1 Jayaben and the deceased Induben, after short intervals, used to meet by visiting each other's house. According to her, on 16.10.2008, at about 8.30 p.m. to 9.00 p.m. she had telephonic talk with Induben. Induben also talked with P.W.2 Prithwiraj at that time. Induben told them that accused No.1 Sandeep had come to her house alongwith two other persons and was saying to her that he wants to talk with her about LIC Policy. As per evidence of P.W.1 Jayaben and P.W.2 Prithwiraj, as accused No.1 Sandeep Pawar was previously working with P.W.2 Prithwiraj in his office, P.W.2 Prithwiraj told Induben that she can talk with him.

20. It is their further evidence that when accused No.1 Sandeep was working with P.W.2 Prithwiraj, he used to visit the house of Induben relating to her work of LIC. Even after accused No.1 Sandeep had left the job of P.W.2 Prithwiraj about 2 years ago, he used to come to the house of deceased Induben and meet her frequently. He was helping Induben in handling the correspondence of LIC. He even used to accompany Induben when she was going outside. As per evidence of P.W.1 Jayaben

and P.W.2 Prithwiraj, on the date of incident Induben had called them and told about accused No.1 Sandeep coming to her house alongwith other two persons. It is their evidence that thereafter though they tried to contact Induben on 17.10.2008 and 18.10.2008, they did not get any response on phone and ultimately they found her dead body in the flat when alongwith police they entered there and noticed that she was put to death by strangulation with handkerchief.

21. In view of the evidence of P.W.9 watchman Yadav, P.W.10 Govindkumar Jha, the lift-man, P.W.15 Santkumar Mandal, the Supervisor, P.W.1 Jayaben and P.W.2 Prithwiraj, the submission of learned APP is that Induben was last seen alive on 16.10.2008 at about 8.30 p.m. when these three persons, who are identified as accused Nos 1 to 3, visited her house and subsequently after about half an hour left her house. According to learned APP, as thereafter Induben was not seen alive by any of the witnesses, this is a strong circumstance to prove the prosecution case that the deceased was last seen alive in the company of the accused on the night of 16.10.2008 and thereafter only her dead body was found in her flat on 18.10.2008.

22. This circumstance, in our considered opinion, would have

definitely proved to be clinching, but for the fact that the death of Induben, as per evidence of P.W.5 Dr. Ganesh Rathod, who conducted postmortem on her dead body, is found to have taken place on 17.10.2008 at around 1.00p.m. or thereafter. At this stage, it would be, therefore, necessary to refer to the evidence of P.W.5 Dr. Rathod. According to his evidence, he has conducted postmortem on the dead body of Induben at JJ Postmortem Centre, JJ Hospital, on 19.10.2008 in between 1.00 p.m. to 2.00 p.m. On his examination, he found the legature mark present around neck at the level of thyroid cartilage 3 x 4 cm in width. Further he noticed multiple abrasions present on the both sides of thyroid cartilage. Legature mark was horizontal at the level of thyroid cartilage gland. On cut section of legature mark, haemotoma was present at various levels. In his opinion, the cause of death was, asphyxia due to the compression of neck. He further opined that the legature mark around the neck could be caused due to handkerchief. He has issued postmortem report vide Exh.48 to that effect.

23. His cross-examination is material as regards the approximate time of death. According to him, rigor mortise commences in two to three hours after the death. It takes about 12 hours to develop it from head to foot. It remains for another 12 hours and takes 12 hours to pass off. In the

present case, at the time of postmortem, he noticed that rigor mortise had passed off. Therefore, in his opinion the approximate time of death was about 36 to 40 hours before the time of performing postmortem. As the postmortem was commenced at 1.00 p.m., he further opines that the approximate time of Indeben's death might be on 17th October, 2008 around 1.00 p.m. or thereafter.

24. In view of his categorical opinion which is not challenged by the prosecution, it has to be held that Induben died on 17th October, 2008 at around 1.00 p.m. or thereafter and not on the night of 16th October, 2008.

25. Now coming to the circumstance of *last seen together*, it was essential for the prosecution to prove that from the night of 16.10.2008, after the accused had left her flat, no one else had come to her flat till her death which might have taken place on 17.10.2008 at around 1.00 p.m. or thereafter. The best person to depose about the same was her servant Bachan. It is brought on record through the evidence of P.W.1 Jayaben that Deepak Shroff, the neighbour of Induben had informed her on phone that he had watched twice the servant of Induben, namely, Bachan while coming in and going out of the flat of Induben. He has also informed her

about noise of T.V. coming from the flat and that the light in the flat was on. There is also evidence of P.W.10 the lift-man Govindkumar Jha that Bachan was the permanent servant of Induben and on 16.10.2010, Bachan had been to the house of Induben for work and again on 17.10.2008 he did duty in Induben's flat. He has admitted in cross examination that on 18.10.2008 Bachan did duty with Induben. In his further cross examination, it is brought on record that Bachan was also taken into custody by the police and interrogation was made with him.

26. P.W.14 Virendra Shah, who is neighbour of deceased Induben, has also deposed that on 18.10.2008, when he was returning to his home at about 7.00 p.m, he found the servant of Induben by name Bachan, ringing the the bell of her flat and Bachan told him that he is giving bell from half an hour, but there is no response from inside the flat. It is not his evidence that Bachan had told him that earlier also for two days, he was coming for duty to the flat of Induben, but there was no response. He is only speaking of no response on that particular night i.e. on 18.10.2008 and not of earlier two days.

27. P.W.15 watchman Santkumar has also admitted in his cross-examination that on 17.10.2008, he had seen Bachan while going to the

flat of Induben at night. Thus as per evidence of all these witnesses, Bachan was very much coming to duty in the flat of Induben not only on 16.10.2008, but even on 17.10.2008 and that too at night. According to evidence of some of the witnesses, he has also attended duty on 18th October, 2010. If it was so, then it cannot be said that the deceased Induben was *last seen alive in the company of the accused*. The evidence on record points finger towards Bachan who was admittedly coming to her house and rendering services to her for two hours in the morning and in the evening. As deposed by P.W.15 Santkumar, Bachan had come to her house on 17th October, at night.

28. Another piece of evidence which could have been crucial to establish that after night of 16.10.2008, when accused had visited Induben, her flat was not found opened by anybody, was the lying of newspapers outside her flat. If the newspaper of 17th and 18th were found lying outside her flat, they would have given necessary clue to establish link about the time of her death and of her not seen alive after the night of 16th. However, neither P.W.1 Jayaben nor P.W.2 Prithwiraj, state that they found newspapers of these two days lying outside the flat, when they came there on 18th at night. P.W.1 Jayaben has conversely admitted in cross examination that she had not seen newspaper lying outside the flat.

She has even not made any reference about newspaper in her complaint. Further, she has admitted that she does not remember whether she had referred about one or two newspapers in the complaint. If Induben was put to death on the night of 16.10.2008 by the accused, then on the night of 18.10.2008, there should have been two newspapers lying outside her flat, but no such evidence is brought on record by the prosecution. Even P.W.2 Prithwiraj has also admitted that he had not perused the newspaper to know whether there were two newspapers. He had also not seen any milk bags lying outside the flat. The Investigation Officer had also not carried out any investigation in this respect. Even though the Investigating Officer has deposed that finger prints from the spot were collected, the report of finger print expert is not submitted on record.

29. There is also one more aspect which is relevant in the case and it pertains to duplicate key of the flat being with P.W.2 Prithwiraj. It is brought on record through the evidence of P.W.17 API Shirsat and P.W. 18 PI Kinge, that on 18.10.2008, the flat of Induben was opened with duplicate key given by P.W.2 Prithwiraj. It indirectly indicates that P.W.2 Prithwiraj had access to the said flat and it was not a case that after visit of accused on 16th, no one else could have come to the said flat. Therefore, if this evidence is taken into consideration in its proper

perspective, especially having regard to the timing of death, as given by P.W.5 Dr. Ganesh Rathod, then it cannot be said unequivocally that the deceased was *last seen in the company of the accused* and thereafter there was no chance of her being alive. If her death had taken place on 17th October, 2008 at around 1.00 p.m. or thereafter, then it confirms that even after the accused had left her flat on 16th October, 2008, at about 9.15 p.m. she was very much alive in between and there is possibility, as it is brought out in the cross examination of prosecution witnesses that, her servant Bachan had visited her and even possibility of P.W.2 Prithwiraj, who was having duplicate key of the flat, had visited her.

30. In such circumstances, the circumstance of *last seen together* becomes totally irrelevant. As per law laid down by the Apex Court in case of **Ramreddy Rajeshkhanna Reddy and anr -vs- State of Andhra Pradesh AIR 2006 SUPREME COURT 1656**, the *last seen* theory comes into play where time gap between the point of time when the accused and the deceased were seen last alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

31. As held in the **State of U.P. -vs- Satish, (2005) 3 SCC 114**, it

would be difficult in such cases to positively establish that the deceased was last seen with the accused when there is long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence, therefore, to conclude that the accused and the deceased were last seen together, it would be hazardous to come to conclusion of guilt in such cases.

32. In the instant case the gap between the point of time when the deceased was *last seen in the company of the accused* and when the deceased is found to be dead, is quite a long one. Accused were last seen in her company on the night of 16th and her dead body was found on the night of 18th. Thus, there was time gap of two days. Hence the possibility, as is spelt out from the cross examination of prosecution witnesses, always exists of some other person coming in between. In such fact situation, this circumstance is of no use for prosecution to establish the guilt of the accused.

33. The second circumstance on which the prosecution has placed reliance is that *of recovery of certain gold ornaments* at the instance of accused No.2 Sunil Narkar. The prosecution has in this respect relied upon evidence of P.W.3 panch Umesh Jadhav, P.W.17

API Shirsat, P.W.18 PI Kinge and P.W.8 jeweller Gaurishankar, coupled with the evidence of P.W.7 Panch Gangaram Shinde. As per evidence of P.W.17 API Shirsat and P.W.18 PI Kinage, during the police custody, accused No.2 Sunil Narkar gave disclosure statement that he is ready to point out the place where he sold the stolen ornaments. The Memorandum of panchnama Exh.50 was prepared accordingly and thereafter he guided the police and the panch to the shop of Suvarnadeep Jewellers, where P.W.8 Gaurishankar was present. He produced receipts Exh.,55 and 56 under which he has purchased gold ornaments ie. two bangles and a pair of ear ring from accused No.2 Sunil who had come to his shop alongwith accused No.3 Vinod. Those receipts were seized under panchnama Exh.51.

34. As per evidence of P.W.8, Gaurishankar, he told police that the ornaments were kept by his son and he will produce the same after his son returns from the outstation. Thereafter on the next day on 23.10.2008, he produced those ornaments which came to be seized under panchnama in presence of P.W.7 Gangaram. As per evidence of P.W.8 Gaurishankar, he had purchased those gold ornaments from accused No.2 Sunil, when accused No.2 Sunil had come to his shop alongwith accused No.3 Vinod whom he was knowing, on 17.10.2008. On

the same day at night, accused No.3 Vinod came to him and requested him to return stones /diamonds that were fitted in the ear-tops. Accordingly he handed over stones to accused No.2 Sunil. There were total 14 stone pieces. It is further evidence that accused No.3 Vinod has introduced accused No.2 Sunil as Prakash Chavan. He has identified both of them in the Court. It is his evidence that after police came to the shop, he produced before them the receipts Exh.55 and 56. He even produced the original receipt Exh.55 which was to be handed over to accused No.3 Vinod by him. However, accused No.3 Vinod did not take it as he was in hurry to leave the shop. As per his evidence, on that day in the afternoon, he produced those two bangles and two ear tops by going to police station

35. P.W.8 Gaurishankar, however, has admitted in his cross examination that the ornaments which he has purchased were of 22 carot whereas the bangles produced in the court are of 23 carot. It is also pertinent to note that immediately when police came to his shop alongwith accused he was unable to produce those ornaments. Hence suggestion put to him that he has melted those ornaments and prepared new ornaments at the instance of police cannot be lost sight of. Further it is pertinent to note that the receipts are standing in the name of Prakash

Chavan. Except his evidence, there is nothing to show that accused No.3 Vinod has introduced accused No.2 Sunil as Prakash Chavan. About the case of stones on ear-tops also, sufficient omissions and contradictions are brought on record to prove that it is an after thought evidence. These stones are not identified by P.W.1 Jayaben. As a matter of fact P.W.8 Gaurishankar though denied the portion marked "A" in his statement recorded by police, he is confronted with the said contents and those contents are proved through the evidence of the Investigating Officer. According to those contents marked Exh.88 and 89, he has melted those ornaments. In such situation, recovery of those ornaments, which have lost their identity, cannot connect the accused or prove their complicity in the offence.

36. The third circumstance relied upon by the prosecution is about the *recovery of blood stained clothes* of the accused No.3 Vinod. In this respect the prosecution has relied upon the evidence of panch P.W.3 Umesh Jadhav. He stated that the blood stained clothes of accused No.1 Sandeep were seized under panchnama Exh.38. However, the CA report of the said clothes does not prove the presence of any blood stains thereon. The prosecution has thus, relied on the evidence of P.W.16 panch Santosh Chalke and P.W.18 PI Kinge to prove recovery of blood

stained clothes of accused No.3 Vinod. In this respect also the CA report Exh.80, goes to show that the findings of blood group thereon were inconclusive. Moreover, the clothes are seized on 30.12.2008 i.e. after long period of two months. In such situation, the recovery of alleged blood stained clothes that too, in the absence of evidence on record that they were sealed with wax, also becomes irrelevant.

37. To sum up, therefore, it has to be held that the prosecution has failed to establish all the three incriminating circumstances on which it relied, by bringing cogent, reliable and convincing evidence on record. None of the said circumstance, either taken individually or cumulatively, establishes the guilt of the accused. They are not sufficient to form the chain so complete as to leave no scope but to draw an inference about the guilt of the accused and accused alone. The net result, therefore, is that the accused are required to be acquitted of by extending them the benefit of reasonable doubt. Consequently, Criminal Appeal Nos 336 of 2010, 385 of 2010 and 429 of 2010, are allowed and the conviction and sentence of the appellants is hereby quashed and set aside and the appellants are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants be refunded to them. Since the appellants are in jail, they be released forthwith, if not required in any

other case.

38. Fees payable to the learned counsel appointed for the appellant in Criminal Appeal No.385 of 2010 quantified at Rs.5,000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]