

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1242 OF 2011

Kamal Chakrapani Sharma,
Age 42 years, Occ. Shopkeeper,
Residing at Kankiya Bevhli Park,
Rashmi Tanmaya, Irdanroz,
Opp. Cinemax, Mira Road (W),
Thane (At present detained in Thane
Central Prison at Thane) ... Appellant

Versus

State of Maharashtra ... Respondent

Mr. Manoj Mohite a/w Mr. Ashish Sawant for the Appellant.

Mr. Ashish Chavan for the first informant.

Mrs. M.H. Mhatre, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

RESERVED ON : MARCH 15, 2019

PRONOUNCED ON : APRIL 16, 2019

JUDGMENT (Per Dharmadhikari,J.):

The convict in jail questions the judgment and order dated 17/08/2011 delivered by Extra Joint Ad Hoc Additional Sessions Judge, Thane in Sessions Case No. 177 of 2009 punishing him for the offence under section 302 of IPC for life imprisonment, under section 392 of IPC with Rigorous Imprisonment for 10 years and

acquitting him of the offence punishable under section 201 of IPC.
He is in custody since 10/01/2009.

2. We have heard Advocate Mohite for the appellant and learned APP Smt. Mhatre for the respondent State.

3. The story of prosecution in brief is the complainant Omprakash Sharma (husband of deceased Sharda) on 07/01/2009 at about 11.00 p.m. lodged a report pointing out that before returning to his flat in the evening he tried to contact his wife Sharda on phone but could not succeed. He contacted his near friends and requested them to contact his wife. At about 8.30 p.m. he reached there along with his sister-in-law Vina Sharma. He rang the door bell and there was no response. The flat was not locked from outside and he had no latch key with him. He therefore, requested his neighbour Ahuja to call the key maker and that key maker after 9.00 p.m. opened the flat door. He and Vina Sharma entered the flat and called wife Sharda but there was no response. When he entered the next room, he found Sharda in a pool of blood on the floor with injury near her ear and head. There was one nylon rope around her neck and strangulation

marks were seen. The head injury was inflicted by some heavy object. He also noticed that valuables worth Rs.4,70,000/- were stolen from his house.

4. The police came to spot and investigation began. The staff from forensic science laboratory came to take fingerprints. The police also found one silver ring with name as "Om" on it in the flat which belonged to the accused. Police recorded the statements and found that accused had visited Sharda in the evening hours. His fingerprints were found in the flat and CDR collected also reveal his presence there. The stolen articles were recovered under section 27 of Evidence Act from his shop, from others and also from his home. The sample of nylon rope from the shop keeper who sold it to accused were also taken. After completing the investigation, chargesheet was filed.

5. In this backdrop, Advocate Mohite submits that there are no eye witnesses and prosecution has recorded evidence of 31 witnesses. The trial court has found the chain of circumstances and it has been used to held the accused guilty. He points out that the chain found has to be so complete so as not to leave doubt

about the involvement of any other person and the chain must single out the accused as the only person responsible for the offence. He submits that here the alleged circumstances do not constitute the chain and in any case, the same have not been established by a cogent and convincing evidence so as to hold that those circumstances are established. According to him the presence of an electrician and the plumber in the flat on that day with the deceased is brought on record by the prosecution and there is no investigation to rule out their non involvement. Similarly, there were two maid servants who came to flat on that day and one of them had come for the first time and she did not come back again. The role of these maid servants also needed investigation. As that has not been done, the benefit thereof must be given to the appellant accused.

6. He invited our attention to evidence of PW No. 26 Sudarshan to show that the identification of accused by him is shaky and the story of PW No.1 that he had introduced the accused to security guard Sudarshan two years back on the occasion of marriage of his daughter and therefore, Sudarshan knew the accused is unacceptable. Sudarshan has deposed inconsistently with the

story of previous acquaintance and he has not taken relevant entries in the register. As there are no entries of all visitors to flat of the deceased on that day, the evidence of Sudarshan or identification of accused by him is unsustainable.

7. He has invited our attention to test identification parade to submit that in the light of the submissions made above, that identification also does not inspire confidence. The identification parade has not been carried out as per settled principles.

8. The evidence of car washer who had allegedly visited the flat in question to demand his car washing charges again is by way of afterthought and he had not seen the accused in the flat at all. Advocate Mohite submits that PW 3 Sakharam states that he heard the deceased taking name of accused and demanding Rs.50/- for paying Rs.250/- to the car washer.

9. Learned counsel states that the evidence in relation to the finding of the fingerprints of the accused in the flat of deceased tendered by PW 11 Jay Kashinath Khutade, PW 20 Fingerprint Expert Arun Shinde and other panch PW 7 Rajan Mehta does not

explain how the experts could isolate only three finger prints in the entire flat which on that day was visited by several persons. He further submits that the digital photographs of only three fingerprints were taken by the photographer and two of the fingerprints could not be used for verification. Only one fingerprint has been utilized to frame the accused. This story itself is unbelievable and the photographer who has taken the digital photographs or then taken out prints thereafter, has not been examined. Thus the identity of the fingerprints photographed allegedly in the flat and delivered to PW 20 Arun Shinde for examination has not been established. Lastly he submits that as per the story of prosecution the accused was a regular visitor to the flat and hence, finding his fingerprints therein cannot by itself be viewed as a suspicious circumstance.

10. While dealing with the CDR records, he claims that the CDR at Exh. 53 does not carry at its end the certificate under section 65B of the Evidence Act. The nodle officer who has been examined as PW 10, has given certificate separately at Exh. 54 which cannot be read as part of Exh. 53. The CDR record also does not pinpoint the presence of accused in the flat of the deceased.

11. The recovery of nylon rope from the shop keeper who allegedly sold a piece thereof is again not satisfactorily established. The said shop keeper Suresh Chaudhari PW 15 could not identify the accused as a person who had purchased the nylon rope from his shop. He did not have any receipt and similarity between the piece of rope found in the flat and one recovered from his shop is not the decisive factor. All nylon ropes available in the market may have similar composition.

12. In this backdrop, recovery of ornaments allegedly stolen and allegedly recovered under section 27 of the Evidence Act, is strongly objected to. It is submitted that such discovery itself is very weak evidence. There is shocking variance in the quantity/number of ornaments disclosed by PW 1 initially and in his supplementary statement. The valuation doubles in the latter statement which is recorded after second seizure from the accused. The prosecution did not obtain proper description so as to enable it to fix identification beforehand and hence, the entire story becomes doubtful. He points out that the alleged injury on accused is also not shown to be recent and the story of recovery of silver

ring from the flat of the deceased is unsustainable.

13. Coming to technical aspects of fingerprint, he submits that the alleged fingerprints lifted from the spot shows gap in ridges while it is absent in specimen print. Supplementary statements of complainant have been recorded on two occasions i.e. on 08/01/2009 and thereafter on 16/1/2009. He has in his first supplementary statement pointed out that most of the ornaments and valuables stolen were ancestral and he would be in a position to identify the same if shown. The alleged seizure under section 27 of the Evidence Act is before 16/01/2009. Hence, more ornaments have been added to it by way of afterthought. The first seizure or recovery of ornaments is on 10/01/2009 from PW 2 while later recovery is on 12/01/2009. The supplementary statements of informant Omprakash bring on record the theft of material allegedly recovered under section 27 before that date from the accused. Supplementary statement thereafter have been recorded again on 22/1/2009 where he identified various ornaments. Advocate Mohite contends that the entire story of alleged theft and recovery therefore is not satisfactorily proved so as to constitute a circumstance in the chain. He has therefore, prayed for acquittal of the appellant.

14. Learned APP on the other hand submits that the prosecution has brought on record the chain of events which begins with the entry of accused into the flat of the deceased. The security guard who witnessed this has been examined for this purpose as PW 26. The deceased had uttered name of accused to seek Rs.50/- to pay the amount of Rs.250/- to the car washer and that car washer has deposed accordingly. The fingerprints of accused also show his presence in the flat.

15. The deceased was given blows with glass idol of God Ganpati and because of it, the accused got injury which has also been established.

16. The ornaments stolen from the flat are recovered at the instance of the accused from his residence and also from his shop. Some ornaments were sold by him and have been recovered accordingly from the purchasers. The sale proceeds were used by the accused to clear money dues and witness Kiran Arolkar PW 21 has brought that fact on record. He also deposited part of that amount in his own bank account and that is also established by producing the extract of bank account.

17. The CDR record was exhibited without any objection before the trial court and it shows movement of accused in the area

where the house of the deceased is located. It also shows the visit to shop of PW 15 for purchase of rope in Sanpada area. The rope used for strangulation was purchased by the accused from PW 15.

18. By inviting attention to specimen fingerprint and chance fingerprint i.e Exh. 113 and 114 learned APP submits that the chance fingerprint appears to be of the different part of thumb while specimen fingerprint has been taken in ideal situation. The prints have been compared by the expert and cross examination of the fingerprint expert PW 20 does not cast any doubt on the correctness of fingerprint.

19. It is therefore, submitted that the entire chain indicating the appellant as the only culprit are proved through proper evidence and the judgment of the trial court needs to be sustained.

20. It is pointed out that one of the valuables recovered under section 27 from the shop of accused is memento presented to the informant by his employer and the appellant has not explained how it came in his custody. Lastly it is pointed out that cloths with human blood on it were also recovered at the instance of the accused from his residence where the same were concealed. The cloths and blood stains upon it are again not explained by the accused. Learned APP therefore submits that the disclosure of

some ornament later on by the informant by itself cannot be held fatal.

21. Perusal of evidence of PW 1 Omprakash shows that his deposition is consistent with the story of prosecution. His statement that key maker was required to be called is supported by PW 16 key maker who made the duplicate key in the presence of PW 1 and other witnesses. He has also pointed out the position which he witnessed after entering the flat.

22. The narration of events in FIR (Exh. 25) by him is consistent with his narration.

23. The FIR was lodged in the night and it does not mention the white metal ring of accused found by the police on spot as it was discovered by the police later on. In FIR he has pointed out the theft of cash and valuables worth Rs.4,70,000/-. In his deposition before the court he submits that when the police started investigation at the spot of offence, the police found one ring in the bookself with word "Om" written on it. It was of white metal. He identified that ring and it belonged to accused who happen to be his wife's foster brother.

24. In his evidence he has also pointed out that on 8th his daughter Archana arrived and then he learnt that few more

ornaments were lost. It is apparent that this knowledge led to his second statement which has been recorded on 08/01/2009. By that time, identity of accused had become known and hence, in this supplementary statement, he has also explained how he was acquainted with the family of accused. He has also in supplementary statement pointed out that while preparing panchanama used plate with 'laddu' were seen in the kitchen and therefore, his wife might have offered food to the guest who had arrived. He has also expressed in it that the murder was most probably committed by the present appellant.

25. This narration by him therefore, appears to be natural and there is nothing in his cross examination to discredit it.

26. The appellant accused was arrested on 10/01/2009 and the arrest panchanama Exh. 64 shows that there were injuries on his right palm and left palm. The injuries were one or two days old. His left palm was having 4 injuries. The middle finger of left palm at its base was having a mark indicating that a ring was being worn at that place. The mobile handset of Nokia was also seized from him. The arrest panchanama mentions its IME number and also SIM card number of IDEA put in it. A cheque book of HDFC Bank, ICICI Bank and mobile charger was also then recovered.

This arrest panchanama and the facts mentioned therein are not in dispute.

27. PW 3 Sakharam is car washer boy and his evidence shows that he saw the deceased alive at 4.30 pm on 07/01/2009. She paid him Rs. 250/- as his charges and for that she had enquired from the person by name Kamal about the availability of change of Rs.50/-. Thus this witness does not claim to have seen the accused in flat but proves that a person with name of accused was then present with the deceased.

28. PW 26 Sudarshan is the security guard examined by the prosecution to show that accused Kamal had entered the flat of the deceased on that date. He has stated that if the person known to him was entering the flat scheme, he was not taking any entry. He pointed out that at 4.00 pm relative of the informant Sharma came. He also states that the complainant and his deceased wife had introduced that person to him as his relative. He allowed that person to go. At 7.00 pm the said person hurriedly left with one bag. This security guard was on duty till 8.00 pm.

29. He also points out that the police recorded his statement on 08/01/2009 and in test identification parade on 2/2/2009 he identified the accused Kamal.

30. In his examination in chief this witness states that when the accused came at 4.00 pm, he enquired where he wanted to go. He states that the accused told him that he is regular visitor to Mr. Sharma and he had attended the marriage in their family also. This statement in examination in chief is being used by Advocate Mohite to urge that it militates with his narration on oath that the accused was introduced to him by the complainant and deceased. In the cross examination, suggestion in this respect was given to him and he has accepted that at the time of marriage of daughter of Mr. Sharma, Mr. Sharma introduced him with various relatives. He cannot state whether Narendra Sharma and Vina Sharma were then introduced to him but then he expressed that he would be in a position to identify them if he sees them. He has stated that on 07/01/2009, two women, one electrician by name Mishra, one plumber and one helper had gone to the flat of the complainant. The entries of plumber and electrician were taken by him in his register. One lady by name Pushpa Rathod also visited and he had made that entry in the register. He also accepted that he knew Shilabai but was not knowing her surname. He accepted that his register was not called for by the police. He also denied that on 8th February, he was called to police station to see the

accused. He accepted that his statement was recorded under section 164 of Cr.P.C. and it was at Exh. 129. He also stated that he did not state the red underlined portion on the last page of Exh. 129. That portion is “on 08/02/2009 he was called in police station to verify whether the person there was Kamal Sharma or not”.

31. This statement under section 164 of Cr.P.C. supports whatever he has deposed in the court except the fact that in cross he has stated that “on 8th February, I was not called at police station to see the accused”. The fact that he is a security guard working as such since the year 2006 is not in dispute. Similarly the fact that the accused and his family attended the marriage of daughter of the complainant is not in dispute. The security guard had given name of other persons and other visitors. He has no reason to lie in so far as visit of accused Kamal to the flat of deceased is concerned.

32. Prosecution has relied upon finding of fingerprint in flat of informant and deceased. They have examined PW-7 Rajan Mehta and PW-20- Arun Shinde to support this. PW-7 has proved panchanama Exh.38 which depicts lifting of three fingerprints from the house of complainant. This panchanama is at Exh.38 dated

8/1/2009. It is not however explained how only three fingerprints could be isolated and lifted. Recording of panchanama begins at 00.30 hours in the morning and it is over at 1.45 a.m. of 8/1/2009. With large number of visitors in the flat, lifting of only three fingerprints has not been explained by the prosecution.

33. Fingerprint operator A.N. Bhire has claimed to have inspected the spot and he noticed one fingerprint on kitchen door, two fingerprints on backside of bathroom door. Said Bhire has not been examined as witness. These fingerprints are photographed by Shri Kharat, the photographer. This photographer has not been examined.

34. PW-20-Arun Shinde is the expert who has compared those fingerprints with specimen fingerprints. Before us there is no dispute about photograph of specimen fingerprint. This witness does not point out that Mr.Bhire isolated the fingerprints. He claims that after Investigating Officer gave brief history, he examined all possible articles and he noticed two fingerprints on bathroom door and one fingerprint on door of kitchen. This witness then speaks that he got the fingerprint photograph from police photographer. He compared this photograph with specimen fingerprint. Two photographs were improper and unfit for

comparison. One fingerprint photograph was compared with fingerprint of accused on police record, but it was untraced. He then received specimen fingerprint and after comparing he submitted his report at Exh.95. His reasoning for result is at Exh.102.

35. Important fact to be noticed is identity of photograph received by him from photographer Shri Kharat has not been brought on record through proper material. Why he did not photograph other fingerprints cannot be explained by him in cross examination. In cross examination he accepted that he did not find any injury on finger. However he accepts gap between Article B (Exhibit 113). He also accepted that chance fingerprint (Exhibit 114) does not have any such gap. He has explained that gap in Exhibit 113 is due to skin folding. He has also accepted that gap shown in Exh.113 is main characteristic of specimen print.

36. This cross examination therefore shows that he has failed to explain absence of gap in Exhibit 114. His explanation that gap between ridges in Article B is due to folding of skin cannot be accepted. Therefore finding of fingerprint of accused in flat of deceased is unsustainable.

37. However PW-1-Omprakash Sharma and PW-8-Archana

Sharma both have deposed that accused was on visiting terms with deceased and her husband. While answering question No.2 put to him as part of statement under section 313 of Cr.P.C., he has accepted that he was on visiting terms and his father and PW-1 complainant used to work in the same company. Little latter while answering question No.30 he has denied the visits. We have taken note of the fact that learned Trial Court has in question No.2 put different facts i.e. his father and complainant working together and of his visits. In answer to single question he has accepted both facts. In question 30 again Trial Court has put two facts together. First fact is about gotra of both being the same while the other fact is about visiting terms. He has given answer to both and stated that gotra is same but they were not on visiting terms. Material on record therefore sufficiently brings on record the fact that accused was on visiting terms with the family of deceased.

38. One important circumstance is about finding of ring of accused in the flat of deceased. PW-5-Sanjeev Amrutkar is panch to Exh.34 spot panchanama. He has proved that panchanama at Exh.34 and has also pointed out white metal ring with words "Om" imprinted on it below book shelf. This book shelf is on eastern side of showcase and in eastern corner hair balls are also found. There

is no challenge to this evidence.

39. When accused was arrested, mark of finger ring was seen on his finger. This finger ring is put to him in Question No.31 under section 313 of Cr.P.C. Again question put has 2 or 3 facts together. He has stated that though photographs were taken he has no such type of ring. After the ring was found it was identified by PW-1 informant as belonging to accused. The said witness has been cross examined and he has accepted that rings like that are easily available in the market. It appears that in cross examination this witness was shown three similar rings. However this exercise does not derogate the fact that ring that was found was below book shelf in flat of complainant and deceased and that ring was seen by complainant in the fingers of accused.

40. Archana daughter of deceased has been examined as PW-8. She has deposed that she has seen the accused wearing the ring and that ring was not from their family. She also deposed that finding in kitchen dish with laddoo proved that some close relative had come to house. We therefore find the fact that accused was wearing said ring has been sufficiently established by prosecution on record.

41. PW-15-Suresh Chaudhari is witness who bring on record two

pieces of rope i.e. Muddemal Article Nos.30 and 37. It appears that while in custody accused informed police that he had purchased the rope used for strangulating the deceased from shop of PW-15. Police accordingly took two panch witnesses and police to that shop. Police took 8 meters rope from the same bundle from which accused had earlier purchased that piece. He identified the rope sold earlier as also rope later on taken by police from him. There is nothing in his cross examination to discredit him. He in cross examination has asserted that accused purchased rope from his shop.

42. These two pieces of rope were sent to chemical analyzer and Exhibit 156 is the report which shows that both pieces tally/match with each other. It is to be noted that this person Suresh has his shop in Manpada area, Thane (W).

43. The call data record is the important piece of evidence on which prosecution has placed reliance. We may here point out that question in relation to mobile number are put to accused as question No.41 and Question No.34. When in question No.34 number of his mobile number is put to him, he denies it as false. In Question No.41 very same number with details in Exhibit 52 like address are put to him and he has stated that he does not

know about it. This mobile is seized from accused at the time of his arrest.

44. PW-10-Vijay Shinde is Nodal Officer of Idea Cellular Ltd. who has brought on record CDR along with certificate Exhibit 54. Though this witness has been cross examined, no objection about correctness of certificate at Exhibit 54 has been taken. Exhibit 53 is the CDR of above mentioned mobile. This witness has also pointed out areawise location of said mobile and visit to Manpada area in the afternoon for purchase of rope. The CDR shows location of said mobile in the vicinity of the house of deceased and complainant only. He has given tower location upto 7.15 p.m. and has also pointed out that at 7.52 p.m. tower location was 30081. His examination-in-chief in this respect shows that at 8.23 pm tower location revealed that accused was at his residence. This material therefore sufficiently establishes the presence of accused in the area.

45. The other important circumstance relied upon by the prosecution is recovery of ornaments of complainant/deceased at the instance of accused and accused paying back the dues to his creditors.

46. The prosecution has also relied upon recovery of stolen

ornaments at the instance of accused under section 27 of the Evidence Act. First witness is the informant himself. He, in first information report, pointed out the theft of ornaments. The report was taken down at 11.30 in the night of 7/1/2009 in which he has stated items of ornaments and cash of Rs.25,000/- taken away by accused. Total loss then estimated was Rs.4,70,000/-. On 8/1/2009 supplementary statement has been recorded and in it he has given explanation about accused and his family being on visiting terms, why he was aware of white metal ring in finger of accused and how plate with laddoo gave impression to him that some relative had come. He has also explained that ornaments of gold and silver stolen were mostly received from family and ancestral one. He has given mobile number of accused with his address and also stated that he would be in position to identify ornaments. On 16/1/2009 his supplementary statement is again recorded and in it he has pointed out that after his daughter arrived, the theft of more ornaments and other material also came to his knowledge. In that statement, he has given details of additional loss totaling to Rs.3,65,425/-. He has further submitted that total cash lost was Rs.50,000/- which included 250 American \$. As per his estimate total theft was of Rs.8,35,025/- On

22/1/2009 police has recorded his supplementary statement again. When he identified the ornaments in presence of his daughter Sou Archana. This statement shows that ornaments not recovered were worth Rs.3,13,000/-

47. Ornaments have been recovered twice from the accused, firstly, on 10/1/2009 and thereafter on 12/1/2009. PW-17-Akbar Mohammad Husain Shaikh is witness to disclosure under section 27 and the recovery of ornaments from shop. As key of the shop were at the house of the accused, they went to his house took key from his father and went to shop and silver plate having name of Sharmaji (informant) gifted to him by Company was also recovered, 7 credit cards in the name of Sharda and other family members of informant were also recovered. Police seized all ornaments, prepared labels obtained signature and put those labels in plastic bags along with ornaments.

48. Accused thereafter took them to a shop of Femina Jewellers. Kamlesh Jain present in shop had purchased ornaments from accused and he gave two gold rings and 10 gold bangles to police. Those ornaments were sealed in similar fashion. This witness identified those ornaments which are 22 in number. This witness has also pointed out that accused had obtained loan from one

Rajesh Patel. Loan was of Rs.26,000/- and on 7/1/2009 accused paid back that amount in the night. Rajesh produced that amount before police. That amount was seized and this witness identified that amount and he also identified 22 currency notes of American \$, ATM cards, credit cards, recovery under section 27 at the instance of accused. Though he has been cross examined nothing material could be extracted in it. He has only stated that when police was taken to residence of accused, police might have taken short search there.

49. PW-14-Samadhan Tayade has deposed about section 27 recovery effected on 12/1/2009. They initially went to house of accused where his father opened the door. There from flush water tank of toilet accused removed one plastic bag and opened it. It was containing gold ornaments. Same were seized.

50. Accused then also took them to bedroom wherein in a wooden cupboard clothes worn by him at the time of commission of crime were kept. He took out one bag in which one shirt and one pant was there. It was pink colour half T Shirt with two cross lines of white and red colour and blue colour pant. He has given description of those clothes and deposed that there was blood stains on T Shirt as well as pant. Police also seized the same. He

identified the ornaments and clothes. Watchman Sudarshan has also spoken about similar clothes on person of accused.

51. PW-24-Shrikant Sonkamble has acted as panch on 22/1/2009 when complainant and his daughter identified ornaments. He has given details thereof. He has also been cross examined. He has stated that total three parcels containing ornaments were brought out. Those three parcels from bundle were having lac seal and having labels of signature of panch witnesses. All plastic bags were shown to him. Those plastic pouches did not bear seal and signature labels of panch. However as per deposition of witnesses who deposed about discovery under section 27, signatures with labels were put in plastic bags. It is not the case of accused that those seals were missing. On the contrary, Exhibit 125 panchanama dated 22/1/2009 shows that bags before opening were sealed. Seals then removed were again put inside the bags and bags/pouches were resealed.

52. Learned counsel for the appellant has submitted that item at Serial No.14 i.e in Exhibit 125 currency notes of Rs.2273/- are found missing. However, PW-1 Omprakash had identified the ornaments in the Court. The fact that he does not make reference to sealing of parcel cannot be seen as decisive. Articles at Serial

Nos.1 to 21 in identification exercise Exhibit 125 are recovered by police on 10/1/2009 while articles at 22 to 27 therein are recovered on 12/1/2009. Ornaments have been identified by PW-1 and PW-8 and have also been cross examined in this respect. The extent of ornaments stolen are initially given, while filing FIR. Other details are given on 16/1/2009. The recovery of pan cards or ATM/credit cards of family of informant/complainant from accused itself lends credence to theft and recovery. Memento presented to him is recorded.

53. PW-21-Kiran is a person who had given loan to accused and had to recover it. He has taken accused to Femina Jewellers where accused sold 10 gold bangles and two gold rings for Rs.1,35,000/-. Owner of Femina Jewellers Kamlesh Jain has been examined as PW-2 and police recovered these ornaments from him. PW-21-Kiran submits that out of money received, accused gave him Rs.4,500/- and promised to clear balance amount within a period of 2 days. He also pointed out that he returned the said amount of Rs.4,500/- to police on 15/1/2009 under panchanama Exh.104. In cross examination statement to police that accused sold 8 bangles or then amount of Rs.75,000/- was agreed against pledge of ornaments or details of money lending transaction between

Kiran and accused are put to him. When PW-2-Kamlesh has supported the stand of PW-21-Kiran and these recoveries are on 10/1/2009 itself, improvement by this witness is not that material.

54. Evidence of PW-18-Padini M.R. @ Farukh Anna shows that he had also to recover Rs.7,000/- from accused. On 7/1/2009 in the evening accused paid him Rs.6,000/-. He produced that amount before police and also identified currency notes which is property (muddemal Object) No.38. His cross examination does not in any way dilute his examination-in-chief.

55. PW-31-Dr.Padmaja Naik is the Doctor who examined injuries on accused when he was brought for medical examination after his arrest on 10/1/2009. She has also opined that injuries on palm could have been caused because of contact with any rough object. She also pointed that muddemal object No.26 (Ganesh idol) had pointed edges. Though doctor was available for cross examination, no effort has been made to find out when these injuries were caused or to determine age of those injuries. She has described one of the injuries as old injury implying thereby that other were fresh.

56. Report of chemical analyzer on clothes seized from residence of accused at Exhibit 155 shows human blood on the same. Unfortunately, the experts could not determine blood group either

of accused or deceased.

57. Thus, the accused could not explain injuries seen by PW-31-Dr. Naik and also could not explain human blood on his clothes. Why blood stained clothes were received has not been explained.

58. Evidence (supra) therefore shows that accused had acquaintance with deceased and complainant and was on visiting terms. Deceased was found murdered in her flat and valuables as also cash was stolen. Watchman Sudarshan has seen accused go to flat of deceased. Evidence of car washer also shows that person with name of accused was lastly present in flat with deceased when he went there in the evening to collect his charges. Police found white metal ring of accused in that flat and accused was not wearing any ring when he was arrested. There is no explanation about his ring or its mark

59. Ornaments stolen were recovered on 1/1/2009 and 12/1/2009 at the instance of accused. One of valuables include silver plate with name of complainant engraved upon it. It was presented by his employer to complainant/informant.

60. Immediately after crime the accused repaid money to PW-18, also to one Rajesh Patel. With the assistance of one of the creditors viz. PW-21-Kiran Arolkar he sold ornaments to PW-2-Kamlesh. Out

of the sale proceeds, he paid some amount to Kiran and deposited balance in his bank account.

61. Police recovered clothes put in by accused at the time of commission of crime from his residence. They were having human blood.

62. The call detail record shows movement of accused in the area where deceased resided at all relevant times. It also supports his visit to shop of PW-15-Chaudhari for purchase of nylon rope at Manpada. This nylon rope is found used to strangle deceased in her flat.

63. The circumstances therefore clearly show the complete chain which single out appellant as accused beyond reasonable doubt. Shaky answers given by him to Section 313 questions mentioned by us supra also lend credence to this. He did not explain blood on his clothes so also injuries on his person. He could not explain how credit cards, ATM cards etc. of family of deceased were recovered at his instance under section 27 of the Evidence Act. We therefore find that prosecution has succeeded in establishing a chain of circumstances which rules out involvement of any other person as offender in the matter.

64. We therefore find no case made out. We therefore uphold the

judgment of conviction. Appeal is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)