

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

CRIMINAL APPEAL NO. 132 OF 2024

Santosh Shridhar Nambiyar	..Appellant
Versus	
The State of Maharashtra & Anr.	..Respondents

**WITH
INTERIM APPLICATION NO. 284 OF 2024
IN
CRIMINAL APPEAL NO. 132 OF 2024**

Mr. Shashikant D. Chandak (Appointed Advocate) a/w. Kanchan S. Chandak, Advocate for the Appellant.

Ms. Dhanalaxmi Krishnaiyer, APP for the State/Respondent.

Ms. Sonia Miskin, Advocate for the Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 06 OCTOBER 2025
PRONOUNCED ON : 14 OCTOBER 2025**

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 19.04.2023 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.144 of 2011. The Appellant was convicted and sentenced as under:

- i) He was convicted for commission of the offence punishable U/s.302 of the I.P.C. and was sentenced to suffer imprisonment for life and to pay a fine of Rs.10000/- and in default to suffer S.I. for six months.
- ii) He was convicted for commission of the offence punishable U/s.394 of the I.P.C. and was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5000/- and in default to suffer S.I. for three months.
- iii) He was convicted for commission of the offence punishable U/s.450 of the I.P.C. and was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5000/- and in default to suffer S.I. for three months.

All the substantive sentences were directed to run concurrently. The Appellant was arrested on 10.03.2011 and since then he is in custody. He was granted set off U/s.428 of the Cr.P.C. Out of the total fine amount he paid, the amount of Rs.15000/- was directed to be paid to the first informant-Respondent No.2 herein.

2. Heard Mr. Shashikant Chandak, learned Appointed Advocate for the Appellant, Ms. Dhanalaxmi Krishnaiyer, learned APP for the State/Respondent and Ms. Sonia Miskin, learned

Advocate for the Respondent No.2.

3. The prosecution case is that the deceased Geeta Pokale was separated from her husband. She used to reside with her brother. But a few days prior to the incident dated 07.03.2011 she had come to reside with her daughter in Dombivli. Her daughter PW-1 the first informant had a job. On the date of the incident, the informant left the house in the morning. When she returned, she found that the door was bolted from outside. She got no response from inside. Somehow, she managed to open the door. When she entered the house, she saw that her mother was lying dead. She raised alarm. The police were informed. C.R.No.40 of 2011 was registered at Vishnunagar police station under sections 302, 394 and 450 of the I.P.C. The investigation commenced. The dead body was sent for the postmortem examination. Some ornaments were found missing. PW-1 Avni Rao gave her F.I.R. The spot panchanama was conducted. During the investigation it was revealed that the Appellant had committed this offence, therefore, he was arrested on 10.03.2011 from Karwar. Some ornaments were found in his house. Some ornaments were pledged by him

with Karwar Urban Co-operative Bank, at Kajubag, Karwar. The ornaments found in his house were seized. They were identified by the witnesses. The investigation revealed that the Appellant had made false entries in the register of the society while effecting entry in the building. Those registers were seized. The Appellant's specimen handwriting was taken. They were referred for the handwriting expert's opinion. A wire was recovered at his instance. The cause of death was mentioned as 'Asphyxia due to throttling and strangulation'. The watchman had seen the Appellant entering in the building, therefore, the test identification parade ("TIP") was held. It is the prosecution case that the Appellant was identified by the watchman in the said TIP. After completion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

4. During the trial, the prosecution examined 14 witnesses including the first informant i.e. the daughter of the deceased, the estranged husband and brother of the deceased, a neighbour, the panchas, the Tahsildar who had conducted the TIP, the Medical Officer who had conducted the postmortem examination and the

investigating officers. The defence of the Appellant was of total denial.

5. The learned Judge considered the evidence on record, the statement of the Appellant recorded U/s.313 of the Cr.P.C. and heard the arguments. The learned Judge relied on the circumstances of recovery of the ornaments, the recovery of the wire, the evidence of identification parade and the handwriting expert's opinion regarding the entries made in the register. Based on all this evidence, he convicted and sentenced the Appellant, as mentioned earlier.

6. PW-1 Avni Rao was the first informant. She was the daughter of the deceased. She deposed that, in the year 2011 she was residing in Riddhi Siddhi Complex in Dombivli (West). Her mother was staying with her. PW-1's husband was in Dubai. She was doing a job.

On 07.03.2011, she left for her job at 9:00a.m. and came back at 9:30p.m. During that time, her mother was alone in the house. When PW-1 came back, she knocked on the door, but

her mother did not respond. She put her hand inside the door from the gap of the safety door and opened the latch. She went inside and saw that the television set was on, the fan was also on and the light was switched off. She proceeded to the bedroom. She saw that her mother was sleeping. She went near her. She saw blood oozing out from her mother's head and nose. The mangalsutra and the ear rings normally worn by her mother were missing. PW-1 called her neighbour by the name Bhide; who in turn informed about the incident to the police. The police came to her house. PW-1 lodged her F.I.R. It is produced on record at Exhibit-18. The police started investigation. They prepared the inquest panchanama and the spot panchanama. The dead body was sent for postmortem examination. PW-1 has stated that, in the morning of the incident, she had noticed one phone call on the mobile phone of her mother, but at that time she did not pay attention to it as she was in a hurry. She informed this fact to the police on 08.03.2011. After registration of the F.I.R., she also noticed that one gold necklace was missing. This fact was also told by her to the police on 08.03.2011. On 10.03.2011, she was called to the

police station. The police showed her one mangalsutra. She identified that mangalsutra as belonging to her mother. Her further statement was recorded. Apart from this jewellery, four bangles were also missing.

In the cross-examination, she stated that her father was also residing in Dombivli, but her mother and father were divorced because of differences between them. The divorce had taken place 15 years before the incident. PW-1 was raised by her father. PW-1's mother used to meet her at the mother's parental house. Her maternal uncle PW-11 Deepak Shet was unmarried. PW-1's mother had come to reside with her 6 to 7 months prior to the incident. PW-1 admitted that, she had not given the description of the gold ornaments in her F.I.R., as well as, in her supplementary statement, and that she had not produced any receipt of those gold ornaments.

In her further examination in chief, she identified the mangalsutra produced in the Court at Article 'M', the ear tops produced in the Court at Article 'J' and four pieces of gold bangles

produced in the Court at Article 'I'. The mangalsutra and the ear tops were used by her mother regularly. The gold bangles were belonging to PW-1. She identified all those articles in the Court.

Her F.I.R. produced at Exhibit-18 substantially corroborates her deposition. It mentions that, four gold bangles, one gold mangalsutra and three ear tops were stolen. Apart from that, Rs.2000/- were also stolen.

7. PW-4 Mrudula Bhide was a neighbour referred to by PW-1 Avni. On 07.03.2011, at about 12:00p.m., she came back to her house with her grandson who had gone to Kids' play group. At about 9:30p.m., PW-1 Avni came to her house and told her that her mother was lying in the house. PW-4 went to PW-1's house and saw the scene of the offence. She did not state about the entire incident. Therefore, she was cross-examined by the learned APP. However, she did not give any further answers helpful to the prosecution.

Her evidence is of limited use. The fact that the deceased was murdered in that house is undisputed. Missing of the

ornaments can only be deposed by PW-1 Avni as she was aware of the details.

8. PW-2 Anjana Prabhu was examined as a pancha witness for the inquest panchanama and the spot panchanama. She has described the condition of the dead body. She had described that, the rice was found scattered in the kitchen and the samosas were also lying there. The inquest panchanama was produced on record at Exhibit-20 and the spot panchanama was produced on record at Exhibit-21. This particular evidence can hardly be disputed.

9. PW-7 Vallabh Pokale was the estranged husband of the deceased. His evidence is not of much importance. He had only narrated the history of why they were separated. It is not necessary to go into the reasons of separation. On the date of the incident, he received a phone call from PW-1 Avni informing him about the incident.

10. PW-11 Deepak Shet was the brother of the deceased. He deposed that, after the divorce of the deceased she was residing with him in his house at Karwar. One month prior to the incident,

the deceased had gone to Dombivli to stay with PW-1 Avni. He used to be in touch with the deceased telephonically. On 02.03.2011, he had conversation with the deceased on phone. He was informed that she was returning to Karwar on 19.03.2011 and she had booked the railway ticket. On 07.03.2011, PW-1 Avni informed him about the incident. He rushed to Dombivli on the next day. He returned to Karwar on 11.03.2011. On 14.03.2011, the police had taken the Appellant to Karwar Urban Co-operative bank, at Karwar. PW-11 was also informed. He had gone to that bank. The Appellant had pledged the gold with that bank. The officer showed him the gold ornaments. This witness identified those ornaments as those belonging to the deceased. There was one necklace and two bangles. The deceased was using those ornaments. He identified those ornaments. They were kept in the bank.

In the cross-examination, he could not explain as to why his police statement mentioned that the deceased was residing with PW-1 Avni since the past six months. The rest of the omissions from his police statement are not of much importance.

He denied the suggestion that his story about visiting the bank at Karwar and the ornaments having been showed to him was false.

11. PW-8 Vrushali Patil was the Tahsildar who had conducted the TIP. She has stated that on 23.03.2011, she conducted the TIP in Adharwadi Jail, Kalyan. Two pancha witnesses were present. The witness PW-5 Dhondiba was also present. The Appellant was placed with six dummy persons. They were of similar description. The Appellant was given an opportunity to change the clothes, but he did not change the clothes. He stood at Sr.No.7 as per his choice. The witness Dhondiba More was brought to the room. He identified the Appellant by touching him.

In the cross-examination, there is hardly any material brought out on record in favour of the defence.

12. PW-5 Dhondiram More is an important witness in this case. He deposed that, he was a watchman in the said Riddhi Siddhi Apartment, Kopargaon, Dombivli. He was having one register and he had to record the names of the visitors in that

register for A and B wing. The other two watchmen were working in the night shift. PW-1 Avni and the deceased were residing in Flat No.503 in B wing. One Narendra Sawant was residing in Flat No.502. At about 9:30a.m. one person came to the building. PW-5 asked him to enter his name in the register. He wanted to go to flat No.502. He entered his name as Mahesh. PW-5 told him that, there was nobody in flat No.502. That person replied that he would come soon. That person then went towards that flat.

At about 2:30p.m. to 3:00p.m. that person came back and told PW-5 that his work was over. PW-5 then left the society at about 7:00p.m. At about 9:30p.m. the Secretary of the society called him telephonically. PW-5 went back to the society. He came to know that a murder had taken place in Flat No.503. The police made enquiries with him. He handed over the register to the police. He showed the entry by the name Mahesh in their register. Those entries were dated 05.01.2011 and 07.03.2011. He showed those entries to the police. The police seized the register. He described that the person by the name Mahesh as a slim person, between 30 to 35 years of age, having blackish complexion and

having height between 5 to 5.50ft. PW-5 was called for the TIP by the Tahsildar. He also identified the Appellant in the TIP. He also identified the Appellant in the Court.

In the cross-examination, he deposed that apart from working as a watchman, he used to look after the water supply of the society. On 07.03.2011, at about 9:00a.m. to 9:30a.m. he had gone to the bore-well to inspect the water supply. PW-5's name was Dhondiram, but in his police statement his name was mentioned as Dhondiba. He deposed that, he could not identify the person who had visited the society on 05.01.2011. He admitted in his cross-examination that the police had already shown the photograph of the accused before the TIP and, hence, he had identified the Appellant.

13. PW-3 Rajdutta Mayekar was a pancha witness. He had turned hostile. When he was cross-examined by the learned APJ, he admitted that, when he went to the police station, the police told him that the Appellant was the accused in the case. The Appellant told them that he would show the place where he had

thrown the electric wire. Accordingly, the statement of the Appellant was recorded. The statement is produced on record at Exhibit-26. After that, the Appellant led the police and the panchas near Riddhi Siddhi society. The Appellant took them towards the bushes and produced one red coloured wire. It was seized under the panchanama. That panchanama is produced on record at Exhibit-26A. He showed his willingness to identify the wire if shown to him. However, that wire was not shown to him.

This witness then did not remain present for the cross-examination and, therefore, the defence was deprived of an opportunity to cross-examine this witness.

14. PW-9 Dr. Purshottam Tike was the Medical Officer who had conducted the postmortem examination. The postmortem notes were produced on record at Exhibit-52. He described the injuries suffered by the deceased. They were as follows:

Surface injuries as per column No.17.

- i) Two abrasion marks 2cm x 1cm seen on dorsum of right hand, brown in colour;

- ii) 2cm x 1/4cm abrasion marks seen, 6cm below right pinna;
- iii) Impression print mark seen going posteriorly from right sternomastoid to left side of neck, 30cm x 1/2cm x 1/4cm;
- iv) Multiple impression marks 3 in numbers seen on left side of neck;
- v) Cricoid cartilage compressed with subcutaneous ecchymosis;
- vi) Nose cyanosed and swollen;

On external and internal examination of skull, following injuries were seen:

- i) Right frontal congestion and bruise of 3cm;
- ii) Brain – Congested and oedematous;

The cause of death was mentioned as ‘asphyxia due to throttling and strangulation’. This evidence is also not in dispute.

15. PW-6 Narendra Kamat was a pancha for conducting the personal search of the Appellant at the time of his arrest. He deposed that he was called by the police near Ramnath Krupa Building, Kajubag, Karwar. The police produced the Appellant before them. The Appellant gave his name as Santosh Shridhar Nambiyar. The police took his personal search. One mangalsutra

was found in his right side pant pocket. One receipt of school fees was found in his shirt pocket. The amount of Rs.13000/- was found in his right side pant pocket. One mobile phone was also found with him. All the articles were seized. The panchanama is produced on record at Exhibit-35.

In the cross-examination, he accepted that he acted as a pancha witness in various cases.

16. PW-10 Asha Desai was the Branch Manager of Karwar Co-operative Bank with Kajubag branch. She had power to sanction gold loan up to Rs.1 lakh. She deposed that on 08.03.2011, one person by the name Santosh Nambiyar came to her with two bangles and one necklace for pledging them. On the basis of pledging of those ornaments, she sanctioned a loan of Rs.36000/-. The loan was granted for one year with interest at the rate of Rs.14%. The gold was still with the bank.

17. On 14.03.2011, the police officers of Dombivli came to her bank with the Appellant. The police made enquiry with her. The Appellant was sitting in the jeep on the road. She gave the

information. The original bond deposited in the bank with the signature of the Appellant in the square showed receipt of cash. It was produced on record at Exhibit-56. The photocopy of the page No.305 of the ledger was shown to PW-10 through video conferencing. It had the signature of the Appellant. It was produced on record at Article 'Z'. She identified the Appellant who was produced through video conferencing. She identified the Appellant by his full name.

In the cross-examination, she stated that the Appellant had told her that the ornaments were belonging to him. When the police approached her for making enquiry, the Appellant was not produced before her.

18. PW-12 P. I. Rajendra Kulkarni was the first investigating officer. He investigated the C.R.No.40 of 2011 registered at Vishnunagar police station. He registered the F.I.R. He conducted the spot panchanama and the inquest panchanama. The F.I.R. at Exhibit-18 mentions that, four bangles, one mangalsutra and ear tops were missing. The spot panchanama was conducted. A mobile

phone was found at the spot bearing No.9029619961. The blood lying on the spot was taken with the help of cotton swab.

19. On 08.03.2011, the clothes of the deceased were seized. PW-1 Avni had informed the police that her mother had received a phone call in the morning. Therefore, PW-12 called for CDR of the mobile phone of the deceased. From the CDR it was revealed that she had received a phone call at 9:11a.m. The police found the location and other data about the mobile number from which the phone call was made. It was made from the mobile number registered in the name of Shobha Kupankar, resident of Karwar, Karnataka. Shobha was the wife of the Appellant. Therefore, he sent his team to Karwar for investigation regarding the same mobile number. He recorded the statements of the witnesses and that of the watchman Dhondiram More-PW-5. During the investigation, PW-5 Dhondiram informed about one person by name Mahesh coming to the society and purportedly going to the flat No.502. PW-12 enquired with the residents of Flat No.502. It was revealed that nobody had visited their house by that name. PW-12 seized the register of the society in the presence of panchas

and prepared the seizure panchanama.

20. On 10.03.2011, the police team returned from Karwar with the Appellant. PW-12 arrested the Appellant. The arrest panchanama is produced on record at Exhibit-65. The first informant identified the mangalsutra seized from the Appellant that was found in his pocket. Accordingly, her supplementary statement was recorded. On 12.03.2011, the Appellant showed his willingness to show the place where he had concealed the electric wire with which he had strangled the deceased. Accordingly, his statement was recorded in presence of the panchas. The Appellant led them to the place outside the compound of the said Riddhi Siddhi society. He led them to the open grass and produced the electric wire. The panchanama is produced on record at Exhibit-26A.

21. On 12.03.2011, PW-12 took the specimen signatures of the Appellant under the panchanama which is produced on record at Exhibit-68. On 13.03.2011, the Appellant showed his willingness to inform where he had pledged the two gold bangles

and one necklace. He gave the information about it. Accordingly, his statement was recorded in the presence of panchas. It is produced on record at Exhibit-69. PW-12 took the Appellant, the police staff and the panchas to Karwar from Kalyan by train. The Appellant took them to his house. His wife Shobha was present in the house. He took out one pouch from the top of the cupboard in his house. He took out some currency notes, two gold bangles and gold ear tops. They were seized. He also produced his clothes which he had worn at the time of the incident. There were blood stains on the shirt. All the articles were seized under the panchanama. The police team then was led to Karwar Co-operative Bank at Karwar. The Bank Manager informed about the loan transaction. She required the order of the Court to handover those ornaments. PW-12 instructed her not to part with those ornaments as they were involved in the offence.

He then made an arrangement, so that, TIP could be conducted on 23.03.2011. He collected the CDR of the mobile number of the Appellant and the deceased. There was a record of the phone call made by the Appellant on the mobile phone of the

deceased on 07.03.2011 at 9:11 in the morning. The seized muddemal was sent for C.A. examination. The specimen handwriting, the signature of the Appellant and the loan application made to the said bank was sent to the Government handwriting expert's opinion, at Pune. He identified all the articles produced in the Court, as well as, the Appellant.

In the cross-examination, he stated that, those ornaments were available in the jewellery shop, but he volunteered that the pieces of the broken bangles produced in the Court were not available. There were no specific identification marks on the gold ornaments. He had taken the F.I.R. from PW-1 Avni at the spot itself. He could not tell by which vehicle his team had gone to Karwar. He had not accompanied them at the first instance. He admitted that the mobile number in question was not registered in the name of the Appellant. But he volunteered that the mobile number was registered in the name of the Appellant's wife Shobha. Similarly, the mobile phone used by the deceased was not registered in her name. PW-12 stated that, there was no seal on the registers seized from the society.

22. The panchanama showing seizure of the articles from the Appellant's house at Exhibit-69 mentions recovery of two gold bangles; out of which, one bangle was broken into three pieces. There was one ear top pair. All these articles were produced in the Court and were identified by the witness including the I.O.

23. PW-13 PI. Anil Jagtap was attached to the Detection Branch. He deposed that the mobile phone of the deceased was lying at the spot. The CDR of that mobile number was collected. There was one phone call at about 9:19a.m. on 07.03.2011. The call entry was deleted from the mobile of the deceased, but the call was reflected in the CDR. This call was suspicious. From that call, further investigation was carried out and it was traced to the phone number of Shobha i.e. the wife of the Appellant. Accordingly, he was given an order by his superior to proceed to Karwar. He along with the other police officers went to Karwar by train. They reached on 09.03.2011 at about 3:30p.m. His team then went to the house of the Appellant. His wife Shobha was present. The Appellant was present. His personal search was taken in the presence of the panchas. The articles, as mentioned earlier,

were recovered from his person during the search. After making report to Karwar police station they left Karwar by train on 09.03.2011 itself and reached their own police station i.e. at Vishnunagar Police Station on 10.03.2011 at 01:20p.m., with the muddemal property. He identified the Appellant and the seized property. He identified the mangalsutra.

His cross-examination is mostly in the nature of suggestions that he was deposing falsely. He denied those suggestions.

24. PW-14 Deepak Pandit was examined as the handwriting expert. He deposed that, he received the concerned documents. He found that the person who had written the Exhibit Nos.S-1 to S-6 had also written the Exhibit Nos.Q-1 and Q-3. The natural handwriting N-1 and the specimen handwriting S-1 to S-6 were not tallied, therefore, the natural handwriting N-1 was not considered for examination. The effect of his evidence was that the entries in the register of the society referred to herein above i.e. two entries dated 05.01.2011 and one entry dated 07.03.2011

were found to be in the handwriting of the appellant.

In the cross-examination, he deposed that he had not given the statement of reasons to the police. According to him, the statement of reasons was meant for the purpose of helping the Court and, therefore, it was to be submitted to the Court at the time of giving evidence. His opinion is produced on record at Exhibit-109. His statement of reasons is produced on record at Exhibit-113.

A requisition for handwriting expert's opinion is produced on record at Exhibit-90. It refers to three question entries from the register of the Riddhi Siddhi society; they are termed as Q1, Q2 and Q3, for dated 05.01.2011 the Entry No.47 and 51 and for dated 07.03.2011 the Entry No.16 respectively. Seven specimen signatures were marked as S1 to S7 and natural handwriting marked as N-1 was the signature on the loan application form submitted with Karwar Urban Co-operative Bank.

This is the evidence led by the prosecution.

SUBMISSIONS OF MR. SHASHIKANT CHANDAK, LEARNED COUNSEL FOR THE APPELLANT.

There are no eye witnesses to the incident. The F.I.R. did not give details of all the jewellery which was allegedly stolen. The mobile phone number, based on which the investigation proceeded against the Appellant, did not belong to the Appellant. Similarly, the mobile phone number which is referred to by the investigating agency regarding the mobile handset found at the spot, did not belong to the deceased. The neighbours were not examined. The only neighbour PW-4 Mrudula Bhide who was examined, did not support the prosecution case fully. The TIP has no meaning because PW-5 Dhondiram has admitted that the photograph of the Appellant was shown to him before conducting the TIP. There was overwriting in the entry in the, therefore, there was a strong possibility of manipulation in the register. There is nothing to show that it was the official register maintained by the society. No office bearers of the society was examined in that connection. The evidence of the Manager of the Bank where the ornaments were pledged has no meaning because the articles were not produced before the Court and she identified the Appellant

only through video conferencing.

25. PW-3 Rajdutta's cross-examination was not allowed to be conducted. Therefore, the recovery of wire cannot be held against the Appellant. In any case, the wire was not produced before the Court. It was found from an open place, therefore, this recovery cannot be held against the Appellant. PW-5 Dhondiram is clearly a tutored witness. Finding of the ornaments from the Appellant's house was natural and there was nothing incriminating about it.

SUBMISSIONS MADE BY LEARNED APP MS. DHANALAXMI KRISHNAIYAR FOR THE STATE:

The Appellant had misled the watchman that, he wanted to go to Flat No.502 when nobody was present in that flat. The evidence shows that, in the past also he had come to the society by making the false entries. Thus, he had hatched that plan much before the incident. In January 2011, he had mentioned the entry of flat No.B-503. He had entered that flat at 2:50p.m. On the same date again he had entered that flat at 4:00p.m., but this time, in the entry he had not mentioned the flat number. On 07.03.2011, he had mentioned the flat No.B-502 and not B-503. Thus, there

was a clear design to commit the crime by creating false record. The presumption U/s.114 of the Evidence Act, in particular, *illustration* (a) applies. She submitted that, the false entry in the register is proved through the handwriting expert's opinion. There is recovery of the ornaments. They are identified by the witness. The motive was obviously of robbery. All these circumstances form a complete chain and, therefore, the prosecution has proved its case beyond reasonable doubt.

Learned counsel appearing for the Respondent No.2- first informant adopted the arguments advanced by the learned APP.

REASONS

26. We have considered these submissions. This case is based on the circumstantial evidence. We have carefully considered each of these circumstances against the Appellant. The first circumstance is about effecting entry in the house of the deceased. The deceased's phone or at least the phone which she was using was found at the spot. The phone call at 9:11a.m. is a

significant circumstance in this case. That particular phone call entry was deliberately deleted from the handset of the deceased which was lying there. However, that phone call was reflected in the CDR. Further it was revealed that the said phone call was made from the phone number registered in the name of the Appellant's wife. Thus, there is direct connection of that particular phone number with the Appellant. The circumstance that the said phone call entry was deleted from the mobile handset clearly shows that the Appellant had tried to erase the evidence which was directly concerned with that particular phone call. It was made from Karwar. The deceased was residing at Karwar with her brother before coming to Dombivli to stay with her daughter for a few days.

27. The Appellant had also made a similar entry in that particular flat in the month of January 2011. Thus, the deceased had allowed him to enter the house. He stayed in the house between 9:30a.m. to 3:00p.m.; as can be seen from the entry where his departure time is mentioned. During that period, this incident had taken place.

28. The handwriting of the entry is conclusively proved through the evidence of PW-14 that it was of the Appellant himself. Thus, the first circumstance of entering the house of the deceased and deleting his mobile phone record is a strong incriminating circumstance which is proved by the prosecution beyond reasonable doubt.

29. The entry in the month of January 2011 shows that he had made the entry to visit flat No.B-503, but on 07.03.2011 he had deliberately not mentioned the flat No.503, but instead he had mentioned flat No.502 when he had no connection with the occupant of the flat No.B-502. This also means that he had entered the society with a clear mind to commit that offence. It was a premeditated crime. The police, through some intelligent work, traced the phone record and reached Karwar where the Appellant was arrested. His personal search and search in the house showed that he had kept the ornaments belonging to the deceased with him. Those ornaments were seized. They were identified by the witness. They were identified when they were produced in the Court. One of the bangles was broken into three pieces. PW-1 Avni,

in particular, was well aware of the ornaments worn by her mother. She was also naturally aware of her own ornaments. She had identified those articles in the Court and during the investigation, as well. All those articles were recovered from the possession of the Appellant. This is yet another strong circumstance against him.

30. The third circumstance of pledging of the ornaments is also important. However, those ornaments were not produced before the Court. The Bank Manager had deposed that the Appellant had come to their bank on the very next day of the incident and had pledged the ornaments with the bank. The incident had taken place on 07.03.2011 and the Appellant had gone to their bank on 08.03.2011 for pledging the ornaments. The Bank Manager had identified the Appellant with his full name when he was produced during the trial through video conferencing. There is no reason to disbelieve her. It would have been better if through court process the ornaments pledged by him were produced before the Trial Court. But the fact remains that the prosecution has proved that on the next day of the incident, the

Appellant had pledged the same ornaments with the said bank.

31. As far as recovery of the wire is concerned, we are inclined to give benefit of doubt, only for that circumstance, to the Appellant. First of all, the pancha was not available for the cross-examination, secondly, the wire was recovered from an open place accessible to all, and thirdly, the wire was not produced in the Court.

32. The medical evidence shows that the deceased was murdered by throttling and strangulation. The motive was robbery as the ornaments were stolen. As rightly submitted by the learned APP that, *illustration (a)* to Section 114 of the Evidence Act would apply in this case; which reads thus:

**“114. Court may presume existence of certain facts -
.....**

Illustrations

The Court may presume -

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;”

33. Hence, we find that the prosecution has proved the above circumstances separately and cumulatively beyond reasonable doubt. They form a complete strong chain of circumstances against the Appellant. Therefore, the learned Judge has rightly convicted and sentenced the Appellant. We see no reason to interfere with the impugned Judgment and order.

34. With the result, the Appeal is dismissed. With disposal of the Appeal, the connected interim application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)