

CNR No. MHCH040003572019



Presented on	:	17/05/2019
Registered on	:	17/05/2019
Decided on	:	10/08/2026
Duration	:	07-Y-02-M-24-D

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WARORA
DISTRICT- CHANDRAPUR.

(Presided over by Shri Atul K. Shah)

Reg. Cri. Appeal No. 23/2019
Exh. No. 09

Bhagatram s/o Narsu Tekankar
Age 35 years, Occu. Labour,
R/o Lashkari Bag Garden, Nagpur,
Tah. & Distt. Nagpur.

.. **Appellant**
(Orig. Accused)

VERSUS

State of Maharashtra
through Police Station Officer,
Police Station Bhadrawati
Teh. Bhadrawati,
District- Chandrapur

.. **Respondent**
(Prosecution)

**Appeal against the judgment & order
dated 08/05/2019 of conviction
passed by Ld. J.M.F.C., Bhadrawati in
Reg. Cri. Case No. 81/2017.**

Appearances :

Ld. Adv. S. I. Jiwane for the Appellant.

Ld. APP. A. F. Fulzele for the Respondent.

J U D G M E N T

(Delivered on 10th day of August, 2026)

Appellant Original accused no.2 in Reg. Criminal Case No.81/2017 is convicted by the Ld. J.M.F.C., Bhadrawati for the offence punishable under section 380 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer further rigorous imprisonment for one month, has preferred this appeal under section 374 of the Cr. P.C.

02] Facts for the purposes of this appeal in brief are as under :-

On 27/03/2027 at about 2:00 p.m. when informant Tularam Gajbhiye returned to his house, he found the lock of his house was broken and upon entering into the house, he noticed that lock of almirah was also broken and all the articles were lying helter and skelter. Upon further inquiry he came to know two mobile phones of I-ball company and carbon company so also, gold necklace of 3 gms. silver, ankle chain and silver leg finger rings, cash Rs.3,000/- total worth of Rs.14,300/- were stolen away from his house. Thus, he lodged report with Police Station Bhadrawati.

03] The offence u/s 454, 457 & 380 of IPC came to be registered against unknown persons. The investigation of the offence was carried out by PSI Ingale. He arrested the appellant and in his custody appellant gave disclosure statement that he along with other co-accused have committed theft and ready to show that place where the stolen articles are concealed. His statement came to be recorded before panch witnesses. Then at the instance of appellant stolen property is recovered. The seized articles were identified by informant Tularam. Upon investigation he filed charge-sheet before the Ld. J.M.F.C. against the appellant and co-accused Pramod Gedam.

04] The Ld. Trial Court framed charge for the offences punishable under sections 454, 457 and 380 r/w 34 of the I.P.C. against the appellant and co-accused. The contents of the charge were read over and explained to the appellant in vernacular to which he pleaded not guilty and claimed to be tried.

05] The prosecution has examined in all four witnesses. The statement of appellant u/s 313 of Cr. P.C. came to be recorded. It shows his defence is that of total denial. The Ld. Magistrate then heard the Asst. PP and defence lawyer and passed the impugned order, sentencing the appellant.

06] As stated above being aggrieved and dissatisfied by the impugned judgment of conviction the appellant has preferred this

appeal on various grounds amongst others.

07] According to the appellant the Ld. JMFC has not considered the evidence of the prosecution witnesses in proper perspective and passed erroneous judgment of conviction of the appellant. The Ld. Magistrate failed to appreciate that the panch witness on spot panchnama and seizure panchnama has not supported to the prosecution but relying upon the sole evidence of Investigating Officer appellant is held guilty. The offence against appellant is not proved beyond reasonable doubt despite of that he has been convicted.

08] Heard both the sides. On perusal of the cases papers, following points have arisen for the determination. I have recorded findings against each points for the reasons enumerated thereunder :-

Sr. no.	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the offence u/s 380 of IPC is proved against the appellant on the basis of evidence on record ?	...	No
2.	Whether impugned judgment and order need interference at the hands of this Court ?	...	Yes
3.	What order ?	...	As per final order.

REASONS**AS TO POINT NO.1 TO 3 :-**

09] Heard Ld. Advocate for the appellant. During arguments he took me through the impugned judgment and the evidence on record. He submits that the material witness of the prosecution PW-2 Dilip on disclosure statement and seizure panchnama has not supported to the prosecution. The informant Tularam has admittedly not seen the incident or appellant while committing theft. The another panch witness on disclosure statement Devidas Parve is not examined by the prosecution for the reason best known to it. The Ld. Magistrate has based conviction only on the evidence of the Investigating Officer. The evidence of Investigating Officer is duly challenged in cross-examination. Further his evidence is not corroborated by any of the witnesses. Therefore, the impugned order of conviction is not sustainable in the eyes of law and need interference at the hands of this Court by allowing the appeal and acquitting the appellant.

10] On the other hand, Ld. PP Vehemently urged that there is no dispute that theft of two mobile phones, gold and silver ornaments and cash amount of Rs.3,000/- took place in the house of informant Tularam Gajbhiye. There is further no doubt that said ornaments seized were duly recovered and seized at the instance of appellant and they are duly identified by the informant Tularam Gajbhiye. He submits the Investigating Officer in his evidence specifically stated that in his custody appellant gave disclosure

statement which he has recorded in presence of panch witnesses and then seized all the ornaments as per his disclosure statement. He submits that even though the panch witnesses have not supported the evidence Investigating Officer but his evidence is convincing and believable. There is no law that the evidence of Investigating Officer cannot be relied upon when panch witnesses have not supported his evidence or turned hostile.

11] Thus, according to Ld. PP the findings recorded by Ld. J.M.F.C. Bhadrawati are justified and warrants no interference. The appeal is devoid of merits and deserves to be dismissed by confirming the judgment passed by the trial Court. In support of his argument he placed reliance on a case of **Mallikarjun and others Vs. State of Karnataka AIR ONLINE 2019 SC 2300**. In this case the Hon'ble Apex Court in para no.23 observed *"as pointed out earlier, based on the disclosure statement of accused no.1, dagger which was kept hidden in the haystack of fodder in the loft of the cattle shed behind the house of accused no.1 had been seized under panchnama Exh.P9 in presence of panch witnesses PW-8 Chandrappa and PW-9 Mahadevappa. Said panch witnesses have not supported the case of prosecution and turned hostile. Dagger and handle of the axe were recovered from the scene of occurrence under spot panchnama Exh.P-7 . On behalf of the accused Ld. senior counsel contended that the evidence of PW-17 PSI as to recover of dagger at the behest of accused no.1 is doubtful and when PW-8 and 9 have turned hostile, no weight could be attached*

to the alleged recovery of dagger. There is no merit in the contention that merely the panch witnesses turned hostile, the recovery of weapon would stand vitiated. It is fairly well settled that the evidence of the Investigating Officer can be relied upon to prove the recovery even when the panch witnesses turned hostile.”

The Hon'ble Apex Court further relied on a case of **Modan Singh Vs. State of Rajashtan (1978) 4 SCC 435**. *In this case it is observed that where the evidence of Investigating Officer who recovered material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in case of **Mohd. Aslam vs. State of Maharashtra (2001) 9 SCC 362**. The same law has been laid down by our Hon'ble High Court in case of **Anand Augstin Bhambal Vs. The State of Maharashtra 2015 ALL MR (Cri) 2231**.*

12] So from the above observations of Hon'ble Supreme Court and Hon'ble our High Court it can be firmly said that if the evidence of Investigating Officer is convincing one it can be relied upon in absence of corroboration by panch witnesses or they turned hostile. Therefore, it is necessary to see whether the evidence of Investigating Officer so far as recovery of gold and silver ornaments at the behest of appellant is concern what PW-3 PSI Mahendra stated. He deposed that custody of appellant and other co-accused are taken in this crime. During investigation all the accused gave

disclosure statement which he has identified to be the same, his signature and so also signature of panchas on it (Exh.29). He further deposed he has seized gold and silver ornaments as per disclosure statement under seizure panchnama Exh.30. Then he called informant who has identified said ornaments belongs to him. He prepared identification panchnama Exh.22. The prosecution has examined panch witness on disclosure statement and seizure panchnama as PW-2 Dilip. He has not supported the evidence of Investigating Officer that in his presence the appellant gave disclosure statement and at his behest the Investigating Officer seized said ornaments from the place as shown by the appellant.

13] However, here is necessary to state that the incident took place in the night of 27/03/2017 to 28/03/2017 and disclosure statement of appellant Exh.29 came to be recorded on 15/05/2017. The appellant stated that he and co-accused Pramod Gedam, Ajay Dhakate and Shubham Jain have committed theft. He has thrown mobile phones in river and concealed gold and silver ornaments and he is ready to show that place. Then it is seen from the recovery panchnama that Investigating Officer, two panch witnesses, appellant and other two accused, police staff went by Scorpio private vehicle and appellant directed him to take vehicle on Nagpur road. The appellant took them at Ajni railway station platform and recovered ornaments from the bushes near the Palash tree which he has seized under seizure panchnama Exh.30. Here it is material to state that the Investigating Officer in his evidence did

not state that appellant and other two co-accused have taken him and panch witnesses at different places and he recovered gold and silver at their behest. He did not state that appellant directed him to take vehicle at Nagpur and then Ajni railway station and from the platform open space appellant has recovered gold and silver ornaments from the bushes near Palash tree. In this regard the Investigating Officer simply stated that appellant gave disclosure statement in presence of panchas and accordingly he has seized gold and silver ornaments at his behest. His this much evidence is neither sufficient nor convincing one for the reason that he has not given details as stated in disclosure statement and seizure panchnama.

14] There is no dispute of the law laid down by Hon'ble Apex Court and our Ho'ble High Court that when the evidence of Investigating Officer is convincing one that can be taken into consideration to prove recovery. However, for want of further details the evidence of Investigating Officer is not convincing one. Further the incident took place in the night of 27/03/2017 and 28/03/2017 and ornaments alleged to have been seized on 15/05/2017. Thus, it is not the case of the prosecution that immediately after the incident said articles were recovered at the instance of appellant. In such state of affair in my view his evidence need corroboration by independent panch witnesses.

15] I have gone through the judgment of Ld. trial Court. The Ld. trial Court failed to taken into an account that the evidence of Investigating Officer is not convincing one for want of further details. In absence of giving of further details, questions in that regard was not put to the accused/appellant u/s 313 of Cr. P.C. On perusal of the statement of 313 of Cr. P.C. of appellant (recorded at Exh. 38) it seems that the Ld. Magistrate has put him clubbed questions in paragraph to paragraph which was not expected. Therefore, I find the impugned judgment and findings recorded therein are improper and sentence awarded to the appellant is not sustainable in the eyes of law.

16] Accordingly, I record findings against point no.1 No, point no.2 Yes and in answer to point no.3, I proceed to pass the following order :-

ORDER

- 1] Appeal is allowed.
- 2] The judgment passed by Ld. trial Court in Reg. Cri. Case No.81/2017 on 08/05/2019 is hereby set aside.
- 3] The appellant stands acquitted for the offence punishable under section 380 of the Indian Penal Code vide section 255(1) of the Cr. P.C.
- 4] His bail bonds stands cancelled.
- 5] The fine deposited by appellant be returned to him after appeal period is over.

- 6] The seized muddemal property was already handed over to the informant on supratnama be continued to retain with him.
- 7] Appellant has to furnish bail of Rs.15,000/- as per provisions of Section 437(A) of the Cr. P.C.
- 8] Copy of this judgment along with Record and Proceedings be sent immediately to the trial Court.

(Dictated and pronounced in open Court).

Warora.
Date : 10/08/2026

(Atul K. Shah)
Additional Sessions Judge,
Warora.

I affirm that the contents of this P.D.F file order are same, word to word, as per the original order

Name of the Stenographer	A.L. Shastrakar, Stenographer Gr.1,
Name of Court	District Judge-1, Warora
Date of Dictation	10/08/2026
Judgment signed by the P.O. on	10/08/2026
Judgment uploaded on	10/08/2026