
(2020) 02 BOM CK 0140
In the Bombay High Court
Case No : Criminal Appeal No. 911 Of 1998

State Of Maharashtra

APPELLANT

Vs

Raghuprasad Radhakrishna Raikar And Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 347, 392, 397, 449

Citation : (2020) 02 BOM CK 0140

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : M.M. Deshmukh,Virendra Pethe, B.D. Joshi

Final Decision : Dismissed

Judgement

V.G. Bisht, J

1. This Criminal Appeal has been preferred by the Appellant-State aggrieved by the judgment and order dated 24th April, 1998 passed by the learned

Additional Sessions Judge, Thane in Sessions Case No. 280 of 1997 whereunder respondents/accused were acquitted of the offences punishable

under Sections 302 r/w 34, 392, 397, 449 r/w 34 and 347 r/w 34 of the Indian Penal Code (for short â??IPCâ??).

2. The brief facts of the case are:

The informant at the relevant time was working with one Manjunath Datta Revankar and was learning art of making of gold ornaments. One

Digambar Vyankatesh Kurdekar(since deceased) was also with him and he also used to learn the same. The said Manjunath used to bring gold from

Mumbai and as per the orders received from the customers they used to prepare the gold ornaments. On 21/051997, said Manjunath brought gold

from Mumbai for manufacturing 110 pairs of gold earrings (d.kZQqys) and gave it to said deceased and went away his village. According to

prosecution the said persons always used to give the gold for polishing and designing to one Vikrant Seth of Kalva who after doing the needful used to

return the ornaments through his servant, namely, Raju Suresh Raikar, who was known to informant.

3. The prosecution next contends that on 21/05/1997 the informant and the deceased as per direction of said Manjunath Datta Ravankar went to the

house of said Vikrant seth and handed over 110 pair of earrings (d.kZQqys) for polishing and designing. The said ornaments were returned by said

Raju Suresh Raikar on 23/05/1997 at about 09.30 pm. Thereafter, the informant left for market.

4. According to prosecution at about 10-30 pm when the informant returned to the flat he found the door was closed and therefore, he knocked but

nobody opened it and therefore, he went on the back side of the flat and found that kitchen lights were on whereas light of the hall was switched off.

Neither he could see anything nor hear any voice of deceased and therefore, he immediately returned to the main door of the flat and, meantime, he

saw a person running towards staircase and also found the door of the flat opened. The prosecution then contends that the informant become

suspicious and immediately entered into the flat and found deceased lying on the floor. He tried to awake him but he was motionless. He also did not

find 110 pair of gold earrings (d.kZQqys) and thus got suspicious of the theft in respect of the said ornaments, came out of the house and raised

commotion. The people from the society gathered including the watchman. The informant narrated the whole incident to the persons gathered there

and also informed running of a person towards the terrace of the building.

5. The prosecution lastly contends that the person then rushed to the terrace and apprehended three unknown boys and brought them down. One of

them was the brother of said Vikrant seth, namely, Raghu (A-1).

6. Later on, the informant lodged the report with Kopari Police Station and in the police station he came to know the other two persons as Manjesh

Jawaharlal Goutam (A-2) and Kishor Chandan Arya (A-3). The informant also alleged about theft of gold ornaments worth Rs.85,000/-.

7. On the basis of report of informant, C.R.No. 53 of 1997 for the offences

punishable under Sections 302, 397, 449, 347 r/w 34 of the IPC came to be registered and after necessary investigation the accused were chargesheeted.

8. The accused abjured their guilt and pleaded false implication. According to A-1 and A-2, they had been there to see their friends and wrongly caught hold by the police whereas according to A-3, he had casually gone in that area and police wrongly caught him.

9. Smt. Deshmukh, learned APP, submitted that the evidence of material witnesses examined by the prosecution are not properly considered by the learned Trial Court. The learned Trial Court also lost sight of the fact that the presence of accused in the society was not disputed and despite there being recovery of ornaments from the possession of A-1, it was wrong and improper on the part of trial Court to hold that the guilt of the accused is not duly proved by the prosecution. In such circumstances, according to learned APP, interference at the hands of this Court is necessary and the impugned judgment and order of acquittal deserves to be reversed.

10. Mr. Pethe, learned counsel for respondent-accused, on the other hand, supported the impugned judgment and order of acquittal by contending that the evidence adduced by the prosecution being not cogent and convincing and the fact that it does not prove the case beyond reasonable doubt, this Court should not interfere in the findings of acquittal which is probable and reasonable in the facts and circumstances of the case.

11. In case of murder, factum of homicidal death assumes significance and it is to be established beyond reasonable doubt by the prosecution. In order to prove that the death of Digambar Vyankatesh Kurdekar was homicidal, the prosecution has relied on the evidence of PW-9 Dr. Beena Kiran Ruikar (Exh. 36), who conducted postmortem on the dead body on 24th May, 1997.

12. PW-9 Medical Officer stated in her evidence (Exh. 36) that on 24th May 1997, Kopari police referred the dead body of Digambar Vyankatesh Kurdekar for postmortem and accordingly she conducted the same. During the postmortem, she found the following external injuries on the dead body:

1. Transverse bruise just below chin on anterior surface of neck -reddish coloured above 4 X 1 cm. Oblique.

2. Oblique bruise on lt. Side of neck about 6 X 2 cm. reddish colour.

3. Oblique bruise irregularity in between on lt. side of neck reddish colour 6 X 2 cm.

4. Semi-lunar shaped abrasion on rt. and lt. Side of neck above and below of bruises mentioned above with concavity towards mandible.

5. Bruises of posterior part of neck transverse reddish coloured 7 X 2 cm.

6. Bruises on sternum 3 X 2 cm.

7. Red coloured bruises on both lips in middle finger aspect of 0.5 c. to 1 cm in dimension each.

13. It is her further evidence that after noting the external injuries, she dissected the dead body and found fracture of hyoid bone in front and in middle.

According to her, the cause of death was due to violent asphyxia and that might have been caused due to pressure of the hand on the throat (trachea).

14. It may be noted here that an inquest panchnama (Exh. 23) is duly admitted in evidence by the defence. If the postmortem report (Exh. 37) which

is duly proved by PW-9 Medical Officer and the inquest panchnama read in conjunction, then we notice that all the external injuries found on the dead

body of the deceased correspond to the injuries noted in the inquest panchnama. There is no challenge to the version of the Medical Officer as to the

cause of death in clear terms. In the light of medical evidence and as also the fact that the inquest panchnama is also duly admitted in evidence, we

have no difficulty in holding that the victim died of homicidal death.

15. This is a kind of case where admittedly there is no direct evidence proving the involvement of accused. The evidence of PW -1 Informant plainly

suggests it being of a circumstantial nature. From the evidence of material witnesses viz. PW -1 to PW -4, PW-8 and PW-11, the following

circumstances are pressed into service to bring home the charge by the prosecution:

(i) A-1 to A-3 were seen in the company of deceased soon before the death of latter by PW -4;

(ii) PW -1 informant saw A-1 running hurriedly to the staircase leading to terrace at the time of incident;

(iii) A-1 to A-3 were caught/ apprehended from the terrace of building;

(iv) Recovery of 80 pairs of gold ornaments (d.kZQqys) from the possession of A-1 soon after incident;

(v) Motive.

16. Before advertng to the above noted circumstances, few pronouncements of the Honâ??ble Apex Court may be noted in this regard. In

Hanumant Govind Nargundkar -vs- State of M.P. AIR 1952 SC 343, the Honâ??ble Apex Court laid down the principles as under:

â??It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accusedâ??.

17. In the case of Bakshish Singh -vs- The State of Punjab AIR 1971 Supreme Court 2016, the Honâ??ble Apex Court held that:

â??In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accusedâ??.

18. In Rumi Bora Dutta -vs- State of Assam AIR 2013 Supreme Court 2422, the Honâ??ble Apex Court held that:

â??When a case is totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and they must lead to a singular conclusion that the accused is guilty of the offence and rule out the probabilities which are likely to allow the presumption of innocence of the accusedâ??.

19. Similarly, in the case of Dharam Deo Yadav -vs- State of U.P. 2014 CRI. L.J.

2371 (S.C.), the Honâ??ble Apex Court held that :

â??Each and every incriminating circumstances must be clearly established by reliable and clinching evidence and the circumstances so proved must

form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against

the guilt is possible. Even when there is no eye-witness to support the criminal charge, but prosecution has been able to establish the chain of

circumstances which is complete leading to inference of guilt of accused and circumstances taken collectively are incapable of explanation on any

reasonable hypothesis save of guilt sought to be proved, accused may be convicted on the basis of such circumstantial evidenceâ??.

20. In H.D.Sikand (D) Through L.Rs. -vs- Central Bureau of Investigation and Another 2016 (4) Crimes 370 (S.C, .)The Honâ??ble Apex Court

held that in a case based on circumstantial evidence the chain of circumstances must be complete and all links in the chain must be established.

21. Thus, the above noted various pronouncements of the Honâ??ble Apex Court would show that for conviction in murder case on circumstantial

evidence, following conditions must be fulfilled:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with hypothesis of the guilt of the accused i.e., they should not be explainable on any other

hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency.

(iv) They should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

22. Keeping in view the settled law on circumstantial evidence, the evidence of prosecution witnesses as named above needs to be meticulously

scrutinized. I would like to discuss circumstances (i) to (v) collectively as they are closely interlinked and go to the root of the matter.

23. PW-1 Nagu Kuppa Gauda stated in his evidence (Exh. 18) that at the relevant time he was serving with Manjunath Datta Revankar (PW-5), who

deals in gold ornaments. Manjunath resides in Kamlesh Housing Society, Kopri, Thane. He was learning the preparation of gold ornaments under the

guidance of Manjunath. The deceased was also working with him under Manjunath. According to him, Manjunath used to purchase the gold from

Mumbai and after preparation they used to give to one Vikrant Seth, who is brother of A-1, for polishing the same. It is his further evidence that on

21st May 1997 he and Digambar were present in the house of Manjunath. Manjunath asked them to handover 110 ear ornaments of gold to Vikrant

for making design on the same. He, therefore, took those 110 ear ornaments along with Digambar and went to the house of Vikrant. When they

reached there, one Raju Suresh Raikar and Mahesh Suresh Raikar, the workers of Vikrant, were present. This witness handed over 110 gold ear

ornaments to said Raju Raikar. He and Digambar returned back to the house of Manjunath. By the time, Manjunath had left the house for his village.

24. It is his further evidence that on 23rd May, 1997, said Raju Raikar brought those 110 gold ear ornaments after polishing and designing the same,

which were received by him and then he handed over it to the deceased. His evidence then shows that he went to Kopari market for bringing the

clothes for relative of Manjunath. As the shop was closed, he went directly to Kalwa to reach Raju Raikar from cloth shop. After reaching Raju

Raikar to Kalwa bus stop, he returned to the house of Manjunath.

25. His evidence then further shows that the door of the house of Manjunath was closed. He knocked the door from outside but he did not get

response. The said house is situated on the ground floor. Thereafter, he went to the backside of house of Manjunath and found that the lamp in the

bedroom was on, however, the lamp in the hall was off. Thereafter, he returned to the main door of the house and at that time he saw one person

running towards the terrace of that building. He saw only the hands of that person. Being afraid, he went to his house and thereafter pushed the main

door from outside. The door was already opened. When he entered into the house, he saw the deceased lying under the cot in the hall. The deceased

was not speaking. Therefore, he came out of the house and raised hue and cry.

26. Deposing further, according to him, many persons including one Purushottam Daulatram Mulchandani (PW-2) rushed to the house in response to

his shouts. He narrated the incident to Purushottam. According to him, three

persons went on the terrace to catch the persons, who had already rushed to the terrace. Those persons included Purushottam and one Kamlesh Raman Afre (PW-3). They brought three persons by catching them from the terrace. He then identified the accused who were brought from the terrace.

27. His evidence lastly shows that on the same night his statement came to be recorded by the police. He then proved his FIR (Exh.9). It is his further evidence that the gold ornaments, which were with the deceased, were found thrown on the terrace as well as in front of house of Manjunath during the incident.

28. The substantive evidence of informant broadly corroborates the content of FIR except to the extent relating to the concluding part of his examination-in-chief. His concluding part of evidence shows that the ornaments, which were with the deceased, were found on the terrace as well as in front of the house of Manjunath.

29. It is absolutely not the case of prosecution or of the informant that he had also gone to the terrace and himself saw the ornaments lying there. As far as his evidence showing that the ornaments were lying in front of the house of Manjunath is concerned, in the cross-examination, he clearly stated that when the person he saw running from the house of Manjunath towards terrace, he entered in the house and switched on the lamp but he did not see any ornaments lying in the house at that time. If that was so, then how could this witness depose about lying of ornaments may be in front of the house of Manjunath.

30. Needless to say, this witness has contradicted himself on this material aspect. It is also pertinent to know from the evidence of this witness that he was not able to see the person who had rushed towards the terrace but was able to see his hands only. It is only after those three persons were brought from the terrace, this witness identified A-1 only inasmuch as admittedly he knew A-1 being the brother of Vikrant Seth to whom they used to give ornaments for polishing. Therefore, at the moment from the evidence of this witness, it cannot be held conclusively that soon after the incident the accused were found in possession of the gold ornaments. Since, according to prosecution, it were PW-2 Purushottam Mulchandani and PW-3 Kamlesh Afre who had gone to terrace and apprehended accused, their

respective testimonies become more important and therefore, need to be gone into carefully.

31. PW-2 Purushottam Daulatram Mulchandani stated in his evidence (Exh. 20) that he resides on the ground floor of Kamlesh Housing Society at

Thane. Manjunath also resides on the ground floor of his building. On 23rd May, 1997, after taking meal at about 9.30 p.m. when he was taking round

in the compound of his building, PW -1 Nagu came to him at 10.30 p.m. and told that there was some untoward incident in the house of Manjunath

and the door of the house of Manjunath is not being opened so he should come for his help. Accordingly, he accompanied PW- 1 to the house of

Manjunath. When both of them went near the house of Manjunath, they found the door of the house was opened. According to him, one servant of

Manjunath was seen lying in that house. PW-1 also told him about somebody having run towards the terrace of the building. At that time, one

Kamlesh Afre (PW-3) and one Haresh Mangwani also came there. Thereafter, he, Kamlesh and Haresh went on the terrace of the said building and

found three persons sitting there. They caught hold those three persons and brought them on the ground floor. The police was then called and those

three persons were taken by the police.

32. The initial part of the evidence of this witness is something which is neither the case of prosecution nor the evidence of PW-1 informant. If we go

by the evidence of informant then it is only after he entering into the house and seeing the deceased lying under the cot, he came out, raised hue and

cry as a result of which the persons residing there gathered. Of those persons, PW-2 was one of them.

33. The evidence of PW-2, on the other hand, depicts altogether different story inasmuch as according to him, after taking dinner when he was taking

round in the compound of building, PW-1 informant approached him and expressed his apprehension of some untoward things in the house followed by

his request to accompany him. It is also interesting to note, according to this witness, that PW-1 had also told this witness that the door of the house of

Manjunath was not being opened and thus sought help of this witness.

34. Suffice to say there is no consistency between the versions of these two material witnesses. The next part of the evidence of this witness shows

that he along with Kamlesh Afre (PW-3) and Haresh Mangwani rushed to terrace

and found that three persons were sitting there. They then apprehended those three persons.

35. It is absolutely not the evidence of this witness that those three persons had hidden themselves or were in a position to hide themselves. This goes against the natural conduct of those three persons. Had they been guilty of committing something wrong, they would have attempted to conceal themselves. Our inference gets impetus from cross-examination of this witness.

36. In the cross-examination, this witness states that there are two staircases to reach on the terrace of their building. The persons can use both the terrace and the persons going from one terrace can come down from another terrace. However, it is not made clear whether the said two staircases are side by side or for that matter, from one staircase one can approach the terrace and by another one can exist without facing the first one.

37. For the sake of argument, if it is assumed that those three persons were involved in the commission of any offence then they could have easily made there escape good from another staircase. This material piece of evidence cannot be lost sight of. Another significant point, which can be noted down from the evidence of this witness, is that he does not say, like PW-1, about lying of gold ornaments either on the terrace or in front of the house of Manjunath. So except finding the accused sitting on the terrace and bringing them to the ground floor, there is nothing more which can in any manner further the case of prosecution.

38. Let us see what PW-3, who also had gone to the terrace along with PW-2, has to offer.

39. PW-3 Kamlesh Raman Afre stated in his evidence (Exh.21) that he resides on the ground floor in Kamlesh Housing Society, Thane. Manjunath also resides on the ground floor of his building. On 23rd May, 1997, at about 10.45 p.m., he heard some noise outside of his house. When he opened the door of his house, one person was lying facing down in the house of Manjunath. One of the door of the house of Manjunath was seen opened. It is his further evidence that he was out of his house. He saw PW-1 and PW-2 present near the house of Manjunath. One Haresh Mangwani was also seen there and at that time, he came to know that three persons had gone towards the terrace of his building. Thereafter, he, PW-2 and Haresh Mangwani went on the terrace of the building and saw three persons hiding

themselves. Thereafter, they brought those three persons on the ground floor.

40. The evidence of this witness is also not free from blame for two reasons. Firstly, according to him, this witness reached the house of Manjunath.

He came to know that three persons had gone towards the terrace of his building. It is absolutely neither the evidence of PW-1 informant, except A-1, nor that of PW-2 that those three persons had gone towards the terrace of their building. Secondly, according to this witness, he along with PW-2 and

Haresh Mangwani went on the terrace and found those three persons hiding themselves, again which is not at all deposed to and as pointed out by us

earlier while discussing the evidence of PW-2. On the contrary, the evidence of PW-2 shows that those three persons were simply sitting on the terrace.

41. What therefore emerge from the testimony of all three material witnesses i.e. PW-1, PW-2 and PW-3 is that there is no uniformity, cohesiveness

and consistency amongst their versions as regards conduct of the accused and as also about the gold ornaments lying scattered on the terrace and in

front of the house of Majunath.

42. We now come to PW-4 Ratan Kachru Bankar.

43. According to prosecution, PW-4 is a star witness inasmuch as PW-4 had seen the accused in the company of deceased just before incident. This

being so, the evidence of this witness, needless to say assumes greater significance.

44. PW-4 stated in his evidence (Exh. 27) that at the relevant time, he was working as a watchman in Kamlesh Housing Society at Thane. One

Sawant (PW-6) was another watchman working with him. He knows A-1 since prior to the incident as he used to visit the house of Manjunath. As

per his evidence, on 23rd May, 1997 he was present in the building since morning to evening. He attended his duty as a watchman till 9.30 p.m. and

thereafter handed over his charge to another watchman, namely, Sawant (PW-6).

45. It is his further evidence that before leaving the premises, he asked all the residents of the building to collect the water from the tap. He also

visited the house of Manjunath for telling him to collect the water. When he rang the door bell of the house, one servant of Manjunath opened the

door. That servant is no more now. He also saw three male persons standing behind the said servant in the house of Manjunath and those three persons were the accused. He then told those persons to collect the water from the tap and went to his house.

46. At a first blush, it would appear that everything is right with the evidence of this witness but gradually as we go reading his cross-examination, we get nothing but disappointment.

47. In his cross-examination, he stated that on the following day of the incident, he resumed his duties at about 8.00 a.m. One Gupta was the Secretary of the said society during that period. He did not disclose to Gupta that he had seen the accused in the house of Manjunath on the preceding night. He also did not tell his co-watchman on the next day of the incident that he had seen the accused in the house of Manjunath on the preceding night.

48. He further stated that his statement was recorded by the police on 6th June, 1997 in the police station. He did not go to the police station on his own account till the police called him on 6th June, 1997. According to him, he did not tell anybody that he had seen the accused in the house of Manjunath till his statement was recorded. He further stated in his cross-examination that he did not make entry in the register of duty on 23rd May, 1997 that he attended his duties from 8.00 a.m. to 8.00 pm.

49. From the evidence of this witness, it is more than clear that his duty hours were from 8.00 a.m. to 8.00 pm. Even we take into consideration his last part of cross-examination that he had gone to the house of Manjunath at about 9.30 pm., then there is no explanation as to why he remained there for about one and half hours more after his duties hours were over. Although, this witness says that he had been to the house of Manjunath at about 9.30 p.m. but according to the evidence of PW-6 Watchman, Ratan Bankar i.e., PW-4 had returned from the house of flat owners at about 9.30 pm.

Thus, there is clear cut inconsistency between these two material witnesses.

50. Be that as it may, there are another important aspects of his cross-examination. Assuming that PW-4 was in the said housing society complex till 9.45 p.m., a plain reading of his cross-examination compel us to question his conduct on many counts.

51. Firstly, according to him, one Gupta was the Secretary of the said society

during the period when incident happened. When he resumed his duties on the next date of incident, he did not bother to approach said Gupta and thought it proper to brief him about the presence of accused in the house of Manjunath on the preceding night i.e., at the relevant time of incident. Secondly, even he did not tell this material fact of having seen the accused in the company of deceased to his co-watchman on the next day when he joined duties to relieve his companion. Thirdly and, most importantly, on his own words, he did not tell anybody, till the police recorded his statement, that he had seen the accused in the company of deceased on the date of incident. Lastly, he himself had not gone to police station to apprise the police of having seen the accused in the building premises and, more particularly, in the house of Manjunath along with deceased till the police called him in the police station and recorded his statement.

52. The above bothering conduct reflecting his questionable character even remotely do not allow us to throw weight behind his testimony. Needless to say, testimony of this witness does not inspire confidence as to the theory of last seen.

53. The evidence of PW-6 Kamlakar Dattatray Sawant, another watchman of Kamlesh Housing Society (Exh.31), shows that on 23rd May, 1997 he was present near the building of his society since 8.00 a.m. to 8.00 p.m. on the following morning. Ratan Bankar i.e., PW-4 is another watchman of the said housing society whose duty hours were from 8.00 a.m. to 8.00 pm. His evidence then shows that on 23rd May, 1997 when he resumed his duty at 8.00 a.m., Ratan Bankar (PW-4) was also present near the said building.

54. According to him, he requested PW-4 to wait for some time as there was some difficulty in supply of water in the said society. Accordingly, PW-4 waited for some time to assist him. At about 9.15 p.m. on that day, he opened the valve of the pump for supplying the water to the said society and then asked PW-4 to verify whether water had reached in every flat of the said society. Accordingly, PW-4 went towards the flat owners and returned at about 9.30 p.m. and told him that water had already reached in every flat.

55. From the evidence it can be seen that on the day of incident, there was some problem with water supply system in the said society. This witness asked PW-4 to wait for some time even though his duty hours were over and

sought his assistance. It is only at about 9.15 pm., this witness opened the valve of the pump and supplied water to the society and after satisfying through PW-4 that water supply is restored to every flat owners, PW-4 returned at about 9.30 p.m.

56. All these material facts are nowhere revealed by PW-4 in his substantive evidence. Therefore, the explanation of overstaying by PW-4 in the society premises given by PW-6 cannot be a substitute for the explanation which ought to have been given by PW-4. In the circumstances, much cannot be read from the evidence of this witness.

57. This brings us to the motive. According to prosecution, in order to rob the deceased of gold ornaments, the accused not only robbed but also done with the life of the deceased. In order to substantiate that the prosecution has placed reliance on the testimony of panch witness and as also investigating officer to establish recovery of gold ornaments from the possession of A-1.

58. PW-8, Ravi Kashinath Vernekar, panch witness stated in his evidence (Exh. 33) that on 23rd May, 1997, he was called in police station Kopri to act as a panch. One Tolani, another panch witness, was present with him. In their presence, police took the personal search of the accused.

According to him, during the personal search of A-1, one paper packet was recovered by the police and after opening it they found 80 pairs of gold ear ornaments. However, nothing was found from the possession of A-2 and A-3.

59. PW-10 Mohansingh Pralhadsingh Duwar, who was working at the relevant time in the police station, also stated in his cross-examination (Exh. 40) that on 23rd May, 1997, he seized 80 pairs of gold ear ornaments from the possession of A-1.

60. It may be noted here that latter part of investigation was done by PW-11. We would be discussing his evidence shortly hereinafter.

61. The evidence of PW-8 panch witness and as also PW-10 appear to be very vague and cryptic. While the evidence of PW-8 shows that on personal search, one paper packet was recovered from the possession of A-1, but it is nowhere disclosed from where the said paper packet was

recovered. PW-10, on the other hand, simply stated that he had recovered 80 pairs of gold ear ornaments from the possession of A-1. Again there is

no specification or details from where those 80 pairs of gold ear ornaments came

to be seized. The evidence of both these witnesses does not give an insight as to from where they seized 80 pairs of gold ear ornaments.

62. As against above, the evidence of PW-11 Investigating Officer, who later on came into picture after some part of investigation was carried out by PW-10, is quite interesting.

63. PW-11 Krishnaji Mahadev Tavde stated in his evidence (Exh. 43) that on the following morning of the incident, he prepared the panchnama of scene of offence. He found two pairs of gold ear ornaments on the scene of offence and therefore, attached the same under panchnama of scene of offence. It is his further evidence that he also found 18 pairs of gold ear ornaments on the staircase of the house in Kamlesh Housing Society and also attached those ornaments.

64. What is need to be noted promptly from the evidence of this material witness is that on the next day when he visited the place of occurrence not only he seized two pairs of gold ear ornaments from the scene of offence but also 18 pairs of gold ear ornaments lying on the staircase of the building.

This simply suggests that throughout night i.e., right from the inception of incident till this witness reached at the place of occurrence, ornaments were lying in the flat and as also on the staircase.

65. Intriguingly enough, neither informant says that when he entered into the flat, he saw two pairs of gold ear ornaments lying there nor PW-2 and

PW-3, who had rushed to the terrace, stated anywhere in their respective evidence that they noted 18 pairs of gold ornaments lying there. It is also to

be noted here that all the accused were apprehended then and there only and were immediately taken to the police station and that being so from

where PW-11 found 20 pairs of gold ear ornaments is something beyond comprehension.

66. One more reason to question the whole recovery is that, according to prosecution, the deceased was having 110 pairs of gold ear ornaments while

80 pairs of gold ear ornaments were allegedly found from the possession of A-1 and 20 pairs of gold ear ornaments were allegedly seized by PW-11

from the flat and staircase of the said society. Thus, there was alleged recovery of only 100 pairs of gold ear ornaments.

67. In the cross-examination of PW-11, he stated that he investigated about 20 missing gold ear ornaments, however, he could not find the same.

68. It is not the case of prosecution that there were in all 120 pairs of gold ear ornaments. In such circumstances, there could not have been question

of missing of 20 pairs of gold ear ornaments as already noted. Since the accused were apprehended on the spot itself, the question of missing of even

a single pair of gold ear ornament was apparently not possible.

69. Be that as it may, the fact remains that alleged recovery of gold ear ornaments from the possession of A-1 is not cogently and convincingly

established by the prosecution. Therefore, on this count also the prosecution fails.

70. We, therefore, conclude that requirements as propounded by the Honâ??ble Apex Court as enumerated hereinabove in the case of present

nature are not fulfilled by the prosecution witnesses and prosecution has failed to conclusively prove and complete the chain of circumstances so as to

lead to a singular inference of guilt of accused. There are many pitfalls and infirmities galore in prosecution evidence. When taken together, they

certainly and cumulatively do not present complete chain leading to only hypothesis of the guilt of the accused.

71. We, therefore, hold that the learned trial Court has taken into consideration all the material aspects of the case. There is no good ground to meddle

with the order of the trial Court. The impugned order is in accordance with law and neither it is perverse nor illegal. Hence, the Appeal is dismissed.

72. Bail bonds, if any, shall stand cancelled.