

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

CRIMINAL APPEAL NO.540 OF 2017

Nareshkumar Rajpal Bagdi
Aged about 32 years, Occ. Cleaner,
Residing at- Opposite Raja Shivaji School,
Above Public Lavatory, Ghodbunder,
Thane
Originally residing at
Chandhimandir, Near Sanket Hospital,
Bidghagar, Tal & Dist- Panchkula, Haryana.
At present undergoing the sentence
imposed upon him at Nashik
Central Prison, Nashik.

.. Appellant

Vs.

The State of Maharashtra
(At the instance of
Senior Inspector of Police
Kashimira Police Station,
Vid C.R.No. I-87 of 2011)

.. Respondent

Mr. Amit Mane, appointed Advocate for the Appellant.
Mr. Shreekant V. Gavand A.PP for the Respondent-State.

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MANE

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

RESERVED ON : 25th JANUARY 2024

PRONOUNCE ON : 17th APRIL 2024

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

1) Challenge in this Appeal is to the Judgment and Order dated 20th June 2016, passed by the Additional Sessions Judge-I, at District and Sessions Court, Thane, in Sessions Case No.239 of 2011, whereby the

Appellant has been convicted for the offences punishable under Sections 302, 392 and 452 of the I.P.C. and sentenced as follows:

- i) Under Section 302 of the I.P.C. to suffer imprisonment for life;
- ii) Under Section 392 of I.P.C. to suffer RI for two years; and
- iii) Under Section 452 of I.P.C. to suffer RI for One year.

2) The prosecution's narrative outlined as follows:

2.1) Shrimati Shraddha Pardeshi (for short 'the *deceased*) and her daughter Arpana Pardeshi (PW-2) were residing together in a flat number 301, Ratan 7, Gaurav Sankalp phase 4, Mira Road East Thane. Informant Mohd. Azam (PW-1) is a contractor and he has been residing in the same Society. The accused was working there as a sweeper.

2.2) On 14th March 2011, Mohd. Azam (PW-1) was engaged in cement work within the Society premises. He had stored some cement in the house of the deceased and needed it. At about 12 p.m., Mohd. Azam (PW-1) tried calling the deceased, but she did not attend his phone call. While standing outside his building, he heard a noise from the deceased's house, possibly from a window, but saw no one. He then went to her house, rang the doorbell, but received no response. Therefore, he phoned Arpana (PW-2) and informed about the situation. During the conversation, Mohd. Azam heard '*khad-khad*' sound suggesting someone was at the door. However, the door was not opened, therefore, Mohd. Azam (PW-1) again phoned to Arpana (PW-2) and informed her said fact. Meantime Arpana

(PW-2) phoned to deceased but she did not pick the call. At this juncture, Mohd. Azam (PW-1) left the spot to pick up his daughter from school. When Mohd. Azam (PW-1) was returning from the school, he received a phone call from Arpana (PW-2) and she told him that one key of her house is with her neighbour Alka Mishra (PW-9), the latter is trying to open the door of the house but the door is not opening and hence, requested Mohd. Azam (PW-1) to go there and help. Shortly after, again Mohd. Azam (PW-1) received a phone call from Arpana (PW-2). This time she told him that the door of the house is opened but there is blood in the house. Immediately, Mohd. Azam (PW-1) went to the house and found that, there was blood in the hall and the deceased was lying on the kitchen floor in a pool of blood. The deceased had grievous injury on throat and on cheek. Mohd. Azam (PW-1) noticed that, glass panes of a window in the toilet of the house were removed, the window net was cut and some iron bars of the window were bent outside. Articles in the bedroom were lying scattered. Meanwhile Arpana (PW-2) reached there and noticed that, gold chain, ear-rings (*Jhumkas*) and finger ring on the person of the deceased were stolen. It was concluded that, some unknown assailant had entered the house, robbed the gold ornaments of the deceased and escaped from the toilet window.

2.3) On receiving information, police arrived at the scene, recorded the statement of Mohd. Azam (PW-1) and treating it as F.I.R. registered this

Crime No.I-87 of 2011, under Sections 302, 392, 449 and 452 of the I.P.C. against an unknown person. The Investigation Officer PI. Anil Patil (PW-12) recorded the Spot Panchnama (Exh.30). It was followed by an Inquest Panchanama (Exh.19) and a Post-Mortem Examination of the deceased. The clothes and other articles removed from the body of the deceased were seized under Seizure Panchnama (Exh.25). On the same day, the police recorded the statement of certain witnesses. The preliminary investigation revealed that, on 14th March 2011, at about 12.30 p.m., the Society watchman-Muktar Ahamad (PW-6) saw that, the Appellant came down from the said Society. There were bloodstains on the forehead and clothes of the Appellant. The Appellant was limping while walking. When questioned by Muktar Ahamad (PW-6), the Appellant claimed that, he had fallen due to excessive alcohol consumption.

2.4) On 15th March 2011, acting on a secret information, the police from Local Crime Branch (LCB) apprehended the Appellant. Later, PI. Anil Patil (PW-12) arrested the Appellant. A Sonata wrist watch; a Rexine Wallet with 7 Indian currency notes of Rs.10 denomination; a coin of Rs.2; ID Card of Appellant; a Receipt of pledging Gold Chain for Rs.10,000/- dated 14th March 2011, issued by Mahipal Jewellers, Borivali (E.), Mumbai; a bunch of keys; one handkerchief having stains like blood and a couple of medicine pills were found from the person of the Appellant. PI. Anil Patil (PW-12)

seized these articles and recorded a Seizure Panchanama thereof (Exh.26). Further, he recorded the statement of witnesses from time to time.

2.5) On 15th March 2011 itself, the Appellant made a disclosure statement (Exh.36) in presence of panchas wherein he disclosed pledging of the deceased's gold chain for Rs.10,000/- with Mahipal Jewellers, facilitated by his acquaintance Raghunath Mane (PW-8) and showed readiness to recover the same. The Appellant then led the panchas and P.I. Anil Patil (PW-12) to the said shop and confirmed that he had pledged the gold chain with Kalpesh Jain (PW-4). The later also confirmed that fact and produced the gold chain and a receipt book containing the Pledging Receipt [counter foil] (Exh.22), issued to the Appellant. P.I. Anil Patil (PW-12) seized the gold chain and the receipt book and recorded Recovery Panchnama (Exh.37). On the same day, P.I. Anil Patil (PW-12) visited the crime scene and involving Scientific Assistant, took samples of the dried blood found there on the wall, fridge etc. under Seizure Panchnama (Exh.31).

2.6) On 19th March 2011, the Appellant gave one more disclosure statement (Exh.38) that, he has disposed of the knife used in the offence and the clothes worn by him at the time of incident in a mud-pit of a gutter to the West of Meeragaon- MIDC Road. Then the Appellant led the police and panchas to the said place and recovered the knife and the clothes

which P.I. Anil Patil (PW-12) seized under Recovery Panchnama (Exh.39).

2.7) During further investigation P.I. Anil Patil (PW-12) recorded the statement of witnesses, collected the Post-Mortem Report and referred the *muddemal* articles to the concerned RFSL for chemical analysis.

2.8) On completion of investigation, it transpired that the Appellant entered in the house of the deceased to commit theft, murdered her causing various grievous injuries by a knife and robbed her of her gold chain and gold ear-rings and fled from the toilet window. Appellant then pledged the gold chain with Kalpesh Jain (PW-4). Accordingly P.I. Anil Patil (PW-12) submitted the charge-sheet for the offences punishable under Sections 302, 392, 449 and 452 of the I.P.C. in the Court of the J.M.F.C. 5th Court, at Thane. After complying with Section 207 of Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, Thane.

3) On committal of the case, the learned Judge of the trial Court framed the charge at Exh.11 of the offences punishable under Sections 302, 392 r/w. 397 and 452 of the I.P.C. The charge (amended) was read over and explained to Appellant in Marathi vernacular. The Appellant pleaded not guilty to the charge and claimed to be tried. His plea is recorded at Exh.12.

4) In the course of trial, the prosecution examined 14 witnesses in support of its case and placed reliance on various documents in evidence

including the seized material objects. The Appellant in his defence, denied his involvement in entirety contending that, as real culprit was not found, the police implicated him in this crime. After the prosecution closed its evidence, statement of the Appellant under section 313 of Cr.P.C. was recorded. Appellant also submitted his written statement (Exh.116) in his defence. Appellant did not examine himself nor examined any witness in his defence.

4.1) The learned Judge of the trial Court after considering the evidence in the light of rival arguments, held that, the chain of all the circumstances has been proved. It leads to a safe and only one hypothesis that, the Appellant has committed this crime, therefore, convicted and sentenced the Appellant as noted above.

5) Mr. Amit Mane, the learned Advocate for the Appellant has raised several points regarding the credibility of the evidence presented in the case. According to him, initially, there was no story of the theft. There is doubt about the date, time and place of the arrest of the Apparent. Santosh Prasad (PW-5) has admitted that the Seizure Panchnamas (Exhs.25 and 26) were already prepared before his visit to the Police Station meaning thereby said panchnamas were not at all prepared in his presence. Given this questionable circumstance, the seizure of clothes of the deceased, as well as the wristwatch, cash of Rs.72, and Pledging Receipt (Exh.92) etc., allegedly

found in the Appellant's possession, cannot be accepted as reliable.

5.1) In respect of the disclosure statements leading to recoveries of the gold chain, blood-stained clothes and the knife at the instance of the Appellant, Learned Advocate submitted that, Ashish Dev (PW-10) is identified as a relative of the deceased, making him inherently biased and therefore, an interested witness. This bias has potentially influenced his testimony, thus, casting doubt on its reliability. The prosecution has failed to produce an independent panch to corroborate the events surrounding the recoveries. The evidence shows that, Bhavarlal Jain (PW-13) is the real owner of the shop, however, Kalpesh Jain (PW-4) signed the Pledging Receipts in the name of 'Bhavarlal', which is uncommon in gold business. The gold chain was pledged on a Monday. However, as mentioned in the Pledging Receipts (Exhs.22 and 92), the jewelry shop is closed on Mondays. The Pledging Receipt (Exh.92), allegedly seized from the Appellant, is not proved. The gold chain lacks any unique identification marks, making it difficult to establish a definitive link between the said gold chain and the alleged crime. However, Arpana (PW-2) identified that chain in the Police Station which is legally impermissible. The cross-examination of P.I. Anil Patil (PW-12) suggests that he was already familiar with the shop 'Mahipal Jewellers' where the gold chain was recovered. This familiarity and the above discrepancies raise questions about the impartiality of the

investigation. In this background, the recovery of the gold chain cannot be relied against the Appellant.

5.2) Learned Advocate submitted that, the evidence of Muktar Ahmed (PW-6) clearly shows that, there was enmity between him and the Appellant on account of the latter did not pay the former's money back. The prosecution failed to prove that there were injuries to the heels of the Appellant. Therefore, it would be risky to accept the claim of Muktar Ahmed (PW-6) that he had seen the Appellant while leaving the Society, at that time there were blood stains on the forehead and the clothes on person of the Appellant and he was walking limping. According to Muktar Ahmed (PW-6), at the time of incident the Appellant had white shirt on his person. However, what is recovered by the Appellant under recovery panchnama (Exh.39) is a black T-Shirt with white design. The said recovery was from open place. In view of these discrepancies and considering Ashish Dev (PW-10) is not an independent witness, the testimonies as to the disclosure statement and recovery panchnama (Exhs.38 and 39) are not reliable. That apart, the blood group of the deceased is not proved. Similarly it is not proved that the blood on the knife is matching with the blood of the deceased. Therefore, the recovery of the cloths and the knife is of no avail.

5.3) In short, learned Advocate for the Appellant submitted that, admittedly, the prosecution case was based on circumstantial evidence.

However, the trial Court, while convicting the Appellant for the offences punishable under Sections 452, 392 r/w.397 and 302 I.P.C. has not followed the parameters laid down by the Hon'ble Supreme Court that are to be followed for conviction in a case of circumstantial evidence. There are material discrepancies which go to the root of the case. The trial Court, however, simply brushed them aside, sans giving satisfactory explanation for not considering the same in correct perspective. The impugned conviction and sentence is, therefore, not only erroneous but also illegal. Hence, the Appeal may be allowed.

6) In contrast, Mr. Gavand, learned A.P.P. appearing on behalf of the Respondent-State, argued against the appeal, asserting that the prosecution has successfully met the standard of proof necessary for convicting a person based on circumstantial evidence. He contends that the circumstances relied upon by the trial Court conclusively established the Appellant's involvement in the crime. Additionally, he emphasizes that the chain of evidence provided by these circumstances is complete. The appeal thus lacks merit and is liable to be rejected.

7) We have considered the submissions made by learned counsel for the Appellant and learned A.P.P. for the Respondent-State.

8) Considering the rival submissions, first it must be seen as to whether death of the deceased is culpable homicide amounting to murder.

9) The Appellant has not disputed the date and place of the incident. The testimony of Arpana (PW-2) shows that, on the day of incident, twice she had talked with the deceased on phone. Firstly, at about 10.30 a.m. when she had called the deceased. Secondly, at about 11.30 a.m. when the deceased had called her concerning a visit to their house by MTNL person. Mohd. Azam (PW-1) has deposed that when he phoned to Arpana (PW-2) and told that the deceased was not responding to his phone call and the door bell, at that time (at about 12.00 p.m.) Arpana (PW-2) told him that the deceased is at home. Arpana (PW-2) also deposed that, when she received the phone call from Mohd. Azam (PW-1), she told him that the deceased is at home and she had talked with her on phone just half an hour before. This evidence did not see any challenge in the cross-examination of the witnesses. It is corroborated by the text of the F.I.R. (Exh.16). Thus, said evidence has clearly proved that, the deceased was alive just half an hour before Mohd. Azam (PW-1) went to her house at about 12.00 p.m. and thereafter, within half an hour the deceased was found dead. Therefore, there is no substance in the contention by learned Advocate for the Appellant that the time since the death was not proved.

10) The medical evidence shows that, on 14th March 2011, between 04.40p.m. to 06.00p.m., at Tembe Post-Mortem Center, Thane, Dr.Anjali Pimple (PW-11) conducted the Post-Mortem examination on the body of

deceased. As noted in the deposition of Dr.Anjali Pimple (PW-11), the defence Advocate had made a statement that, he does not dispute the injuries sustained by the deceased. Therefore, we deem it appropriate not to reproduce here all the injuries for brevity purpose.

10.1) The testimony of Dr. Anjali Pimple (PW-11) shows that, she had noted in all 23 injuries on the body of the deceased. All the injuries were incised cut and deep wounds. They were caused by sharp edged weapon. Both sided carotid arteries and jugular veins were cut (injury no.12). Tracheal ring- 5th and 7th were fractured (column no.18). Dr.Anjali Pimple (PW-11) deposed that, all the injuries were antemortem and sufficient in the ordinary course to cause death. The cause of death of the deceased was '*hypovolemic shock due to cut throat injury with injury to the major blood vessels*'. Accordingly, she issued the Post-Mortem Report (Exh.48). The nature of the injuries and the weapon by which the same were caused convey that said injuries were the result of an act committed with intent to cause the death. In view thereof, the trial Court returned the finding that, the death of the deceased is culpable homicide amounting to murder. There is nothing on record to take an exception to said finding. Hence, we hold the same.

11) Now, the momentous question that needs an uncovering is, whether the prosecution has proved that the Appellant has committed this

crime. The answer to this question is depending on circumstantial evidence. However, it is essential to recognize the limitations of circumstantial evidence. It can sometimes be subject to alternative interpretations or be less convincing when viewed in isolation. Therefore, the strength of circumstantial evidence often depends on the quality and coherence of the overall narrative presented by the prosecution.

12) As held in the case of *Shri. Sujit Biswas vs. State Of Assam, AIR 2013 SC 3817*, “. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between ‘may be’ true and ‘must be’ true, the Court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility

of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (*Vide: Hanumant Govind Nargundkar & Anr. vs. State of M.P., AIR 1952 SC 343; State through CBI vs. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan vs. State of U.P., AIR 2012 SC 1979*).

12.1) In the case of *Shri. Sujit Biswas (supra)*, it is also laid down that, in a case of circumstantial evidence, the Judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

12.2) In the case of *Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622*, the Hon'ble Supreme Court held that, "Graver the crime, greater should be the standard of proof". Adding on to

the aforesaid legal principles, in *Kali Ram vs. State of Himachal Pradesh*, AIR 1973 SC 2773, the Hon'ble Supreme Court held that, "in a case based on circumstantial evidence where two views are possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favourable to him. The aforesaid principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence".

13) Considering the prosecution evidence in the case at hand in the light of the aforementioned established principles of law, it is essential to meticulously evaluate the circumstances on which the prosecution relies to assert that it has proven the charge against the appellant.

14) Alka Mishra (PW-9) deposed that, on 14th March 2011, at about 11:30 a.m., she received a phone call from Arpana (PW-2) and the latter told her that the deceased is not receiving her phone call nor responding to the door bell. Alka Mishra (PW-9) deposed that, she had the key of the house of the deceased. As requested by Arpana (PW-2), she opened the house of the deceased. The first door was easily opened but the second door took time to open as it was chained from inside. At this juncture she peeped through the gap of the door. There was blood on the floor. She told this fact to the lady in Flat No.304. Said lady went to call the watchman and she (PW-9) went to call the Chairman of the Society. But he

was not available. Therefore, she returned and pushed the door with force. As a result, the door opened. She entered in the house. Then she saw that, the deceased was lying on the floor. There was blood in the hall. This evidence is consistent with the evidence of Mohd. Azam (PW-1) and Arpana (PW-2).

14.1) Mohd. Azam (PW-1), Arpana (PW-2), Alka Mishra (PW-9), Nilesh Mishra (PW-7), and PI. Anil Patil (PW-12) have provided consistent testimonies regarding the scene of the offence. They observed that a cupboard in the bedroom was open with disorderliness of the items within. Additionally, the glass panes of the toilet window were removed, the net was cut, and the iron bars were bent outside. Both Mohd. Azam (PW-1) and Arpana (PW-2) have specifically testified that, a gold chain and *ear-rings* on the person of the deceased were missing. The Spot Panchanama (Exh.30) noted that, the small boxes useful for keeping silver and gold items were lying on the floor. The drawer of the cupboard was removed. The articles from the drawer were lying scattered on the bed. The aforementioned testimonies of Mohd. Azam (PW-1), Arpana (PW-2), Nilesh Mishra (PW-7) and PI. Anil Patil (PW-12) have not suffered any damage in the cross-examination. The text of the F.I.R. (Exh.16) assist the said testimonies and the contents in the Spot Panchanama (Exh.30). There was no reason for the sudden murder of the deceased and the theft of the gold items on her body.

14.2) Having regard to the aforesaid circumstances including the manner in which the deceased was assaulted and done to death, it is safe to conclude that, the perpetrator of the crime had entered in the house of the deceased with an intent to commit theft and robbed the gold chain and *ear-rings* of the deceased.

15) Muktar Ahmed (PW-6) deposed that, since March 2011, he was working as a watchman at Gaurav Ratan Society. Mohd. Azam (PW-1), Arpana (PW-2), Muktar Ahmed (PW-6) and Alka Mishra (PW-9) have testified that, at the relevant time, the appellant was working as sweeper in their Society. This collective assertion by the witnesses is not disputed in the cross-examination. On the contrary, in the cross-examination of Muktar Ahmed (PW-6) it is brought on record that, the Appellant was attending his duty in morning and leaving as soon as his work was over. Thus, the Appellant has admitted that at the relevant time he was working in the said Society as sweeper and he had an easy access to and exit from the Society.

16) P.I. Upase (PW-14) has deposed that, in the year 2011 he was serving as A.P.I. at the LCB, *Kashimira* Unit, Thane Rural. Parallely, the LCB police was searching the accused in this crime. On 15th March 2011, acting on an information that the Appellant has arrived in the area where he was staying, his team went there and apprehended the Appellant. Thereafter, the Appellant was handed over to P.I. Anil Patil (PW-12).

16.1) PI. Anil Patil (PW-12) has testified that, on 15th March 2011, the Appellant was produced before him at the Police Station by the LCB police. He arrested the Appellant. Together the evidence of Santosh Prasad-Panch (PW-5) and PI. Anil Patil (PW-12) shows that after/at the time of arrest, one wrist watch; a handkerchief; wallet; cash Rs.72/-; ID Card of the Appellant and Receipt of pledging gold chain for Rs.10,000/-, dated 14th March 2011, issued by Mahipal Jewellers, Borivali (E.), Mumbai (Exh.92) were found from the person of the Appellant. PI. Anil Patil (PW-12) seized the above articles and recorded a Seizure Panchanama thereof (Exh.26). It bears signature of the Appellant.

16.2) The aforesaid evidence of Santosh Prasad (PW-5) and PI. Anil Patil (PW-12) is consistent with each other to some extent and it is corroborated with the Seizure Panchanama (Exh.26). From the said evidence it is clear that, the Appellant was arrested within one day after the incident. The Appellant is poor. He was doing labour. There was no enmity between the Appellant and PI. Anil Patil (PW-12) or PI. Upase (PW-14). This diminishes the likelihood of involving the Appellant in this crime and foisting the aforesaid articles on him for oblique reason and particularly the Pledging Receipt (Exh.92) by forging it. Therefore, the evidence of Santosh Prasad (PW-5), PI. Anil Patil (PW-12) and Seizure Panchnama (Exh.26) is trustworthy. Accordingly, we hold that, one wrist watch; one handkerchief;

a Wallet; cash Rs.72/-; ID Card of the Appellant and gold chain Pledging Receipt (Exh.92) were seized from the possession of the Appellant.

16.3) Even though the prosecution did not prove the Pledging Receipt (Exh.92) through the witness concerned, the defence brought it on record by referring the same in the cross-examination of P.I. Anil Patil (PW-12). The defence did not object when the Pledging Receipt (Exh.92) was marked in the evidence. This Receipt indicates that, on 14th March 2011, the Appellant had pledged a gold chain with Mahipal Jewellers, for Rs.10,000/-, through Raghunath Mane (PW-8). There is one 'Estimate Memo' dated 21st January 2012 (Exh.60) issued by M/s. Manoj Jewellers, at Bhayandar (W). But it is in respect of certification of the gold chain to deposit it in the Court for trial purpose. Therefore, it cannot be taken otherwise.

17) Cumulatively, the testimonies of Ashish Dev (PW-10) and P.I. Anil Patil (PW-12) show that, on 15th March 2011, in presence of Ashish Dev (PW-10), co-panch and P.I. Anil Patil (PW-12) the Appellant disclosed that, he pledged the ornament on the person of deceased with Mahipal Jewellers, at Boriwali (E.). P.I. Anil Patil (PW-12) recorded the memorandum of that statement (Exh.36). Further we get that, then the Appellant led the panchas and the police to the shop-Mahipal Jewellers. At that time, Kalpesh Jain (PW-4) was present there. Ashish Dev (PW-10)

deposed that, Kalpesh Jain (PW-4) informed that, the Appellant had pledged a gold chain with him for Rs.10,000/-. P.I. Anil Patil (PW-12) deposed that, the Appellant also stated that he had pledged the gold chain as above and Kalpesh Jain (PW-4) accepted the pledge for Rs.10,000/- through an acquainted person. Both Ashish Dev (PW-10) and P.I. Anil Patil (PW-12) have deposed that, Kalpesh Jain (PW-4) handed over the chain (Article-20) alongwith the Pledging Receipt (Exh.22) (counterfoil of Receipt Exh.92). Accordingly, P.I. Anil Patil (PW-12) recorded the recovery panchanama (Exh.37).

17.1) The testimony of Raghunath Mane (PW-8) serves to corroborate the testimony of Ashish Dev (PW-10) and P.I. Anil Patil (PW-12). Raghunath Mane (PW-8) has asserted that he knew the Appellant since last 10 years. The Appellant was doing sweeping work in Devipada area. On 14th March 2011, at about 5.30p.m., the Appellant met him. The Appellant was carrying a chain and *ear-rings* with him. The Appellant's daughter was to be operated and he was in need of money. Raghunath Mane (PW-8) deposed that, he therefore took the Appellant to Mahipal Jewellers of his familiarity. There the Appellant pledged the gold chain for Rs.10,000/- and went away.

17.2) Kalpesh Jain (PW-4) has testified that, he has been working with his uncle in Mahipal Jewellers. On 14th March 2011, the Appellant had

come to his shop to pledge a gold chain. Raghunath Mane (PW-8) was accompanied with the Appellant. Raghunath Mane (PW-8) told him (PW-4) that the Appellant is in need of money and he knew him. Kalpesh Jain (PW-4) deposed that, at this juncture the Appellant said him that, he has no bill of purchasing said gold chain. The Appellant, however, showed his Identity Card displaying his photo. Kalpesh Jain (PW-4) deposed that, the gold chain was weighing 15.5gms. He paid Rs.10,000/- to the Appellant. Kalpesh Jain (PW-4) deposed that, on 15th March 2011, Police visited at his shop alongwith the Appellant. The police asked him whether the Appellant had pledged the gold chain with him. He delivered the gold chain to the police alongwith the Receipt (Exh.22) prepared by him. It bears his signature and signature of the Appellant.

17.3) Bhavarlal Jain (PW-13) has testified that, he is doing a jewelry business in the name and style as 'Manipal Jewellers and Moneylenders', at Borivali (E.). His nephew Kalpesh Jain (PW-4) also sits in said shop and handles the business even in his absence. Bhavarlal Jain (PW-13) deposed that, he had instructed and consented Kalpesh Jain (PW-4) to sign the bills and receipts in the name 'Bhavarlal', in his absence. It was the practice in his shop. The signature 'Bhavarlal' appearing on the Receipt (Exh.22) is in his name. It was done by Kalpesh Jain (PW-4) with his consent.

17.4) Arpana (PW-2), Kalpesh Jain (PW-4), Raghunath Mane (PW-8),

Ashish Dev (PW-10) and PI. Anil Patil (PW-12) have identified the gold chain (Article 20) as the same stolen gold chain of the deceased.

17.5) The aforesaid testimonies of Kalpesh Jain (PW-4), Raghunath Mane (PW-8), Ashish Dev (PW-10) and PI. Anil Patil(PW-12) are very consistent with each other. Their said evidence is substantially corroborated with the disclosure statement (Exh.36) and recovery panchnama (Exh.37). Said oral and documentary evidence clearly show that, the gold chain was pledged by the Appellant with Kalpesh Jain (PW-4) on the same day of the theft and murder and he recovered it on the very next day. None of these witnesses have any reason to falsely claim that, the Appellant had pledged the gold chain as above and recovered it. The evidence of Raghunath Mane (PW-8) clearly shows that the Appellant was in need of money to operate his daughter. This provides a plausible motive for the Appellant's action of pledging the gold chain. The familiarity between Raghunath Mane (PW-8) and the Appellant adds credibility to the former's evidence. The Pledging Receipt (Exh.22) has been duly proved by Kalpesh Jain (PW-4). The pledging receipt (Exh.92) was seized immediately after the incident. Both the Pledging Receipts (Exhs.22 and 92) are identical and bear signature of the Appellant. Thus, said Pledging Receipts corroborates the disclosure statement (Exh.36) and recovery panchnama (Exh.37). The F.I.R. (Exh.16) was lodged very promptly. This swift action suggests that there was little

opportunity for the Mohd. Azam (PW-1) and the police to concoct a story of the murder for theft. The Appellant showed his inability to provide the bill of the gold chain which conduct is common in such theft cases. Therefore, the oral evidence as to the disclosure statement (Exh.36) leading to recovery of the gold chain under recovery panchnama (Exh.37) is free from all doubts and thus, worthy of reliance. Accordingly, we hold that, there was theft of the gold chain (Article 20). As held above, the Appellant had easy access to and exit from Society. Therefore and in view of the presumption under Section 114 (a) of the Evidence Act, it is safe to conclude that, the Appellant himself had committed the theft of said gold chain and pledged it with Kalpesh Jain (PW-4) to meet his financial need.

18) As recorded in Seizure Panchnama (Exh.82), on 13th March 2011, the Appellant had borrowed Rs.500/- from Muktar Ahmed (PW-6) keeping his mobile phone as security. Muktar Ahmed (PW-6) produced that mobile phone before P.I. Anil Patil on 20th March 2011 who seized the same under Seizure Panchnama (Exh.82).

18.1) In this context, P.I. Anil Patil (PW-12) deposed that, on 20th March 2011, Muktar Ahmed (PW-6) produced said mobile phone before him and informed that, he had given Rs.500/- to the Appellant and the latter had given that mobile to him. Muktar Ahmed (PW-6), however, has not testified so in his Examination-in-Chief. Yet, in the cross-examination

Muktar Ahmed (PW-6) has admitted that, the Appellant had borrowed Rs.500/- from him about 10 days before the incident and he had taken the mobile from the Appellant 3 days prior to the incident. Thus, said evidence of Muktar Ahmed (PW-6) is little inconsistent with Seizure Panchnama (Exh.82.). There is delay in seizure of the said mobile. Nevertheless, said evidence of Muktar Ahmed (PW-6) and P.I. Anil Patil(PW-12) indicates that, the Appellant had borrowed Rs.500/- from Muktar Ahmed (PW-6) and as he could not return the same, Muktar Ahmed (PW-6) took the mobile phone of the Appellant. In the cross-examination it has been suggested to Muktar Ahmed (PW-6) that, there were monetary transactions between him and the Appellant and as the Appellant did not return said Rs.500/- Muktar Ahmed took the mobile phone of the Appellant. Thus, the fact of borrowing Rs.500/- has been admitted by the Appellant. This circumstance also indicates that occasionally the Appellant was in need of money due to his poverty. Thus, the fact of borrowing Rs.500/- supports our conclusion as to theft of the gold chain (Article-20) by the Appellant.

19) No doubt, in the cross examination Ashish Dev (PW-10) has admitted that he is related to the family of the deceased. As mentioned on the Pledging Receipts (Exhs.22 and 92), the shop 'Mahipal Jewellers' remain closed on Monday, but it was open on 14th March 2011, which was Monday. Further, that, P.I. Patil (PW-12) has not recorded the statement of

Bhavarlal Jain (PW-13). However, these facts, are insignificant because the Pledging Receipt (Exh.92) was seized much prior to calling Ashish Dev (PW-10) as panch. It is common experience that even if an establishment should remain closed on the given day, sometimes it is opened for business violating the conditions of the Registration Certificate of Establishment. That apart, if really the police and the witnesses wanted to falsely implicate the Appellant in this crime, the police could have told Arpana (PW-2) to arrange more gold items to show its seizure from the Appellant to make out a more stronger case.

20) Evidence of Ashish Dev (PW-10) and P.I. Anil Patil (PW-12) further shows that, on 19th March 2011 again the Appellant disclosed that, he has concealed the clothes worn by him at the time of incident and the weapon used in the offence in a *Nallah* of MIDC at *Bhyander*, between Meera Village and Pleasant Park and he would discover the same. P.I. Anil Patil (PW-12) recorded the memorandum of said statement (Exh.38). It bears signature of the panchas, P.I. Anil Patil(PW-12) and the Appellant. Both Ashish Dev (PW-10) and P.I. Anil Patil(PW-12) have testified that, thereafter they went to the said spot by police jeep, as led by the Appellant. Said spot falling between *Kashimira* Police Station and Pleasant Park. There, the Appellant took out one Barmoda-Pant (Article 21), T-Shirt (Article 22) and Knife (Article 23). There were bloodstains on the

Barmuda-Pant (Article 21). PI. Anil Patil (PW-12) seized the same and recorded its recovery panchanama (Exh.39). It bears signature of the panchas, PI. Anil Patil (PW-12) and the Appellant.

20.1) The aforementioned testimonies of Ashish Dev (PW-10) and PI. Anil Patil (PW-12) are consistent with and corroborated by the disclosure statement (Exh.38) and the recovery panchnama (Exh.39). PI. Anil Patil had no reason to concoct a story of the recovery as above.

21) The evidence of Muktar Ahmed (PW-6) is that, his duty hours were from 06:00 a.m. to 08:00 pm. On 14th March 2011, at about 12.30 p.m. the Appellant came down from the Society. There was blood on the forehead and on the clothes worn by the Appellant. The Appellant was walking limping. Muktar Ahmed (PW-6) deposed that, he asked the Appellant as 'what happened'. The Appellant replied that, he fell down due to overdose of liquor. The aforesaid testimony of Muktar Ahmed (PW-6) did not shatter in the cross examination. PI. Anil Patil (PW-12) also deposed that, the Appellant was limping at the time of arrest. Said fact is also reflecting from the Seizure Panchnama (Exh.26). Therefore, testimony of Muktar Ahmed (PW-6) is safe to rely upon. Accordingly, we hold what on 14th March 2011, at about 12.30 p.m., Muktar Ahmed (PW-6) had seen the Appellant when he came down from the Society, at that time there was blood on the forehead and on the clothes worn by the Appellant and he was

walking limping.

22) On the strength of the testimonies of Nilesh Mishra-Panch (PW-7), P.I. Anil Patil (PW-12), Spot Panchnama (Exh.30) and blood samples seizure panchanama (Exh.31) the prosecution has proved that, immediately after the incident on 14th March 2011, P.I. Anil Patil (PW-12) collected the blood sample from the spot (Sr. No.A-8:in C.A. Report Exh.86). Further it is also proved that, on 15th March 2011, with the help of Scientific Assistant Bhavesh Shaha, P.I. Anil Patil (PW-12) collected the samples of dried blood found on the wall, on the fridge and at other places inside the house (Sr. Nos.A-1 to A-7, C.A. Report Exh.86). From the evidence of Shamal Raut (PW-3) it is proved that, P.S.I. Afale had recorded the Inquest Panchnama (Exh.19) in her presence and the co-panch. Kurta (Article 2), Salwar (Article 4), wrist watch (Article 8) and gold ring (Article 9) were on the body of the deceased. Further, from the evidence of P.I. Anil Patil (PW-12) it is proved that, on 25th March 2011, he had forwarded the seized articles and blood samples etc. to RFSL for Analysis under forwarding letter (Exh.83). The C.A. Report (Exh.86) clearly shows that, the sample of the blood collected from the spot (Sr. No.A-8) is of group 'AB'. Said blood group matches with the blood group 'AB' of the blood found on the wall and the fridge inside the house (Sr. Nos.A-1 and A-2). It also matches with the blood group 'AB' of the blood found on the clothes of the deceased i.e.

Kurta, inner, Pyjama and Nicker (Article Nos. 2 to 5, Sr.Nos.B-1 to B-4, C.A. Report Exh.86) and the blood group 'AB' of the blood found on the Burmoda-Pant (Article 21) recovered by the Appellant. The T-Shirt (Article 22) and the knife (Article 23) recovered by the Appellant were also stained with human blood (Sr.Nos.C-2 and D-1, C.A. Report Exh.86). These circumstances also corroborates the testimonies as to the disclosure statement (Exh.38) and the recovery panchnama (Exh.39). The Appellant has not offered any satisfactory explanation for the presence of the blood of the deceased on his Burmoda-Pant and the human blood on his T-Shirt and the knife recovered by him. Thus, these circumstances lead to a safe conclusion that the Appellant has assaulted the deceased by said knife and caused her murder and in that act the blood of the deceased contacted his clothes.

23) The prosecution case is that, after committing this crime, the Appellant fled from the spot through the toilet window of the house of the deceased. The house of the deceased is on the third floor. The Appellant fled with the help of drainage pipe but in that process, he fell down from the mark of second floor. However, the relevant medical certificate is not proved by the prosecution.

23.1) In the above context, P.I. Anil Patil (PW-12) has testified that at the time of arrest, the Appellant had mute injury to his heel and he was

limping. This evidence is consistent with the evidence of Muktar Ahmed (PW-6). The door of the house of the deceased was closed when Mohd. Azam (PW-1) went there to take cement. Immediately after Mohd. Azam (PW-1) left the house for the school, Alka Mishra (PW9) went there and opened the first door of the house, however, the second door was chained from inside. This all happened within 30-45 minutes meaning thereby, the Appellant did not get any chance to exit from the front door of the house otherwise he would have been seen and caught by Alka Mishra (PW-9) and the lady from Room No.304. Therefor, and considering consistent testimony of Muktar Ahmed (PW-6) and P.I. Patil (PW-12) that, at the relevant time the Appellant was limping, it is safe to infer that after committing the theft, the Appellant fled from the toilet window to avoid being caught, and therefore, he sustained an injury to heel.

24) The summary of the aforesaid discussion is that, on re-appreciation of the evidence on record in the light of the settled principle of law, we are of the considered view that, the prosecution has fully established all the relevant circumstances from which the conclusion of the guilt of the Appellant is to be drawn; said circumstances are of a definite tendency unerringly pointing towards the guilt of the Appellant; the circumstances taken cumulatively are forming a chain so complete that there is no escape from the conclusion that within all human probability

this crime was committed by the Appellant; the said circumstances are consistent only with the hypothesis regarding the guilt of the Appellant; and thus exclude every possible hypothesis except the one to be proved. As a result, the Appeal is liable to be dismissed.

24.1) Hence, the following Order:

24.2) The impugned Judgment and Order dated 20th June 2016, passed by the Additional Sessions Judge-1, District and Sessions Court, at Thane, is upheld

24.3) Criminal Appeal is, accordingly, dismissed.

25) Before parting with the Judgment, we place on record our words of appreciation for Mr. Amit Mane, appointed Advocate for the Appellant, who was thoroughly prepared and argued this Appeal in a manner expected from such an Appointed Advocate.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)