



Received on	20	09	2021
Registered on	20	09	2021
Decided on	31	07	2026
Duration	Day	Month	Year

:: FORM - A ::

IN THE COURT OF SESSIONS JUDGE (Mr. M. A. BHATTI) at PORBANDAR.	
Date of Judgment	31.07.2026
Case Number	Sessions Case No.33/2021
FIR	C. R. No.Part A 11218009210368/2021
Police Station	Kamlabag Police Station, Dist. Porbandar.
Complainant	STATE OF GUJARAT, (de-facto complainant: Arjanbhai Ranabhai Ranavaya)
Represented by	Mr. A. J. Lila, Ld. A.P.P. for the State.
Accused	ARJAN @ MANDO MASARIBHAI ODEDRA
Represented by	Mr. S. H. Parmar, Ld. Advocate for the accused.

:: Form - B ::

Date of Offence	13.04.2021
Date of FIR	21.04.2021
Date of Chargesheet	26.08.2021
Date of Framing of Charges	02.06.2022
Date of commencement of evidence	16.06.2022
Date on which judgment is reserved	18.06.2026
Date of Judgment	31.07.2026
Date of Sentencing Order, if any	---

::Accused Details::

Rank of the Accused	A1
Name of the Accused	ARJAN @ MANDO MASARIBHAI ODEDRA
Date of Arrest	30.05.2021
Date of Release on Bail	In judicial custody
Offence Charged with	Under Sections-302, 450 & 397 of the IPC.
Whether Acquitted or Convicted	Acquitted by extending benefit of doubt.
Sentence Imposed	N.A.
Period of Detention Undergone during Trail for purpose of Section 428, Cr. P. C.	5 Years and 2 Months and one day (1888 days)

::Form - C::**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution**

RANK	Exhibit	NAME	NATURE OF EVIDENCE
PW1	17	Urmilaben @ Umaben Pravinbhai Bharada	Panch Witness (Inquest Panchanama)
PW2	23	Nil Sureshbhai Khokhari	Panch Witness (Panchanama of scene of incident)
PW3	28	Gopal Narashibhai Kotiya	Panch Witness (Panchanama of scene of incident)
PW4	29	Arjan Ranabhai Ranavaya	Complainant (relative of deceased)
PW5	38	Hemendrabhai Harishbhai Lodhiya	Witness (Jeweler)
PW6	40	Kashyap Nitinbhai Jogiya	Witness (Jeweler)
PW7	45	Nirmal Jentilal Thakrar	Panch Witness (Panchanama of seizure of muddamal)
PW8	50	Dineshbhai Balubhai Parmar	Panch Witness (Panchanama of seizure of muddamal bangles & earring)
PW9	53	Hardikbhai Virambhai Vaja	Panch Witness (Arrest Panchanama)

::Form - C:: LIST OF PROSECUTION/DEFENCE/COURT WITNESSES A. Prosecution			
PW10	55	Kaushikgar Ranchhodgar Goswami	Panch Witness (Discovery Panchanama)
PW11	65	Jignesh Tapubhai Thanki	Panch Witness (Panchanama of seizure of vehicle rickshaw & mobile)
PW12	70	Jitesh Jethabhai Keshvala	Panch Witness (Arrest Panchanama)
PW13	71	Nagajanbhai Lilabhai Bhutiya	Panch Witness (Reconstruction Panchanama)
PW14	75	Rameshbhai Keshubhai Sodhatar	Panch Witness (Panchanama of seizure of blood-sample of accused)
PW15	77	Vijaybhai Parsotambhai Solanki	Panch Witness (Panchanama of seizure of muddmal earring of deceased from complainant)
PW16	83	Bhikhubhai Jethabhai Chopda	Panch Witness (Panchanama of muddmal earring of deceased from complainant)
PW17	84	Vijaybhai Bhikhubhai Chauhan	Panch Witness (Panchanama of seizure of blood-sample of accused & Reconstruction Panchanama)
PW18	86	Vijaybhai Ramdebhai Odedra	Panch Witness (Panchanama of seizure of CCTV footage)
PW19	89	Ranjitbhai Arjanbhai Karavadra	Panch Witness (Panchanama of seizure of CCTV footage)
PW20	90	Raj Prakashbhai Gohel	Panch Witness (Panchanama of seizure of CCTV footage)
PW21	95	Manoj Damjibhai Kateliya	Panch Witness (Panchanama of seizure of CCTV footage)
PW22	98	Sureshbhai Kanjibhai Khokhari	Witness (neighbour of deceased)

::Form - C::			
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES			
A. Prosecution			
PW23	104	Jinabhai Rajabhai Katara	Police Witness
PW24	106	Purvesh Jaysukhlal Surani	Scientific Officer
PW25	111	Dr. Sohel Valimahamad Jokhia	Medical Officer
PW26	117	Ranjitsinh Amubha Dayatar	Police Witness
PW27	119	Dhirendrakumar Gajendrabhai Salvi	Circle Officer (Dy. Mamlatdar, Porbandar)
PW28	123	Jitendrabhai Liladharbhai Lodhiya	Witness (Yash Jewelers)
PW29	126	Bipinchandra Jethabhai Savaliya	Witness (Mamlatdar/Inquest Panchanama)
PW30	129	Mayur Madhubhai Soneri	Witness (neighbour of deceased)
PW31	131	Milan Lakhmanbhai Aahir	Police Witness (Investigating Officer)
PW32	140	Bharatbhai Kanitlal Vara	Witness
PW33	143	Arshibhai Bhimshibhai Sisodiya	Police Witness (Investigating Officer)
PW34	156	Lekhrajsinh Vedprakash Rana	Police Witness (PSO)
PW35	160	Kirankumar Ishvarlal Modi	Police Witness (Investigating Officer)
PW36	180	Mukesh Natvarlal Dave	Police Witness (Investigating Officer)
PW37	189	Hasmukhbhai Bhaishankarbhai Dhandhaliya	Police Witness (Investigating Officer)

B. Defence Witness, if any:

RANK	NAME	NATURE OF EVIDENCE
DW1	---	---

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW1	---	---

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution:		
Sr. No.	Exhibit Number	Description
1	18	Inquest Panchanama
2	24	Panchanama of scene of incident
3	25 to 27	Panch-Slips
4	30	Declaration regarding accidental death
5	31	Original Complaint
6	33	Letter of Ld. Second Additional Chief Judicial Magistrate, Porbandar sent to Ld. Chief Judicial Magistrate, Porbandar regarding statement of witnesses under Section-164 of CrPC
7	39	Statement of witness Hemendra Harishbhai Lodhiya under section-164 of CrPC
8	41	Certificate regarding Section-65(b) of the Indian Evidence Act
9	43	Statement of witness Kashyap Nitinbhai Jogiya under section-164 of CrPC
10	46	Panchanama regarding seizure of muddamal bangles from PW5 on 01.06.2021
11	47	Panchanama regarding seizure of muddamal one earring from PW6 on 01.06.2021
12	48 & 49	Panch-Slips
13	54	Arrest panchanama of accused
14	56	Discovery Panchanama
15	57 to 60	Panch-Slips
16	66	Panchanama regarding seizure of vehicle
17	67	Panch-Slip
18	72	Reconstruction Panchanama
19	76	Panchanama regarding seizure of blood sample of accused
20	78	Panchanama regarding seizure of one earring of deceased from the complainant
21	79	Panch-Slip
22	87	Panchanama regarding seizure of CCTV footage
23	88	Panch-Slip
24	91	Panchanama regarding seizure of CCTV footage

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution:		
25	92	Panchanama regarding seizure of CCTV footage
26	93 & 94	Panch-Slips
27	99	Certificate regarding Section-65(b) of the Indian Evidence Act
28	102	DVD of video footage
29	107	Analysis Report of DSF, Gandhinagar
30	112	Yadi sent to Medical Officer for postmortem of deceased
31	113	Police report to be forwarded to the Medical Officer with dead body
32	114	Postmortem report of deceased
33	120	Yadi sent to Circle Officer, Mamlatdar Office, Porbandar for preparing map of scene of offence
34	121	Letter of Circle Officer regarding map of scene of offence
35	122	Map of scene of offence
36	124	Muddamal Receipt (Yash Jewelers)
37	125	Muddamal Receipt
38	127	Yadi sent to Executive Magistrate Porbandar for Inquest
39	130	Certificate regarding Section-65(b) of the Indian Evidence Act
40	132	Yadi sent by PSI Kamlabag Police Station to PSO Kamlabag Police Station to register the offence
41	133	Forwarding letter regarding Accidental Death No.14/2021
42	134	Extract of Accidental Death Register (vide No.14/2021)
43	135	FIR
44	136	Police report sent to Medical Officer along with dead body for postmortem
45	137	Letter sent to bank by Kamlabag Police Station regarding details of bank account of deceased
46	138	Letter sent to bank by Kamlabag Police Station regarding details of bank account of deceased
47	139	Receipt of handing over dead body of

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution:		
		deceased
48	144	Special report regarding serious offence
49	145	Panchanama regarding search of house of deceased
50	146	Letter sent to bank by Kamlabag Police Station regarding details of bank account of deceased
51	147	Letter sent to FSL Gandhinagar by Kamlabag Police Station for date and time of S.D.S. Test
52	148	Details sent by the bank to the Kamlabag Police Station regarding bank details of deceased
53	149	Letter seeking call detail records of mobile no. 7984544775
54	150	Letter seeking call detail records of IMEI no. 911563957441616 & 911563957441624
55	151	Letter seeking call detail records of mobile no. 8238329706
56	152	Letter seeking call detail records of IMEI no. 359283041731919
57	153	Letter seeking call detail records of mobile no. 9408557218 & 8200076706
58	154	Letter seeking call detail records with tower location and SDRS and CAF documents of mobile no. 8155912365 & 9998550170
59	155	Letter seeking call detail records with tower location and SDRS and CAF documents of mobile no. 9106415321 & 8866115321
60	157	Copy of Station-Diary of AD no.14 of 2021
61	158	Message regarding AD no.14 of 2021
62	159	Yadi sent to Executive Magistrate Porbandar for Inquest
63	161	Letter for making entry in station diary about arrest of accused
64	162	Report of Kamlabag Police Station for adding Sec.450 & 397 of IPC
65	163	Yadi sent by Kamlabag Police Station to Bhavsinhji Hospital for collecting 5 C.C. blood sample and nail of accused
66	164	Muddamal Ravangi Note sent to FSL, Junagadh

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution:		
67	165	Computerized statement of note of muddamal sent to FSL
68	166	Letter by FSL Junagadh to Kamlabag Police Station acknowledging receipt of muddamal article
69	167	Analysis report of FSL, Junagadh
70	168	Report regarding to obtain statements of witnesses under Section-164 of CrPC
71	169	Report of court regarding to obtain statements of witnesses under Section-164 of CrPC
72	170	Yadi sent to Porbandar Nagarpalika Porbandar for providing two employees as panch
73	171	Request letter for recording statement of witnesses in terms of Section-164 of CrPC
74	172	Letter of DFS Gandhinagar sent to Kamlabag Police Station providing date and time for SDS

B. Defence:

Sr. No.	Exhibit Number	Description
--	--	--

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
--	--	---

D. Material Objects:

Sr. No.	Muddamal Receipt Number / Date of Seizure	Details of Maddamal	Article Number
1	Muddamal Receipt No.21/21, Dated 14.04.2021	(1) White mattress cover having red and gray marks in 33.5" x 99" in sealed bag (2) Old Pillow Cover having design of red bule colour circle sealed in cloth bag	Article No.1 Article No.2

		(3) Pink colour Gown worn by deceased 44"x54" sealed in cloth bag	Article No.3
2	Muddamal Receipt No.52/2021, Dated 30.05.2021	(1) Blue colour shirt having checks design having written on back side in english - PANTSON THE GROUND sealed in white bag. (2) Navy blue colour cap having written PERFO RMAX sealed in white bag. (3) Gray colour old pent sealed in white bag. (4) White colour cloth mask sealed in white bag. (5) Pair of chappal sealed in bag.	Article No.4 Article No.5 Aritcle No.6 Aritcle No.7 Article No.8
3	Muddamal Receipt No.53/21, Dated 31.05.2021	(1) Vehicle PIAGGIO Rickshaw No.GJ-17-U-7598 (2) Black colour TECNO company androide mobile	Article No.9
4	Muddamal Receipt No.54/21, Dated 31.05.2021	(1) Sealed bottle of blood sample (2) Sealed bottle of nail sample	Article No.10 Article No.11
5	Muddamal Receipt No.55/21, Dated 01.06.2021	Golden earring having weight of 0.680 milligram sealed in	VMR Article No.1

		transparent plastic small box.	
6	Muddamal Receipt No.56/21, Dated 01.06.2021	Golden Bangles Nos.2 having weight 30.310 grams sealed in box.	VMR Article NO.2
7	Muddamal Receipt No.57/21, Dated 01.06.2021	Golden earring having weight 0.400 milligram sealed in transparent plastic small box.	VMR Article No.3
8	Muddamal Receipt No.99/21, Dated 15.07.2021	FRONTECH Company DVD sealed in bag.	Article No.12
9	Muddamal Receipt No.122/21, Dated 23.08.2021	FRONTECH Company DVD sealed in bag.	Article No.13
10	Muddamal Receipt No.123/21, Dated 23.08.2021	FRONTECH Company DVD sealed in bag.	Article No.14

**IN THE COURT OF SESSIONS JUDGE
at PORBANDAR.**

Sessions Case No.33/2021

STATE OF GUJARAT

Vs.

ARJAN @ MANDO MASARIBHAI ODEDRA

Trial arising from C. R. No.Part A 11218009210368/2021 of
Kamlabag Police Station,
Dist. Porbandar.
For offence punishable under
Sections-302, 450 & 397 of the IPC.

:: J U D G M E N T ::

[1] The accused above named is charged for having committed the offence punishable under Section-302, 450 & 397 of the IPC arising from offence registered with the Kamlabag Police Station, District Porbandar vide Criminal Register No.Part A 11218009210368/2021.

The case of prosecution

[2] On 13.04.2021 at about 7 p.m. the neighbours of deceased victim Hiriben Babubhai Ranavaya aged 65 noticed that Hiriben was not seen around and the main door of her house is open since long; therefore, they suspected something might have happened to her and therefore, her neighbour Pujaben Sureshbhai Khokhari made a phone call to complainant Arjanbhai Ranabhai Ranavaya (PW4) and informed him about such situation and upon reaching at the house of Hiriben, the

complainant and other persons of the locality gathered near the house of deceased and the complainant along with Kamlesh Hirabhai Kotiya and another neighbours entered in the house of Hiriben and saw that Hiriben was lying on a setty and she had black and red colour marks over her nose and cheeks and also had injury mark on right leg and she did not respond despite making attempts to awake her up; therefore, the neighbours contacted Maher Shakti Sena Ambulance and after arrival of the ambulance, the complainant and Kamleshbhai Hirabhai Kotiya, Ashwin Hirabhai Kotiya and Bharat Savdasbhai Ranavaya took the victim to Bhavsinhji Hospital in the said ambulance and the doctor on duty declared that Hiriben has passed away.

[2.1] Initially, accidental death report No.14/2021 of Cr.P.C. Section-174 was registered on 13.04.2021. Thereafter, the complainant lodged a complaint on 21.04.2021 at 23:10 hrs. stating that he was informed by the officials at the Bhavsinhji Hospital that the demise of Hiriben is not natural, but she was strangled and she died on account of asphyxia. It is further narrated in the complaint that the deceased Hiriben was living alone in her house and she preferred to be inside of her house most of the time and that the said Hiriben had commissioned masonry work at her house through a person named Nayan Dabhi prior to three years; and since then the said Nayan Dabhi was in touch with Hiriben and used to visit the house of Hiriben time and again and on 13.04.2021 after the demise of Hiriben, the said Nayan Dabhi did not attend her funeral and was not bothered about the victim and upon attempting to contact the said Nayan Dabhi, his phone is shown as switched off; therefore, it is suspected that the said Nayan Dabhi caused the death of victim

Hiriben and has escaped or ran away.

[2.2] With regards to the delay in lodging the complaint, it is stated that one of the relatives of complainant was infected with Corona and was in need of plasma and the complainant had gone to out of station to donate plasma and the complainant was still under the influence of Corona and was quarantined at his house and on 21.04.2021 the police official visited the house of complainant and he narrated the complaint.

[2.3] It may be noted that the accused above named was not a suspect, and even after having learned about death of victim Hiriben, the complainant, who happens to be son of nephew of victim Hiriben, did not suspect that the victim was murdered. Rather it was only after being informed by the doctor, who conducted postmortem examination of the victim, that the complainant came to know that the victim was murdered. The victim was living all alone and by herself.

[3] Pursuant to lodging of complaint, investigation was carried out. The inquest panchanama and postmortem examination of victim's body was conducted prior to registration of the offence. The site inspection report as well as the scene of incident panchanama were also prepared prior to registration of offence. During the course of investigation, statement of witnesses were recorded, the details of bank accounts of deceased Hiriben were sought. Thereafter, on 30.05.2021 the accused above named was arrested by the Police Sub Inspector Mr. N. M. Gadhvi of LCB Branch, Porbandar in terms of Section-41(1)(i) of the Cr.P.C. and the accused confessed about

the offence. Therefore, he was arrested by the Police Inspector Mr. K. I. Modi (PW35), Kamlabag Police Station, Porbandar (Investigating Officer). Thereafter, discovery panchanama was prepared on 30.05.2021 leading to discovery of clothes, mask and footwear worn by the accused at the time of incident. Initially, the offence punishable under Section-302 was registered. However, during the course of investigation vide report dated 31.05.2021, the offence punishable under Section-450 & 397 of IPC were added. The CCTV footage of adjoining house and the statements of neighbours were collected. The statement of person cited as suspect in the complaint named Nayan Dabhi was also recorded and as per the claim of the Investigation Officer, while the Local Crime Branch team was trying to solve the undetected case, they received information from human sources that the present accused is involved in the offence; and therefore, the Local Crime Branch formed a team and the accused was called at the Local Crime Branch Office and interrogated scientifically as well as psychologically whereby the accused confessed the crime. The blood sample as well as nail clippings of finger and thumb of the accused were collected and sent for FSL analysis. The auto-rickshaw of accused bearing registration No.GJ-17-U-7598 was seized on 31.05.2021. One earring was produced by the complainant before the Investigating Officer on 01.06.2021 which was seized in terms of panchanama. The golden bangles were recovered from Hemendrabhai Harishbhai Lodhiya (PW5) of Balvi Jewelers on 01.06.2021. One earring was recovered from Kashyap Nitinbhai Jogiya (PW6) of Mahalaki Jewelers on 01.06.2021. Reconstruction panchanama was prepared on 02.06.2021.

[3.1] It is the claim of the Investigating Officer that the accused entered in the house of victim and sat on a chair in the hall and thereafter, the victim closed the main door and went to prepare tea for the accused and thereafter she had chat with the accused and later the victim went in the kitchen for making tea again and told the accused to take his chair to the other room and therefore, the accused went inside and set on a wooden setty and after the victim came with cup of tea, she set on the other side of the room and thereafter, the accused told the victim about his debts and demanded money from her, however, the victim denied to give him money; and therefore, the fought with the victim and smothered her with pillow cover and thereafter took away the golden bangles worn by the victim and one of the earring, however, the other earring did not come out and thereafter, the accused took the mobile phone and cash of Rs.750/- from the purse of the victim and went away. It is also claimed that the mobile phone was dumped in garbage-box near Paradise Cinema and the Sim-Card was broken and thereafter, he escaped in his auto-rickshaw.

[3.2] During the course of investigation, the statements of witnesses in terms of Section-164 of the Cr.P.C. were caused to be recorded by the learned Magistrate. The CCTV footage from the camera installed at the house of witness Kashyap Nitinbhai Jogiya (PW6) and Sureshbhai Kanjibhai Khokhari (PW22) was collected during the investigation. The site map of the place of incident was caused to be prepared. The SDS test of accused was caused to be conducted. The call details of location of mobile numbers were obtained. The statements of jewelers were also recorded and the statement of person who accompanied the

accused to sell the golden ornaments was also recorded. The muddamal article was sent for FSL analysis. Upon conclusion of investigation since the Investigating Officer was in the view that there is ample evidence against the accused, the charge-sheet was filed and registered as Criminal Case no.8397 of 2021 on the file of Chief Judicial Magistrate, Porbanadar. Since the offences alleged against the accused were triable by the Sessions Court, the matter was committed for trial in terms of section 209 of CrPC after compliance of section 207 of CrPC and the same was registered as Sessions Case no. 33 of 2021.

[4] After hearing learned A.P.P. as well as learned advocate for the defence, charge was framed against the accused at Exh.15 on 02.06.2022 by the predecessor presiding officer and the accused pleaded not guilty vide his statement at Exh.16 and claimed trial.

[4.1] During the course of trial, the prosecution has adduced above listed oral and documentary evidences as narrated in Form-C herein above. Thereafter, learned P.P. for the State filed evidence closure memo at Exh.190. The further statement of accused in terms of Section-313 of Cr.P.C. was recorded on 03.12.2024 by the predecessor presiding officer; and thereafter, the matter was taken for final arguments.

Arguments of Prosecution:

[5] The learned P. P. submits that the case of prosecution is based on circumstantial evidence, however, the prosecution has succeeded in establishing complete chain of evidence clearly proving involvement of accused. It is argued

that the gold earring which was recovered from Mahakali Jewelers was sold by the accused to the said jewelers and the said fact has been endorsed by the PW6 as well as PW32 who accompanied the accused to the said shop of PW6 while the accused went to sell the said earring. It is argued that the complainant has identified the said earring as the one belonging to the victim and the other earring of the said design was also produced by the complainant during the course of investigation as the one recovered from the dead body of victim at the time of postmortem examination.

[5.1] Further, it is argued that the recovery of gold bangles sold by the accused to Balvi Jewelers is also established and though the said jeweler deposing as PW5 has turned hostile in his deposition before the Court, his statement was recorded under Section-164 of the Cr.P.C. substantiates the case of prosecution and the PW5 clearly names the accused as the person who sold the said bangles of the victim, and the complainant has identified the said bangles as the one belonging to the victim.

[5.2] It is argued that the accused was seen proceeding near the house of victim in the CCTV footage and therefore also the involvement of accused is clearly spelled out from the oral as well as scientific evidence adduced by the prosecution. It is further submitted that the witnesses are all natural witnesses and they have no reason to falsely implicate the accused. It is also submitted that the motive on the part of the accused to commit the crime is also established by virtue of recovery of golden ornament from the accused which was robbed by the accused at the time of incident. It is urged by learned A.P. P. for the State

that in case based on circumstantial evidence, there are no eye-witnesses and the case of prosecution is to be examined on the strength of circumstances which point out towards the guilt of the accused and in the case at hand since the CCTV footage and recovery of gold ornament are specifically established, therefore the accused may kindly be held guilty and punished under the law.

Arguments of defense:

[6] Learned advocate for the defence argues that the accused was not named in the FIR and no explanation has been offered by the prosecution as to why the person who was cited as suspect in the FIR was set free. It is further submitted that the death of victim being unnatural is also doubtful on the premise that the victim was aged lady and the incident dates back to COVID times; besides the complaint was lodged after around seven days from the death of victim.

[6.1] Learned advocate for the defence submits that there is no mention of any earring on the dead body of victim in the FIR as well as in the inquest panchanama and even the doctor conducting postmortem examination of the victim has not spoken anything about presence of one earring on the body of victim and therefore, the entire story of prosecution with regards to one earring sold by the accused and the other earring produced during the course of investigation, is fabricated with a view to connect the accused with the alleged offence. It is also argued that the accused was implicated after more than 15 days of registration of the offence and thereafter, the gold earring is recovery from the jeweler on 01.06.2021 and the complainant also produced other

gold earring on the very same day; therefore, the conduct of complainant not producing the gold earring till 01.06.2021 is clearly indicative of such earring having been planted to falsely implicate the accused. It is vehemently argued that the prosecution has failed to prove that any of the gold ornaments belonged to the victim.

[6.2] It is argued that nail clippings from victim's body were not collected at the time of postmortem examination and the nail clippings of accused collected during the course of investigation are not reported to have any traces in skin or tissue linked to the victim and there is no forensic and scientific evidence linking the accused to the alleged offence.

[6.3] With regards to CCTV footage relied by the prosecution, it is submitted by learned advocate for the defence that the witness examined at PW30 who is a neighbour of victim states that he had not seen any video footage and the police did not take his DVR and this witness also denied about having prepared of CCTV footage of his DVR and therefore, the CCTV footage produced by the PW30 is not proved in accordance with the law and though the authentication certificate is signed by the PW30, the same would have no legal value when the witness in his deposition before the Court confirms about having not prepared the CD from DVR and not even seen the footage and he clearly admits that the certificate was prepared by the police and he was merely made to sign the said certificate. Further, it is argued that the cross-examination of this witness clearly reveals that his house is at a distance of 150 feet from the house of victim and that his house is in another street and therefore also

the CCTV footage would not have any bearing on the merits of case.

[6.4] With regard to the recovery of gold earring from Mahakali Jewelers, it is submitted that the prosecution has failed to prove that another earring which matches earring recovered from Mahakali Jewelers (PW6) was recovered from complainant after it was found on the body of victim. It is submitted that the possibility of distinct set of earring having similar or same design is required to be taken into consideration; moreover, merely on the basis of recovery of earring and ornament, the accused can not be held guilty for the offence like murder, more particularly when there is no cogent and credible evidence to establish that the ornament in fact belonged to the victim.

[6.5] It is submitted that the deposition of complainant is clearly indicative of complainant having changed his stance before the Court inasmuch as though there is specific mention of Nayan Dabhi as suspect in the complaint, the complainant denies to the suggestion of defence in cross-examination that the name of Nayan Dabhi was mentioned in the complaint as a suspect. It is also argued that the complainant admits of having last met the victim prior to two months of incident and that he was not visiting the victim frequently. Further, it is argued that the complainant also admits that during the course of investigation, he was not made to identify the ornaments, therefore, the accused can not be connected with the offence solely on the basis of recovery of ornaments.

[6.6] With regard to the recovery of one earring from the

shop of PW6, it is argued that the PW6 admits in his cross-examination that he cannot say with certainty as to whether the person who came to sell one earring at his shop was the accused himself. It is argued that the witness at PW6 also admits about maintaining register of purchase and sale of gold ornaments and he confirms that he did not hand over any bill in respect of purchase of earring from the accused and the PW6 also admits about there being no entry in any diary with regard to purchase of second hand gold ornament from the accused. It is submitted that PW6 also admits that the police did not seize the DVR from his shop and confirms that he has no knowledge about Section-65(B) of the Indian Evidence Act. It is argued that the authentication certificate produced at Exh.41 signed by PW6 is not on letter-head of his shop and it does not bear any outward number. It is submitted that though PW6 denies that he gave a false certificate, it needs to be appreciated that the PW6 has no technical knowledge and merely appending signature on authentication certificate does not ensure compliance of legal procedure as provided under Section-65(B) of the Indian Evidence Act.

[6.7] It is submitted that PW6 clearly admits in his cross-examination that the gold earring was purchased by him from Bharatbhai Kantibhai Vala (PW32) and the amount of consideration was handed over by him to the said Bharatbhai Kantibhai Vala (PW32). It is submitted that by placing reliance on deposition of PW6, it can not be said that the prosecution has established that the single earring was sold by the accused to PW6. It is submitted that though PW32 Bharatbhai Kantibhai Vala states in his examination-in-chief that he accompanied the

accused to the shop of PW6 for selling the single earring, the depositions of PW6 and PW32 differs on material aspect; the PW32 admittedly could not identify the said gold earring which was sold through him by the accused to PW6. It is further submitted that PW32 has made many exaggeration in his deposition before the Court about the facts which were not narrated by him in his statement during the investigation and perusal of para-7 of the cross-examination of the PW32 clearly reveals that the facts regarding this witness having told the accused to approach the shop of PW6 for selling the earring and having given address of the shop of PW6 to the accused as well as PW6 having given the amount of consideration in the hands of this witness examined as PW32, and thereafter him having handed over the amount to accused, and this witness having introduced the accused to PW6 as his friend and having told the PW6 that the accused is in need of money and wants to sell the earring, are not narrated in the statement of PW32 before the investigation officer; and therefore, these aspects can not be taken into consideration.

[6.8] Learned advocate for the defence further submits that the Investigating Officer has not resorted to scientific evidence which would have easily established the involvement of the real culprit. It is submitted that the nail clippings of accused were collected during the course of investigation, but the FSL report does not indicate presence of any skin tissue or DNA of the victim being found in the nail clippings of the accused. It is also argued that, had the Investigating Officer conducted DNA analysis of the clothes of the accused as well as his nail clippings, the issue of involvement of accused would have been

clear; but with a view to solely implicate the accused, such detailed forensic investigation was not conducted by the Investigating Officer, and the person cited as suspect in the complaint has been absolved without thorough investigation.

[6.9] Learned advocate for the defence relied upon following decisions.

1. *Criminal Appeal No.1980 of 2008 decided by the Hon'ble Supreme Court in the case titled Ashish Jain Versus Makrand Singh and Ors.*
2. *2025 LiveLaw (SC) 157 in the case titled Thammaraya And Another Versus The State of Karnataka.*
3. *2017 (0) AIJEL-SC 59638 in the case titled Raj Kumar @ Raju Versus State (Govt of NCT of Delhi).*
4. *1993(1) GLR 616 Hon'ble High Court of Gujarat in the case titled Mahendra Shamaldas Soni Versus State of Gujarat.*
5. *2017(2) GLR 1272 Hon'ble High Court of Gujarat in the case titled State of Gujarat Versus Shaileshbhai Madhubhai Patel & Anr.*
6. *2023 (LiveLaw (SC) 395 in the case titled Dinesh Kumar Versus The State of Haryana.*
7. *2023(2) GLR 1213 Hon'ble High Court of Gujarat in the case titled State of Gujarat Versus Govindbhai Madhubhai Koli.*
8. *Criminal Appeal No.753 of 2021 decided by Hon'ble Supreme Court in the case titled Tulesh Kumar Sahu Versus State of Chhattisgarh.*
9. *2023 LiveLaw (SC) 239 in the case titled Pradeep Kumar Versus State of Chhattisgarh.*
10. *2014 CRI. L. J. 2778 Hon'ble Supreme Court in the case titled Dhan Raj alias Dhand Versus State of Haryana.*
11. *Criminal Appeal No.57 of 2013 decided by Hon'ble Supreme Court in the case titled Sonu @ Sunil Versus State of Madhya Pradesh.*

Points of determination:

[7] In light of the above submissions and upon perusal of material on records, following points arise for just

adjudication of this case:

- (1) *Whether the prosecution proves that the death of victim Hiriben Babubhai Ranavaya was homicidal in nature?*
- (2) *Whether the prosecution proves that the accused entered the house of deceased and caused death of victim by smothering her with pillow cover and robbed her ornaments, mobile phone and cash as alleged?*
- (3) *Whether the prosecution has proved chain of evidence so complete that it leaves no reasonable ground for a conclusion consistent with the innocence of the accused?*
- (4) *Whether the prosecution proves that the accused committed offence punishable under Section-302, 450 & 397 of the IPC?*
- (5) *What order?*

[7.1] My findings to the above points are as under.

- (1) *In the affirmative.*
- (2) *In the negative.*
- (3) *In the negative.*
- (4) *In the negative.*
- (5) *Accused is acquitted by extending benefit of doubt.*

The reasons for above findings, in light of submissions of either side and perusal of material on record are as under:

Homicidal death of victim :

[8] As per the case of prosecution, the victim was killed by the accused by way of smothering the victim with pillow cover. The said contention is consistently put forward by the prosecution witnesses. The complaint also bears mention that the victim Hiriben was lying on a setty and she had black and red

colour marks over her nose and cheeks and also had injury mark on right leg and she did not respond despite making attempts to awake her up. The Inquest Panchanama produced at Exh.18 mentions the name of victim as Hiriben W/o. Babu Ranavaya and it is also noted therein that it appears that there were injury marks over right leg and lower limb of waist. The complainant deposing as PW-4 specifically states that he saw that the victim Hiriben had injury over leg from which was bleeding and there were black and red colour marks over her forehead, eye, and nose and he also saw that one earring, two bangles and one nose pin were missing from the body of victim and thereby he suspected that someone has murdered the victim for obtaining the said ornaments.

[8.1] The panch witness to Inquest Panchanama deposed as PW1 and she identified her signature in the Inquest panchanama produced at Exh.18 and mentioned that she had seen dead body of victim Hiriben and that the victim had injuries over waist, knee and her fingers were green and some green marks were seen over her face skin. The said panch witness to Inquest Panchanama voluntarily stated that the victim Hiriben sustained injuries over her body and it seemed that someone had assaulted the victim. Further, the witness Sureshbhai Kanjibhai Khokhari (PW22) who is neighbour of victim has stated in his deposition that he had seen the victim's dead body and it had head injury.

[8.2] The Medical Officer who conducted postmortem examination of the victim's dead body has deposed as PW25. He states that the postmortem examination was conducted by

himself and panel doctor Bharat Tavari on 14.04.2021 from 08:00 hrs. to 10:00 hrs. and the dead body of victim was identified by Dinesh Bhima Keshvala. PW25 further states that upon examination of victim's dead body, following external injuries were found.

- (1) *Abrasion on Right leg 5cm below Right knee on anterior aspect 1cmx0.5cm horizontally placed with blood clots on margins.*
- (2) *Abrasion of Right iliac crest 2cmx1cm horizontally placed with blood clots on margins.*
- (3) *Linear abrasion 2cm horizontally placed on middle 1/3rd of right mandibular bone.*
- (4) *Bruise on left side of cheek 2cm laterally to left angle of mouth 2cmx1cm.*
- (5) *Diffuse bruise dark reddish brownish in colour placed on right infraorbital bone with cyanosed face.*
- (6) *Diffuse bruise dark reddish brownish in colour placed on left infraorbital bone with cyanosed face.*

[8.3] PW25 further states that upon internal examination, it was noted that brain was congested; both lungs were congested, edematous and cyanosed; pitting on pressure; on cuttings both lungs dark reddish frothy blood oozing from cut section. PW25 further states that pericardium of heart was congested and the heart was congested and cyanosed with right heart chamber filled with dark blood and left heart chamber empty. He further states that major blood vessel was cyanosed and on everting upper lip reddish brown contusions 3 in number seen over mucosa of upper lip; teeth impression were present on inner aspect of upper lip with redness. He further states that esophagus was cyanosed and that stomach was empty; small intestine had semi digested food present; large intestine had fecal matter and gas present; liver, suprarenal, spleen, kidney, were congested and cyanosed. He further states that the bladder and uterus were empty. The said witness Medical Officer has opined that the cause of death is a cardio-respiratory failure as a result of

Asphyxia due to smothering. He voluntarily states that such death can be caused by way of smothering mouth and nose.

[8.4] In his cross examination by defense, it is admitted by PW25 that he did not conduct covid test of the dead body and that during covid pandemic many persons died on account of damage to lungs. He also admits about not having collected viscera and volunteers to say that there was no such requisition by police and there were not signs of death due to poisoning noted during post mortem examination, therefore viscera was not collected. The other suggestions of defence have been denied.

[8.5] Having regards to the deposition of PW25 Medical Officer and the postmortem report produced at Exh.114 as well as taking into account to the oral testimonies of complainant and victim's neighbour wherein they have stated that the victim was found in injured condition, it can be safely inferred that the death of victim was not a natural death and his death was homicidal. **Accordingly, point of determination of Issue No.1 is affirmative.**

Appreciation of evidence on the aspect of guilt of accused as per point of determination no. 2 to 4:

Analysis of recovery of gold ornaments:

[9] Having regard to the charge and the nature of evidence adduced by the prosecution as well as the arguments of either side, it is apparent that there are no eye-witnesses to the incident and the case of prosecution rests entirely on circumstantial evidence.

[9.1] The circumstances relied upon by the prosecution can be broadly summarized as under.

1. The accused sold gold earring and other ornaments of victim to jewelers which were recovered during investigation and these ornaments are claimed to be belonging to the victim.
2. The accused is seen near the house of victim in the CCTV footage within close proximity of the incident.

[10] PW1 is the panch witness to Inquest Panchanama produced at Exh.18. She states that the victim Hiriben was residing opposite to the house of her parent's house at Juri Bag area and that the victim was living all alone. She further states that she was informed by her brother Ashwin and therefore, she went to the hospital and saw the dead body of victim. She further states that the victim's dead body had injuries over knee, waist area and her finger had turned green and she also had contusion over facial skin. She also identified her signature in the panchanama produced at Exh.18. She further states that as the victim Hiriben was living alone, she would call her sometime if she had any work and that upon examining dead body of victim, it appears that she was assaulted by someone, but she does not know who was the assailant.

In her cross-examination by the defence, it is admitted that she had not witnessed the incident and does not know as to how the victim sustained injury and who caused the injury. PW1 also admits that she does not know the accused in the present case and denies to the suggestion that she was not shown the dead body of victim and she is not making false statements on oath in

her deposition of Inquest Panchanama produced at Exh.18.

[10.1] It would also be necessary to note that the Inquest Panchanama prepared on 13.04.2021 at 23:10 hrs. p.m. specifically records that the police has not seized any article from the dead body and that the fingertips of both the hands were seen to be blackish. The Inquest Panchanama also records that reddish black mark were seen on nose and both the cheeks and it also records that there was an injury on right knee and right side waist region. The age of victim is mentioned as 65 in the Inquest Panchanama.

[10.2] PW2 is panch witness to the place of incident panchanama produced at Exh.24. However, he does not support the case of prosecution with regards to drawing up of panchanama as claimed by prosecution and identifies his signature at panchanama produced at Exh.24 and he further identifies his signature in the panch slip kept with muddamal article-1 mattress and muddamal article-2 pillow cover as well as muddamal article-3 pink colour gown. In his cross-examination by the defence, it is admitted that apart from appending signature in the panchanama, he has no other information.

[10.3] Another panch witness to the place of incident panchanama is examined as PW3. He also does not support the case of prosecution and only identifies his signature in the panchanama as well as panch slip. PW2 & PW3 were permitted to cross-examined by learned Public Prosecutor, however, nothing fruitful to the case of prosecution was elicited in the cross-examination of these witnesses. Both these witnesses

admitted in cross-examination that they merely appended signature in the panchanama and no information about panchanama.

[10.4] Though the panch witnesses to the place of incident panchanama did not support the case of prosecution, if the said panchanama is read into evidence on the premise that these witnesses identified their signatures and the Investigating Officer has narrated in his deposition before the Court about having drawn the panchanama in the presence of these witnesses; it transpires from the perusal of place of incident panchanama that the place of incident is house of the victim located behind Paradise Cinema in Rabari Keda area of Porbandar and the place of incident is shown by Arjan Ranabhai Ranavaya who is the complainant of the present case. The entrance of the said house is reported to have an iron grill and there is a washroom on the northern side and a staircase leading to terrace next to the washroom. It is further evident that after entering to main door of the house, there is a room having area of 10x10 feet and there is another room on the eastern side which also has the same area; whereas on the southern side, there is another room with door and the area of the said room is 12x10.9 feet. Further, there is a mention of setty lying in the said room inside the south-west direction and the victim was found lying on the said setty. The size of setty is mentioned 3x6 feet and it had a mattress with white colour cover which is mentioned to have blood like stain over it and the said cover of the mattress was seized.

[10.5] Further, a pillow cover was also seized from the place of incident and a gown worn by victim at the time of

incident was also seized and these articles were sealed and sent for FSL analysis. The panchanama further bears mention of a cupboard having mirror at the front place on the western wall of the room and a glass top iron table placed near the northern wall of the room and a TV stand as well as LG company television in the north-east corner of the room with a fridge under the said TV stand. It is further mentioned that the kitchen is located on the eastern side of the room and the cooking articles found in the kitchen and there is also mention of enclosed OTS next to the kitchen. It is also specifically mentioned that no other article was seized from the said room or the kitchen.

[10.6] The prosecution has examined witness Purvesh Jaysukhlal Kurani, Scientific Officer as PW24. He states that on 14.04.2021 he received *vardhi* in connection with the accidental death report no.14/21 and that place of incident was shown to him by PSI Mr. M. L. Aahir and his staff, and states the house of victim Hiriben W/o. Babubhai Ranavaya was situated behind Paradise Cinema area, Rabarikeda and he prepared primary analysis report of place of incident which is the room on ground floor of the house. He has identified his handwriting and signature on the analysis report of place of incident produced at Exh.107. In his cross-examination by the defence, he states that he does not know when the police has prepared panchanama of place of incident. He admits that he did not obtained any sample from the place of incident. He volunteers to say that he had instructed the police to collect different samples from the place of incident. He denied that he has prepared a false analysis report as per the say of police.

[10.7] Thus, it is evident from the perusal of the panchanama of place of incident as well as the deposition of scientific officer that there was absence of ransacking at the place of incident or attempt to open or break up the cupboard placed in the room where the victim was found lying dead.

[11] The complainant is examined as PW4 at Exh.29. He states that the victim was staying alone and he is distant nephew of the victim. He further states that on 13.04.2021 the incident took place and he was informed by neighbour of victim Pujaben over his mobile phone that something has happened to victim and she is lying still at her house. Therefore, he left for the house of victim and on the way he made phone call to his cousin brother Bharat Savdas and informed him about the incident and told him to come to the house of victim.

[11.1] PW4 states that when he arrived at the house of victim, the police staff was already present and further he along with his cousin Bharat Savdas entered the house of victim and saw that the victim had injury on one of her leg and was bleeding and the forehead, eyes and nose of victim were blackened and she was lying dead. He further states that the dead body of victim was taken to the Bhavsinhji Hospital for postmortem and after postmortem examination, the police interrogated him and he informed the police about demise of victim and thereafter, police complaint was recorded his statement which is produced at Exh.30.

[11.2] The complainant further states that the victim usually wore a pair of gold earring, gold bangles and gold nose

pin, however, when he saw the dead body of victim, the gold bangles, nose pin and one of the earring were missing; and therefore, he suspected that someone might have murdered the victim for the sake of gold ornaments. The complaint is produced at Exh.31 whereas the statement of complainant PW4 recorded on 13.04.2021 (day of incident) is produced at Exh.30.

[11.3] The complainant further states that, after lodging the complaint, he was informed by the police that the accused has been caught and he was called upon to visit the Police Station along with one gold earring of the victim and since he had preserved the said gold earring, he went to the Kamlabag Police Station and the police kept the said earring and he was later informed by the police that the present accused murdered the victim.

[11.4] PW4 identified muddamal article-1 Mark-A which is the gold earring and states that the said earring was seized at the time of postmortem of victim's body and was handed over to him and later he had handed over the said earring to the police for the purpose of matching it. The complainant further identified the valuable muddamal article-2 Mark-B as the gold bangles worn by the victim which were not found on the body of victim. The valuable muddamal article-3 Mark-C is identified by the complainant as the other earring which was worn by the victim and was found missing.

[11.5] PW4 states that he does not know the accused, however, since after the involvement of the accused was disclosed during the investigation, he was called upon at the

Police Station along with one piece of earring and had seen the accused at that time and therefore, he can now identify the accused and he accordingly identified the accused before the Court.

[11.6] In his cross-examination by the defence, it is admitted by PW4-complainant that the victim has three brothers and she was the only sister. The complainant denies to the suggestion that Nayan Dabhi was cited as suspect in the complaint, but he confirms that Nayan Dabhi is a mason and the Nayan Dabhi had done masonry work at the house of victim. He also confirms about Nayan Dabhi having visited the house of victim on once or twice for some other work. He confirms about victim having a house in the Kamlabag area, but he claims ignorance about auto-rickshaw driver Jayendrabhai regularly visiting the victim for payment in respect of the said house and the victim using the auto-rickshaw of Jayendrabhai frequently. He also claims ignorance about a maid visiting the house of victim regularly. It is admitted that there are other houses located near the house of victim and the flour-mill in the lane opposite to the house of victim.

[11.7] The complainant states that he last met the victim prior to two months and admits about meeting the victim less frequently as he was residing at Ranavav. The complainant states that he can not say as to whether the muddamal gold articles identified by him are easily available in the market and denies the suggestions that there is no specific mark on these articles which would enable him to identify them. He admits that no identification of the gold ornaments by placing them with other

similar gold ornaments was conducted by the police. PW4 admits about not having seen the incident and denies to the other suggestions of the defence.

[11.8] Having regard to the deposition of PW4 and the fact that he has identified the gold ornaments produced as valuable muddamal articles-1, 2 & 3, it would be necessary to analyze as to whether there was any mention of missing gold ornaments on the body of victim in the first statement of PW4 recorded on 13.04.2021 which is produced at Exh.30. It needs to be appreciated that, since the said statement was recorded prior to the registration of offence, it would not be hit by Section-162 of the Cr.P.C. and can be read into evidence.

[11.9] Perusal of Exh.30 reveals that PW4 was informed about the door of victim's house was open since quite some time and victim being not seen around by Pujaben Sureshbhai Khokhari who was residing next to the house of victim; and therefore, he went to the house of victim and saw that many persons had gathered near the house of victim and thereafter, he along with Kamleshbhai Hirabhai Kotiya and other persons went inside and saw that the victim was lying on the setty and was not responding and someone called an ambulance from Maher Shakti Sena and after the arrival of the ambulance, he along with Kamleshbhai Hirabhai Kotiya, Ashwin Hirabhai Kotiya and Bharat Savdasbhai Ranavaya took the victim in the said ambulance to the Bhavsinhji Hospital and she was reported to have passed away by the Doctor at the hospital. It is further stated that Hiriben is her distant aunt and her husband passed away prior to 15 years and she has not children and her brother

settled at London and here in-laws are also settled at London and the only close relative of the victim at Porbandar is her sister Bhavna Bhima Keshvala. With regard to the incident, it is stated that the victim was living all alone since 15 years and was receiving pension from the Porbandar Post Department and would usually stay in her house. She might have passed away on account of some disease or accident.

[11.10] Thus, perusal of Exh.30 reveals that there is no mention of arrival of police at the place of incident when the complainant PW4 first went to the place of incident. Further, there is no mention of complainant PW4 having noticed any missing ornaments on the body of victim on 13.04.2021. It is also relevant to note that there is no mention of PW4 having noticed any injury on the body of victim.

[11.11] The complaint lodged by PW4 is produced at Exh.31. The complaint was lodged on 21.04.2021, which is after about a week from the day of incident. In the complaint it is narrated that upon being informed about victim not seen around the house and the door being open since quite sometime by Pujaben Sureshbhai Khokhari, the complainant went to the house of victim and upon arrival he saw that many persons have gathered, and he along with Kamlesh Hirabhai Kotiya entered into the house and saw that the victim was lying on setty and there were blackish and reddish marks on her nose and both the cheeks and also fresh injury marks on right knee and that the victim did not respond and therefore, ambulance was called and the victim was taken to the Bhavsinhji Hospital and was declared dead by the doctor. It is also stated in the complaint that

accidental death report in terms of Section-174 of Cr.P.C. was registered with the Kamlabag Police Station vide A.D. No.14/2021.

[11.12] It is further narrated in the complaint that the death of victim was not natural, but she was murdered by smothering her. The complaint also bears mention of victim living in isolation since long and preferring to be inside her house most of the times. It is also contended that the mason named Nayan Dabhi who had executed masonry work at the house of victim prior to about 3 years would frequently visited the house of victim and after demise of the victim on 13.04.2021 the said Nayan Dabhi did not attend the funeral and other rites of the victim and also did not bother to inquire about the victim and the phone of the said Nayan Dabhi was shown as switched off, therefore, it is suspected that the victim was murdered by the said Nayan Dabhi.

[11.13] With regards to the delay in lodging the complaint, it is contended in the complaint that, after the incident since one of the relative of the complainant had Corona and required plasma, he was out of station for donating plasma and that at the time of lodging of complainant also the complainant is under the influence of Corona and quarantined at his house and upon being visited by the police, he narrated the complaint.

[11.14] It is thus evident from perusal of the complaint at Exhibit-31 that there is no mention of complainant having noticed any missing ornaments on the body of victim. The complainant had suspicion over Nayan Dabhi who would

frequently visit the victim's house after he had done masonry work at the house of victim prior to 3 years. It also needs to be noted that though it is mentioned in the complaint that he did not promptly lodge the complaint on account of having out of station to donate plasma to some of his relative, the complainant PW4 does not mention anything about this in his deposition before the Court. Therefore, having regard to the delay of about 8 days in lodging the complaint and absence of complainant having noticed any missing ornaments on the body of victim in his statement recorded on 13.04.2021 as well as in the complaint recorded on 21.04.2021, the case of prosecution is required to be closely scrutinized with higher degree of caution.

[12] Since the complainant has put forward a story that the single earring of the victim was handed over to him at the time of postmortem examination, it would be necessary to appreciate as to whether any panchanama in that regard was prepared or whether there is any such mention in the postmortem note. As noted herein above, there is no mention of any earring or ornament on the body of victim in the Inquest Panchanama produced at Exh.18 and it is also specifically mentioned that nothing was seized from the body of victim. The statement of PW4 recorded on the day of incident and the complaint also does not bear any mention of single earring on the body of victim and other ornaments missing.

[12.1] The doctor who conducted postmortem of the victim's body is examined as PW25. The perusal of deposition of PW25 Dr. Sohail Valimahamad Jokhia reveals that there is no specific mention of any ornament found on the body of victim.

PW25 mentions about the body of victim covered in pink colour gown, however, as per the place of incident panchanama, the said gown was seized from the place of incident on 14.04.2021 at 18:30 hrs. whereas the postmortem was conducted on 14.04.2021 at 08:00 hrs. Therefore, it can be inferred that though the dead body of victim was covered in the gown, the same was not seized by the Medical Officer at the time of postmortem and it was later on seized from the place of incident in terms of place of panchanama on 14.04.2021 at 18:30 hrs.

[12.2] The Medical Officer PW25 further mentions about the condition of eyes and mouth of dead body and absence of any bleeding from nose and ear, but he does not mention anything about presence of any scratch or mark on the nose or ear. It needs to be appreciated that when the Medical Officer conducting autopsy closely scrutinized the condition of dead body and specifically mentioned the condition of eyes, nose and mouth; had there been an earring in one ear of victim's body, he would have specifically noted the same in postmortem report and would have narrated about it in his deposition before the Court; but there is no such mention in the postmortem note or in the deposition of PW25.

[12.3] Further, in the event of assailant having forcibly snatched away or taken out the nose pin and earring, it is highly probable that such act could lead scratch mark or minor abrasion or injury on the nose or ear which is not the case here. PW25 further goes on to narrate the injury found on the body of victim and states that following external injuries were found in the body of victim.

1. *Abrasion on Right leg 5cm below Right knee on anterior aspect 1cmx0.5cm horizontally placed with blood clots on margins.*
2. *Abrasion of Right Iliac crest 2cmx1cm horizontally placed with blood clots on margins.*
3. *Linear abrasion 2cm horizontally placed on middle 1/3rd of right mandibular bone.*
4. *Bruise on left side of cheek 2cm laterally to left angle of mouth 2cmx1cm.*
5. *Diffuse bruise dark reddish brownish in colour placed on right infraorbital bone with cyanosed face.*
6. *Diffuse bruise dark reddish brownish in colour placed on left infraorbital bone with cyanosed face.*

[12.4] Thus, it is evident that there is no mention of any injury over ear-lobe or nose. PW25 opined that the death of victim was result of cardio-respiratory failure as a result of Asphyxia due to smothering. PW25 has been cross-examined at length by the defence and he admits that under ordinary circumstances, if a person is smothered by blocking his mouth and nose, he is likely to resist by it and such resistance may result in abrasion on the body of assailant. It is admitted that in such event the finger nail of the victim would have traces of skin or blood of the assailant. He confirms that if sample of nail clippings of victim are collected and sent for DNA analysis, it can be confirmed as to whether a specific person is the assailant or not.

[12.5] PW25 confirms that viscera sample are collected and sent for FSL analysis to rule out the possibility of death due to poisoning and he confirms that viscera was not collected in the present case. However, it is clarified by PW25 that the police did not request for collection of viscera and there was nothing to suspect death on account of poisoning as per the postmortem examination. He admits that on account of COVID pandemic,

person infected with Corona had severe damage to the lungs and person with severe infection succumb to the virus. He admits about not having conducted any Corona Test of the victim's body.

[12.6] Upon over all appreciation of deposition of PW25 the Medical Officer who conducted postmortem of victim, it is evident that there is no mention in his deposition as well as in the postmortem report about any single gold earring found on the body of victim. Further, there is no mention of injury of ear lobe or nose of the victim which would correspond and corroborate the taking away or snatching away of nose pin or earring from victim. Further, as per PW25 nothing was seized from the body of victim.

[12.7] The request letter for postmortem examination produced at Exh.112 does not bear mention of any request on the part of Investigating Officer to collect any finger nail clippings or even blood sample of body of victim. Likewise in the report forwarded along with request letter produced at Exh.113 the cause of death is mentioned in column No.10 as 'for any reason'.

[12.8] Thus, having regard to the admission made by PW25 in his cross-examination by the defence, the finger nail clipping of victim would have enabled the investigating agency in connecting the accused with the offence, however, non-collection of such finger nail clipping has deprived the investigating agency from such valuable scientific assistance.

[12.9] It also needs to be noted that PW25 cannot be faulted at all in this regard inasmuch as there was no specific

mention in the report produced at Exh.113 that the death was result of any crime. The concerned police official inquiring about accidental death ought to have been more vigilant and careful while making request for postmortem examination in order to ensure that the crucial samples like finger nail clipping and blood are collected and preserved for the purpose of forensic analysis.

[13] The police official who registered the accidental death report is examined as PW34. He states that on 14.04.2021 accidental death report was recorded by P.S.I. Mr. M. L. Aahir at the Bhavsinhji Hospital, Porbandar and the same was forwarded to him while he was serving as Police Constable at the Kamlabag Police Station, therefore, he made an entry of the accidental death vide A.D. No.14/21 and also made corresponding entry in the Station-Diary vide Entry No.3/21 on 14.04.2021 at 01:45 a.m. and assigned further investigation to P.S.I. Mr. M. L. Aahir. He has produced Station-Diary No.3/21 at Exh.157 and also identified signature of Mr. M. L. Aahir in the A.D. Note produced at Exh.133. PW34 has also produced an extract of accidental death report which was made online and produced at Exh.134.

[13.1] Perusal of Exh.134 reveals that the cause of death is mentioned as some disease or accident. He confirms about having no information about the present case apart from having registered the accidental death report after it was recorded by Mr. M. L. Aashir.

[13.2] Mr. M. L. Aahir has been examined as PW31. He states that in 2021 he was serving as P.S.I. at Kamlabag Police

Station and on 13.04.2021 the victim Hiriben Ranavaya was reported to have passed away and he was informed over telephone by P.I. Mr. A. B. Sisodiya (PW33), therefore, he went to the Bhavsinhji Hospital, Porbandar and caused drawing of Inquest Panchanama through Executive Magistrate and sent a request to the Medical Officer to conduct postmortem examination and the accidental death report and the statement of Arjan Rana Ranavaya (PW4) was recorded. He identified his signature in the statement of PW4 recorded on 13.04.2021 produced at Exh.30. He also confirms about having recorded statement of Kamleshbhai Kotiya, Ashwinbhai Kotiya, Pujaben Khokhari, Sureshbhai Khokhari, Muktaben Shah, Ramaben, Vanitaben Fataniya, Narsibhai Fataniya, etc. while inquiring into the A.D. No.14/21 and thereafter, having prepared panchanama of the place of incident in the presence of Forensic Officer Mr. P. J. Kurani on 14.04.2021 from 18:30 hrs. to 19:30 hrs. and he also mentions about having seized the pillow cover and mattress as well as gown of the victim worn at the time of incident. He further states about having recorded complaint as narrated by PW4 on 21.04.2021 and also produced Yadi after registration of the offence and other documents collected during the investigation.

[13.3] In his cross-examination by the defence, PW31 confirms that the dead body of victim was handed over in terms of receipt Mark-14/14. The said receipt is produced at Exh.139 wherein the dead body is mentioned to be handed over to Dinesh Bhima Keshvala on 13.04.2021. It is however clarified by PW31 that the postmortem of victim's body was conducted on 14.04.2021 and was completed at 10 o'clock and the dead body

was handed over on 14.04.2021, however, on account of bonafide mistake, the date is written as 13.04.2021. Further, PW31 admits that the place of incident is residential area and there are many houses located at the house of victim and the victim's house is located at the corner. He confirms that while preparing Inquest Panchanama the seizure of any article from dead body is mentioned in the panchanama. He confirms that there is a note in the Inquest Panchanama produced at Exh.18 that nothing has been seized by the police from the dead body and admits that there is no mention of any article being seized from the dead body of victim and handed over to relative of the victim. He also admits about absence of any mention in the place of incident panchanama about any CCTV camera near the house of victim.

[13.4] PW31 also confirms about complainant having narrated that he has suspicion on person named Nayan Dabhi in the complaint. He also confirms about absence of narration in the complaint with regard to complainant having noticed that the gold ornaments usually worn by the victim were not found on the victim's body and that only one earring was found present. PW31 also admits that in the statement of Sureshbhai Kanjibhai Khokhari (PW22) recorded inquiring A.D. No.14/21 on 14.04.2021 it was stated that Nayanbhai would frequently visit the house of victim. He admits that the postmortem report of victim was received on 19.04.2021. He denies to the other suggestions of the defence.

[13.5] Perusal of deposition of PW31 reveals that he conducted inquiry of A.D. No.14/21 and also recorded the

complaint on 21.04.2021. The complainant denies the suggestion of defence about having not narrated that he notice that the gold ornaments in the form of pair of earring, pair of bangles and nose pin usually worn by the victim were missing and that only one earring was found on the victim's body. However, PW31 admits about absence of such narration in the complaint produced at Exh.31. Further, PW31 also confirms of absence of any narration in Inquest Panchanama about recovery or seizure of gold ornaments from the body of victim. Besides, the person who was handed over the dead body of victim, namely Dinesh Bhima Keshvala has not been examined by the prosecution.

[14] The panch witnesses to Panchanama of seizure of muddamal earring of deceased from the complainant on 01.06.2021 have been examined as PW15 Vijay Parsotambhai Solanki and PW16 Bhikhubhai Jethabhai Chopda PW16. However, they do not support the case of prosecution with regards to drawing up of Panchanama of seizure of muddamal earring of deceased from the complainant as claimed by prosecution and only identify their signatures on panchanama produced at Exh.78. They state that they were called upon at the Police Station and were made to append their signatures on already prepared paper. They identify their signatures on panch-slip of valuable muddamal article-1 produced at Exh.79. In their cross-examinations by the defence, they admit that apart from appending signatures in the panchanama, they have no other information. They also admit that the police has not seized any muddamal in their presence.

[14.1] Despite of panch witnesses not supporting the panchnama, if the same is considered to be proved by the investigation officer; it transpires that the said panchnama was prepared on 01.06.2021 from 10.15 to 11.00 am, and it claims that the complainant appeared before the police station and produced a single earring which according to him was handed over to him by the doctor at the time of conducting post mortem examination of victim's body. However, the said contention of complainant does not find any corroboration inasmuch as PW25 does not speak a word about having found an earring on the body of victim. Besides, the dead body was not handed over to the complainant but to Dinesh Bhima Keshvala, who has not been examined as witness. Hence, the custody of single earring of deceased with the complainant is not explained.

[14.2] The prosecution has examined Bipinchandra Jethabhai Savaliya, Mamlatdar as PW29. He states that he received a Yadi from PSO, Kamlabag Police Station for preparing Inquest Panchanama of MLC No.292/2021, dated 13.04.2021 of deceased Hiriben W/o. Babubhai Ranavaya of Juribag, Porbandar. He identifies his signature for acknowledgment on the said Yadi produced at Exh.127. He further states that he went to the Bhavsinhji Hospital on 13.04.2021 at 22:10 hrs. night and met with Dr. Tavari where PSI Mr. Aahir was present and went to the postmortem room where dead body of Hiriben W/o. Babubhai Ranavaya was lying and was identified by Dinesh Bhima for which panchanama was prepared in presence of panch witnesses Urmilaben W/o. Pravinbhai Ramjibhai Bharada and Ashwinbhai Hirabhai Kotiya.

[14.3] PW29 witness states that he has seen the the dead body and there were injuries on right knee and right side waist region. He states that he has signed the panchanama and signatures of panch witnesses and PSI Mr. Aahir were also made on it. He identifies his signature along with signatures of panch witnesses and PSI on Inquest Panchanama produced at Exh.18.

[14.4] In his cross-examination by the defence, he admits that the Yadi produced at Exh.127 contains date of receipt to be 13.04.2021 on 22:50 hrs. below his signature. He volunteers to say that he reached at the Bhavsinhji Hospital on the same day of receipt of Yadi at 23:10 hrs. night. He admits that no article was seized by the police from the dead body at the time of preparing panchanama in his presence. He admits that only police personal accompanied him when he entered the postmortem room and no other person was there, but he volunteers to say that two panch also accompanied him when he entered in the postmortem room. He denies that the panch witnesses did not sign the panchanama in his presence. He denies that the police has obtained his signature in already prepared panchanama at his office. As per his say, the police office was writing the panchanama at the time of preparing the same.

[14.5] Thus, in light of above referred evidence, it is clear that the prosecution has not been able to adduce consistent and cogent evidence that the victim was found with only one earring no her body and other earring as well as bangles and nose pin were missing when the complainant saw the victim for the first time. It would also be necessary to note that PW31 does not mention about having recorded any further statement of the

complainant after having recorded the complaint. Therefore, the contention of complainant with regard to having seen the victim's body with only one earring and the other earring as well as gold bangles and nose pin being missing appears to be narrated in the Court in his deposition for the first time. Therefore, such contention would not be admissible in evidence.

[14.6] In this regard, it would be apt to refer the observation of Hon'ble High Court of Gujarat in the case titled **State of Gujarat Versus Natubhai Parsotambhai Patel** reported in (2016) 4 GLR 3233 wherein it was held that the facts which witnesses have not stated in statements before the police under Section-161 of Cr.P.C. and stated for the first time before the Court cannot be accepted as evidence. It would be also apt to refer decision of Hon'ble Supreme Court in the case titled **Vimal Suresh Kamble Versus Chaluverapinake Apal S.P. and Another** reported in 2003 Supreme Court Cases (Cri) 596. Further in the case titled **Anil Kumar Versus State of Punjab** reported in 2001 Supreme Court Cases (Cri) 469, it was observed as thus:

That apart, we have also ourselves scrutinised the evidence of PWs. 7 and 13 and from the cross-examination of these witnesses it appears that the most material part of their evidence in Court had not been deposed to while being examined under Section 161, and therefore by no stretch of imagination, two witnesses can be held to be reliable witnesses so that the prosecution can rely upon their testimony for a conviction of the accused appellant.

[15] The prosecution has examined Hemendrabhai Harishbhai Lodhiya as PW5. He states that he runs a jewelry shop at Parekh Chakla under the name of Balvi Jewelers and a person came to his shop to sell pair of gold bangles which was purchased by him for consideration of Rs.1,10,000/- and he had

paid the amount in cash to the said person. He further states that after sometime, police called him up and inquired about the bangles and conveyed it to him that these are stolen property and therefore he had handed over the said bangles to the police after 3 to 4 days. He identifies the valuable muddamal article-2 as the bangles purchased by him from unknown person. PW5 has also identified his signature appended on the statement recorded by the learned magistrate in terms of Section-164 of the Cr.P.C. produced at Exh.39. He further states that the weight of these bangles at the time of depositing was more than 30 grams and the said bangles were seized in terms of panchanama. PW5 however states that he can not identify the said person from whom he purchased the said bangles. Learned P. P. sought permission to cross-examine the PW5, however, all the suggestions of learned P. P. with regards to these bangles having been sold by the accused have been denied.

[15.1] In his cross-examination by the defence, he confirms that he cannot identify the person who had sold these bangles to him and volunteers to say that since COVID pandemic was prevalent at that time, the person who had come to his shop had a mask on his face. He also admits that identification parade of the said person was not conducted before the Executive Magistrate by the police to identify the person who had sold the bangles to him. He also admits that he was instructed to depose in a certain manner before the learned magistrate for recording the statement produced at Exh.39. The statement of PW5 recorded by learned magistrate produced at Exh.39 reveals that Arjanbhai Masaribhai Odedra (accused) had sold him the said bangles and he paid Rs.1,10,000/-, however, no such receipt was

issued by him.

[15.2] Thus, upon over all appreciation of the deposition of PW5, it is evident that he does not confirm in his deposition before the Court that these bangles were sold to him by the accused. Further, the admission on the part of PW5 that he was coerced and instructed to depose in certain manner by the police before the learned magistrate also tends to create a shadow of doubt on the credibility of investigating agency with regards to attributing the sale of bangles to the PW5 by the present accused. It is also relevant to note that PW5 does not mention about any specific date on which these bangles were purchased by him in his deposition before the Court as well as in his statement before the learned magistrate. Hence, the recovery of bangles from PW5 is of consequence and does not aid the case of prosecution with regard to involvement of accused.

[16] The prosecution has examined Jitendrabhai Liladharbhai Lodhiya (Jeweler) as PW28. He states that he is a jeweler running shop in the name of Yash Jewelers in Manek Chok and upon calling by the police he went to the Kamlabag Police Station where he was shown two gold bangles and one gold earring and that he weighed and valued the same and gave receipts of weight which are produced at Exh.124 & Exh.125. He identifies his signatures on the said receipts. In his cross-examination by the defence, he admits that the police is used to call him for weighing ornaments many times. He denies that he signs the papers written by the police without weighing and valuing the ornaments. He claims ignorance whether panch were present at the time of weighing the ornaments or not. He admits

that he does not know the name of person who has produced the said ornaments before the police station.

[16.1] The panchanama in respect of recovery of bangles from PW5 is produced at Exh.46. The panch witnesses to the said panchanama are examined as PW7 and PW8. Both these panch witnesses have disowned the case of prosecution with regard to drawing up of panchanama as claimed by the Investigating Officer and have merely identified their signatures on panchanama produced at Exh.46. Learned P. P. was permitted to cross-examine these witnesses, however, they have denied the suggestion of prosecution with regard to recovery of bangles from the shop of PW5 on 01.06.2021.

[16.2] Further, even if the said panchanama at Exhibit-46 is considered to have been proved on the basis of deposition of the Investigating Officer, perusal of the said panchanama reveals that the PW5 produced the gold bangles at the Police Station and there is no mention in the panchanama about PW5 having disclosed that the said bangles were purchased by him from the accused. Further, there is no mention of date of purchase of these bangles even in the panchanama. Hence, in the absence of specific date of purchase of these bangles by PW5 and non-identification of the accused as the person who sold these bangles to PW5, the accused can not be attributed with the custody of these bangles. In addition to that, the prosecution has not been able to furnish any cogent and credible evidence with regards to ownership of victim over these bangles.

[17] PW6 Kashyap Nitinbhai Jogiya is owner of

Mahakali Jewelers at Aashapura Market, Ranavav. He states that the CCTV camera is installed in his shop and the police demanded CCTV footage of the said camera, therefore, the footage was copied down on a DVD from the DVR and handed over to the police and certificate was signed by him which is produced at Exh.41. He also identifies the valuable muddamal article-1 (which as per the muddamal receipt is the single earring recovered from complainant) as the single earring weighing approximately 260 milligram and that the same was seized in terms of panchanama by the police. He further states that prior to one year and four months, one person came to his shop between 5 to 6 o'clock in the evening and told that he has one earring and the other is lost and therefore, he wants to sell the said single earring, therefore, he weighed the said single earring and told him that it would fetch Rs.1,300/-, however, the said person was not known to him, so he did not purchase.

[17.1] It is further stated by PW6 that, thereafter the said person came with Bharatbhai Kantibhai Vala who is known to PW6 and that Bharatbhai Kantibhai Vala (PW32) told PW6 that the said person is known to him and therefore, PW6 purchased the said single earring and paid Rs.1,300/-. PW6 further states that he had purchased the single earring from Bharatbhai and states that he cannot say with certainty that the person who had come for selling the single earring was the present accused.

[17.2] The accused was shown to PW6, but he said that he can not confirm as to whether the present accused was the person who came to his shop for selling the earring. He further states that he was informed by the police that the said earring was

stolen and taken away after committing murder. PW6 was shown the video footage in the DVD produced at EXh.42 wherein he says that the face of person who had come for selling an earring is not clearly visible, however, the person seen wearing cap on his head had come to his shop on the previous day and requested him to purchase single earring and as he did not know the said person, he did not purchase on that day and thereafter, he came with Bharatbhai Kantibhai Vala (PW32) who works in the Nagarpalika and the said person was identified Bharatbhai Kantibhai Vala (PW32), therefore he had purchased the single earring from the person wearing the cap as seen in the video footage. He identifies the person seen wearing horizontal line t-shirt as Bharatbhai Kantibhai Vala (PW32) and also states that the person wearing cap on his head cannot be identified as his face is not clearly visible in the footage and therefore, he can not confirm whether the said person is accused in the present case or not. He also confirms about police recording his statement and thereafter, learned Magistrate recorded his statement which is produced at Exh.43.

[17.3] The statement of PW6 recorded by the learned Magistrate produced at Exh.43 reveals that on 15.05.2021 the accused Arjanbhai Masaribhai Odedra came to his shop and offered to sell a single earring and he offered Rs.1,300/- for the same and thereafter, on the next day 16.05.2021 at about 10:30 a.m. the said Arjanbhai came with Bharatbhai Kantibhai Vala (PW32) who is employed with the Nagarpalika and told that he wants to sell the said earring and therefore, he (PW6) purchased the said earring and paid Rs.13,00/- cash. He also states that no receipt for payment or purchase of the said earring was issued by

him and that he was later on called upon by the police and was informed about murder of Hiriben.

[17.4] In his cross-examination by the defence, PW6 reiterated that he can not confirm as to whether the person who had come to sell the earring was the present accused or not. He admits about maintaining account for sell and purchase of ornaments in his shop and that a counter copy of such bill is preserved. He also confirms that there is no entry of such purchase in respect of the single gold earring and that no such receipt was handed over by him to the police. However, he volunteers to say that he usually he does not issue bill for purchase of old ornament and only notes down the weight and value of the ornament and hand it over to the person who comes for selling the ornament. He also admits that no bill or entry of any diary was seized by the police and he also did not furnish any such receipt, bill or diary entry to the police. He denies to the suggestion that he did not narrate to the police about police having obtained video footage from the CCTV camera installed at his shop in his statement recorded by the police, however, he confirms that the video footage is stored in the DVR for about one month. He confirms that he has not studied law and also admits that the police did not seize DVR from his shop. He states that he has no idea about Section-65B of the Indian Evidence Act and that the certificate produced at Exh.41 is not issued on any letterhead of his shop and there is no outward number and stamp of his shop on the said certificate. He denies to the suggestion that he has fabricated the certificate produced at Exh.41 at the instance of the police. PW6 admits that PW32 came to sell the said single earring at his shop and that he purchased it from

PW32 and paid the amount to PW32.

[17.5] Thus, upon over all appreciation of deposition of PW6 as well as the statement of PW6 before the Investigating Officer, it can be inferred that the single earring was purchased by the PW6 on 16.05.2021. However, from the deposition of PW6, the identification of accused as the person who had sold the said earring to PW6 can not be confirmed; rather the admission on the part of PW6 that he had purchased the said earring from the PW32 and taken the earring from PW32 and paid the amount to PW32 tends to create the doubt in the credibility of the case of prosecution with regard to the accused having sold the ornament to PW6.

[18] PW32 Bharatbhai Kantilal Vala states that accused Arjanbhai is known to him and he runs his auto-rickshaw at Ranavav and therefore, he is known to him prior to the incident, but he does not know the father's name and surname of the accused. PW32 further states the he also knows the owner of Mahakali Jewelers and prior to one and half or two years the accused approached him and said that he is running short of money and wants to sell an earring; and therefore, PW32 told the accused that he usually sells ornament if found during sweeping streets to Kashyapbhai (PW6) and Kashyapbhai (PW6) gives money for grocery and that if the accused wants to sell the earring he may go to Mahakali Jewelers and PW32 gave address of Mahakali Jewelers to the accused. PW32 further states that after about 20 days PW6 Kashyapbhai came to his house and told him that the earring which was sold by the accused is linked to a murder case. PW32 further states that he had accompanied

the accused to the shop of PW6 and as the accused and PW6 were having discussion, but he (PW32) went to the shop next to the Mahakali Jewelers for Pan-Faki and came back after five minutes and in the meanwhile the transaction between and accused and PW6 regarding sale of earring was over and the accused told him that he has sold the earring to PW6. He identified the accused as the person whom he had accompanied to Mahakali Jewelers.

[18.1] PW32 further states that as the earring which was sold by the accused to PW6 was not shown to him at the relevant time, he can not identify the said earring. PW32 is further shown CCTV footage in the DVD produced at Exh.42 wherein he identified himself as a person wearing horizontal line t-shirt and the person with cap on his head as the accused. PW32 also states that he had introduced the accused to PW6 as his friend who was in need of money and wants to sell the earring and thereafter, the accused gave earring to PW6. He also confirms about PW6 handing over the money to him as the accused was introduced to PW6 by him and in turn he handed over the money to the accused.

[18.2] In his cross-examination by the defence, PW32 admits of being employed with the Nagarpalika as *Safai Kaamdar* since 24 to 25 years and that his work time is from 7 a.m. in the morning to 11 a.m. and from 2 p.m. to 5 p.m in the afternoon. He admits of not having narrated in his statement before the police that he told the accused to approach PW6 if he wants to sell the earring and gave address of PW6's shop. He also confirms about not having narrated in his statement before the

police that PW6 handed over the money and in turn he handed over the same to the accused and that he introduced the accused to PW6 as his friend who is in need of money and wants to sell earring and thereafter, the accused handed over the earring to PW. He also admits about guideline of the Government in the 2020-21 to put on face mask on account of Corona Pandemic. PW32 also admits that in the video footage colour and design of the ornament sold to PW6 is not visible. He also admits that he was not shown any CCTV footage at the time of recording his statement.

[18.3] Having regard to the above referred position of PW32, it appears that there are certain discrepancies in the version of PW32 and PW6 with regard to sale of earring by the accused to the PW6. However, these discrepancies cannot be termed as material discrepancies. PW32 also confirms the identity of accused as the person who has sold the earring to PW6, however, he does not identify the valuable muddamal article-3.

[18.4] Moreover, it appears that on account of oversight the PW6 was shown valuable muddamal article no.1, which as per the muddamal receipt no. A55 of 2021 is the single earring recovered from the complainant on 01.01.2021, whereas the muddamal single earring recovered from PW6 is the valuable muddamal article no.3 recovered vide muddamal receipt no. A57 of 2021 on 01.06.2021. Thus, the single earring recovered from PW6 does not appear to have been shown to PW6 in his deposition. Even if the said lacuna is ignored, it can be inferred that PW6 identified the earring which was purchased by him at

the instance of PW32 and the PW32 though does not identify the said earring as the one which is purchased valuable muddamal article-3, but he confirms the identity of the accused. Moreover, the video footage in the DVD produced at Exh.42 also confirms presence of PW32 at the shop of PW6 and the person seen in the video footage wearing a cap has been identified as PW32 as the person who sold the said earring produced valuable muddamal article-3.

[18.5] The prosecution has examined Dhirendrakumar Gajendrabhai Salvi, Circle Officer as PW27. He states that he has prepared map of place of incident in the year-2021 in connection with the offence registered before the Kamlabag Police Station vide C. No. No.Part A 11218009210368/2021 for the offence under Sec.302 and others of IPC and sent it to the Kamlabag Police Station along with forwarding letter. He has identified letter sent by the P.I. Mr. K. I. Modi to him for preparing map of place of incident which is produced at Exh.120. He has also identified forwarding letter and map of place of incident sent to the P.I. Kamlabag Police Station which are produced at Exh.121 & Exh.122 respectively. In his cross-examination by the defence, he denies that he has not prepared any map of place of incident. He denies that he has not mentioned any date in the map. He volunteers to say that he has signed the map prepared by him and mentioned date 11.08.2021.

[19] The panchanama in respect of recovery of one earring from PW6 is produced at Exh.47. The panch witnesses to the said panchanama are examined as PW7 and PW8. Both these panch witnesses have disowned the case of prosecution with

regard to drawing up of panchanama as claimed by the Investigating Officer and have merely identified their signatures on panchanama produced at Exh.47. Learned P. P. was permitted to cross-examine these witnesses, however, they have denied the suggestion of prosecution with regard to recovery of bangles from the shop of PW6 on 01.06.2021.

[19.1] Perusal of the panchnama at Exhibit-47 reveal that the weight of the single earring produced by PW6 is 0.400 miligrams. Whereas as per the say of PW6 the earring he produced before police weighed 260 miligrams. The muddamal receipt no. A57 of 2021 dated 01.06.2021 in respect of the single earring (valuable muddamal article no. 3) recovered from PW6 bears mention of its weight as 0.400 miligrams. The other earring recovered in terms of muddamal receipt no. A55 of 2021 on 01.06.2021 bears mention of single earring (valuable muddamal article no.1) weighing 0.680 miligrams. Therefore also it cannot be said with certainty that the valuable muddamal article no. 1 and 3 are set of a same pair.

[19.2] The complainant has not furnished any bills indicating ownership of victim over the ornaments during investigation and there is no explanation coming forth for non-furnishing of such bill. Besides, if the recovery panchnamas at Exhibit-46, 47 and 78 are perused, they all pertain to the same day, that is 01.06.2021. The panchama at Exhibit-46 pertaining to recovery of bangles from PW5 is prepared on 01.06.2021 between 13/15 to 14/10 hours; the panchnama at Exhibit-47 pertaining to recovery of single earring from PW6 is prepared on 01.06.2021 between 15/00 to 16/10 hours and the panchnama at

Exhibit-78 pertaining to recovery of single earring from complainant is prepared on 01.06.2021 between 10/15 to 11/00 hours. The panch-witnesses to all these panchnamas have not supported the case of prosecution. Further, the investigation officer did not conduct identification test of the muddamal ornaments recovered from PW5 and PW6 by showing them to the complainant, therefore the identification of these gold ornaments by the complainant in his deposition before the Court cannot be relied upon.

[19.3] Further, it also needs to be noted that the accused was arrested on 30.05.2021 and prior to the arrest of accused, the investigation officer had no clue or input that the complainant has a single set of earring found from the body of victim or that the ornaments of victim are missing. But on the very next day of arrest, the story of ornaments surfaces and the single earring is produced by the complainant and on the same day the PW5 and PW6 came forward and produced the gold bangles and single earring respectively. Moreover, none of investigating officers have recorded any further statement of the complainant seeking explanation in this regard as to why he did not come forward to report missing ornaments of victim. The report of addition of offence has not been exhibited on record, however, if the same is perused it appears that section 450 & 397 of IPC were added vide reported dated 31.05.2021 with a contention that the accused confessed about having taken away bangles, and one earring and that he could pull out the other earring. Thus, it appears that the story of theft of ornament was introduced by virtue of confession of accused and there was no material available with the investigation officer with regard to gold

ornaments of victim being missing.

[19.4] PW35 Mr. K. I. Modi- the investigation officer admits that in case if anything including ornaments are recovered from the dead body of the victim, the same would be reflected in the Inquest Panchanama which confirms about not-mention of any seizure of ornament at the time of Inquest Panchanama in the said panchanama. He also confirms that there is no mention of any recovery or seizure of ornament from the dead body of victim in the postmortem report and admits that he did not record statement of the doctor who conducted autopsy with regard to recovery of earring at the time of postmortem examination of the victim and also confirms that he did not collect any receipt or other documentary evidence with regard to doctor having handed over any earring to the complainant.

[19.5] PW35 Mr. K. I. Modi- the investigation officer also admits that he recorded statement of PW6 on 01.06.2021 and PW6 did not mention about any CCTV camera in his shop and that the DVR of the said camera was not recovered or seized. He confirms that the weight of one earring recovered from the shop of PW6 was not 0.260 milligram and voluntarily states that the said earring was weighed by another jeweler Jitendrabhai Liladharbhai (PW28) and the weight of the same was 0.400 milligram. It thus appears that as per PW6 the earring which was produced by him before the police weighed 0.260 milligram, whereas as per the Investigating Officer the weight of the said earring was 0.400 milligram. The jewelers who had weighed the said earring has not be cited as witness by the Investigating Officer. PW35 also confirms that there is no mention of victim

usually wearing gold earring or bangles in the statement of complainant recorded on 13.04.2021 produced at Exh.30 and even in the complaint produced at Exh.31 there is no mention of victim wearing such ornaments. It is also confirmed that there is no mention of victim's ornament being missing in the complaint produced at Exh.31 and the statement of complainant produced at Exh.30. PW35 also confirms that the complainant did not narrate about gold ornament being looted in the incident in his statement before the previous Investigating Office or before him. He also confirms about having not conducted any identification of the ornament by showing the ornament to the complainant or other relative of the victim. He denied to the other suggestions of the defence.

[19.6] In light of the above discussion, since the prosecution has failed to establish that the said valuable muddamal article-1, 2 and 3 were belonging to the victim and since there is no material to establish that the said earring was owned or worn by the victim, the accused can not be linked with the grievous crime of murder solely on the basis of this circumstance. As noted herein above, there is no mention of any missing ornament on the body of victim in the statement of complainant recorded on 13.04.2021 and even in the complaint recorded on 21.04.2021. Further, there is no mention of any ornament on the body of victim in the Inquest Panchanama as well as in the postmortem report and there is no document worth the name to establish that a single earring was handed over to the complainant after the postmortem of victim's body as claimed by the complainant. Hence, recovery of single earring sold by accused to PW6 cannot be made the basis of inferring guilt on

the part of the accused.

[19.7] In this regard, it would be apt to refer the decision of the Hon'ble Supreme Court in the case titled ***Ashish Jain Versus Makrand Singh and Ors. in Criminal Appeal No.1980 of 2008*** wherein it was observed in para-22, 23 & 24 as thus.

"22. We are of the opinion that the recovery of the stolen ornaments, etc. in the instant matter was made on the basis of involuntary statements, which effectively negates the incriminating circumstance based on such recovery, and severely undermines the prosecution case.

23. Furthermore, the prosecution has examined many witnesses who were alleged to be the pledgors of the said ornaments, who identified their ornaments in an identification conducted by the Naib Tehsildar. This was to prove that the recovered ornaments were in fact the ornaments which were robbed from the house of the deceased Premchand and later recovered from the accused persons. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornaments were pledged by them to the deceased Premchand, except for the account books maintained by the deceased Premchand for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of Shailendra Kumar Jain, PW11, who is the son-in-law of the deceased. Incidentally, he also runs a similar money-lending business as a pawn broker in another town. No valid reason is accredited to the recovery of deceased Premchand's alleged account books from the possession of his son-in-law. Moreover, these account books were returned to him without any prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is identified and marked in the account books. In other words, none of the witnesses have deposed about any relevant entry found in the account books with reference to their respective gold/silver articles. All these issues discussed above, coupled with the fact that the investigation officer has put forth an artificial and got-up story in the matter of identification of the ornaments, creates grave suspicion with regard to the recovery of the ornaments, as well as their identification by the different pledgors. Hence, learned Amicus Curiae may be justified in contending, as held by the High

Court, that the aspect of recovery is a got-up story, only to suit the purposes of the prosecution.

24. The witnesses for the recoveries which were effected at the instance of the accused are Ashish Jain, PW26 and one Sanjeev Jain. Both of them are close relatives of the deceased. Sanjeev Jain has not been examined. Similarly, one Bahadur Yadav was also not examined, who was a servant of the deceased Premchand who had allegedly assisted the police by giving information about the pledgors to locate them to be brought for identification of the recovered articles. The non-examination of these two important witnesses in light of the recoveries adversely affects the prosecution case".

[19.8] Further, since the identification of valuable muddamal articles has also not been conducted by the police during the course of investigation, the circumstance of sell of single earring by the accused to PW6 can not be made the base of inferring guilt on the part of accused. In this regard, it would be apt to refer the decision of Hon'ble Apex Court in the case titled **Thammaraya And Another Versus The State of Karnataka reported in 2025 LiveLaw (SC) 157** wherein it was held in para-22, 23, 24 & 25 as thus.

"22. Furthermore, another very crucial missing link in the prosecution case that it failed to conduct the Test Identification Parade(TIP) of the recovered articles, thereby, bringing the identification of the material objects in Court for the first time, is under a cloud of doubt. It is a case of sheer negligence and dereliction of duty on the part of the Investigating Agency and the Public Prosecutor for not conducting Test Identification Parade(TIP). This Court shed light on the purpose of Test Identification Parade(TIP) in **Ramkishan Mithanlal Sharma v. State of Bombay**, wherein it held as follows:

"20. ... These parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. ...the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence."

23. This Court has further noted the significance of Test Identification Parade(TIP) in **Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh**, wherein it was held:

"66. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification

parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature."

24. Therefore, this material omission on part of the Investigating Officer(PW-27) in not conducting a Test Identification Parade(TIP) of the recovered articles, more particularly when the case of prosecution is based solely upon recoveries of these articles, has created holes in the fabric of the prosecution story, which are impossible to mend.

25. Every piece of relevant fact needs to be sewn via the golden thread of duly proved circumstances, in order to ultimately formulate the fabric of guilt. Sadly, in the present case, the facta probantia fails to sustain and support the alleged factum probando, rendering the prosecution's case miserably weak. Hence, the evidence led by the prosecution against the accused person is woefully short of the mandate to prove the case beyond reasonable doubt".

[19.9] It would also be apt to refer the decision of Hon'ble Apex Court in the case titled ***Raj Kumar @ Raju Versus State (Govt Of Nct Of Delhi) reported in 2017 (0) AIJEL-SC 59638*** wherein it was observed in para-9, 10, 11 & 12 as thus.

"9. This is the sum total of the evidence on record. From the above, it transpires that there are two material circumstances which have been proved by the prosecution. Firstly, that in the night prior to the incident i.e. on 11th September, 1991 the accused were present in the house; and secondly that on 16th September, 1991 from the possession of the accused persons recovery of gold ornaments was made which belonged to the deceased. Such possession has not been explained by the accused. Even if the court is to accept the evidence of P.W.12 that in the morning of the day of the incident the witness had seen the accused in the neighbourhood in a perplexed state, notwithstanding the contradictions and inconsistencies in the said evidence as already noticed, at the highest, another circumstance could be added to the above two, namely, that the accused persons were seen in the neighbourhood in the morning of the incident. The question that confronts the court is whether on the basis of the aforesaid circumstances the case of the prosecution can be taken to have been proved beyond all reasonable doubts.

10. Learned counsel for the appellant would contend that the aforesaid circumstances do not conclusively point to the involvement of the accused appellant in the crime. The chain leading to the sole conclusion that it is the accused persons and nobody else who had committed the crime is not established by the three circumstances set forth above, even if all of such circumstances are assumed to be proved against the accused. Reliance has also been placed on the decision of this Court in the case of Sanwat Khan and Anr. vs. State of Rajasthan, wherein this Court had taken the view that recovery of

ornaments of the deceased from the accused or production of the same by the accused in the course of investigation, howsoever suspicious, cannot be conclusive of the question of the accused having committed the offence. As per Illustration (a) to Section 114 of the Evidence Act, 1872 though recovery of the ornaments can lead to presumption that the accused had committed robbery or received stolen property, unless there are circumstances to show that the theft/robbery and the murder took place in the same transaction, the accused would not be liable for the offence under Section 302 IPC.

11. The facts in Sanwant Khan (*supra*) bear a striking resemblance to the facts that confront us in the present appeal. If the evidence of P.W.12 is to be discarded on the ground that such evidence is vague, (there is no mention of the date on which P.W.12 had seen the accused person in the neighbourhood and also as the said testimony runs counter to the prosecution case about arrest of the accused on 16.09.1991) the last seen theory built up on the evidence of P.W.5 and P.W.7 leaves a significant margin of time during which the crime could have been committed by somebody other than the accused. The said fact must go to the benefit of the accused. In this regard, it may be recollected that P.W.5 and P.W.7 have deposed that they had last seen the accused person in the early morning of the date of the occurrence i.e. 12.09.1991 and that they were going away to some other place. Even if the evidence of P.W.12 is to be accepted, all it can be said is that the evidence of the said witness read with the evidence of P.W.5 and P.W.7 disclose that the accused persons were seen in the vicinity of the neighbourhood of the crime little before the same was committed. By itself, the said circumstance cannot lead to any conclusion consistent with the guilt of the accused.

12. The above circumstance, if coupled with the recovery of the ornaments of the deceased from the possession of the accused, at best, create a highly suspicious situation; but beyond a strong suspicion nothing else would follow in the absence of any other circumstance(s) which could suggest the involvement of the accused in the offence/offences alleged. Even with the aid of the presumption under Section 114 of the Evidence Act, the charge of murder cannot be brought home unless there is some evidence to show that the robbery and the murder occurred at the same time i.e. in the course of the same transaction. No such evidence is forth coming".

[19.10] If thus flows from the above referred decisions that in a case wherein the only evidence against the accused is the recovery of stolen property, it would be not safe to draw the inference that the person in possession of the stolen property was the murderer. Further, having regard to the peculiar facts and circumstances of the case, it would be relevant to refer the

decision of Hon'ble Supreme Court in the case titled ***Tulesh Kumar Sahu Versus State of Chhattisgarh in Criminal Appeal No.753 of 2021*** wherein it was observed in para-11 as thus.

"11. The observations in *Ashish Jain* were relied upon in the decision in *Sonu alias Sunil*, and it was found that it would not be safe to uphold the conviction on the basis of material produced by the prosecution. This Court also relied upon the decisions in *Sunder Lal alias Sundera vs. State of Madhya Pradesh*³ and *Sanwant Khan vs. State of Rajasthan*⁴. The relevant discussion found in paragraphs 27, 28 and 33 of the judgment is:-

"27. The scope of this provision has been considered by this Court on various occasions. In *Sunder Lal alias Sundera v. State of Madhya Pradesh*, both the accused and deceased were seen together. After the alleged murder, the accused went with the article belonging to the deceased for pledging/selling it. In the circumstances, the Court took the view that the ornaments were established to be the ornaments worn by the deceased. No explanation was forthcoming how the accused came to be in possession on the very same day on which the alleged murder was committed. On this, the Court took the view that the conviction under Section 302 of the IPC, based on the circumstances, was correct.

28. On the other hand, in *Sanwant Khan v. State of Rajasthan*, one Mahant Ganesh Das, who was a wealthy person, used to live in a temple of Shri Gopalji along with another person. Both of them were found dead. The house had been ransacked and boxes and almirah opened. It was not known at the time who committed the offence. Investigation resulted in arrest of the appellant, and on the same day, he produced a gold khanti from his bara, where it was found buried in the ground. Another accused produced a silver plate. The Court found that there was no direct evidence. There were certain circumstances which were rejected by the Sessions Judge and the solitary circumstance was the recovery of the two articles. In these circumstances, the Court held, *inter alia*, as follows:

"Be that as it may, in the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles from the houses of the two appellants the only inference that can be raised in view of illustration A to S.114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

** ** *

Here, there is no evidence, direct or circumstantial, that the robbery and murder formed parts of one transaction. It is not even known at what time of the night these events took place. It was only late next morning that it was discovered that the Mahant and Ganpatia had been murdered and looted. In our Judgment, Beaumont, C.J., and Sen J. in - *Bhikha Gobar v. Emperor*, AIR 1943 Bom. 458 (B) rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder.

** ** *

In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murdered.

Suspicion cannot take the place of proof.

33. In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests:

- i. The first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the murderer [Sanwant Khan (supra)];*
- ii. The nature of the stolen article;*
- iii. The manner of its acquisition by the owner;*
- iv. The nature of evidence about its identification;*
- v. The manner in which it was dealt with by the accused;*
- vi. The place and the circumstances of its recovery;*
- vii. The length of the intervening period;*
- viii. Ability or otherwise of the accused to explain its possession [See Baiju v. State of Madhya Pradesh].”*

[19.11] It is evident from the perusal of the above referred decision that it is the duty of prosecution to establish that the theft and murder forms part of one transaction and apart from recovery of stolen article from the accused, the prosecution is required to prove the nature of stolen article, the manner of its acquisition by the accused, the evidence about identification of the ornament and the length of intervening period. Further, there is nothing to connect the ornaments to the victim and therefore the recovery of these articles from jewelers cannot be made the basis of inferring guilt on the part of accused.

[19.12] In the case at hand, the incident has taken place on 13.04.2021 and as per PW6, the single earring was purchased by him on 16.05.2021 which is about more than one month after the incident as indicated in the statement of PW6

before the learned magistrate produced at Exh.43. Therefore, in the absence of identification period of the ornament and any cogent and credible evidence linking the ornament to the victim, it would not be safe to base inference of guilt solely on the basis of this circumstance.

Analysis of circumstance of CCTV footage of the cameras installed near the house of victim:

[20] The other circumstance relied upon by the prosecution is the video footage of the camera installed near the house of victim wherein the accused is seen to be entering the house of victim and passing by the area at the time within the proximity of incident.

[20.1] In this regard, the prosecution has examined PW22 Sureshbhai Kanjibhai Khokhari who states that victim Hiriben Babubhai Ranavaya was his neighbour and that his wife Pujaben informed him over phone that Hiriben has passed away and therefore, he came home and went to the house of victim Hiriben and saw her lying dead. PW22 states that Hiriben had injury on head and the police has also arrived and thereafter, relative of Hiriben has also arrived from Ranavav, but he does not know him. He further states that he has a CCTV camera installed at his house and after the incident, the police saw the footage of the said camera and it was found that some person was went into the house of victim Hiriben. He also states about the police having recorded his statement, however, he states that he did not see the face of person who was seen in the CCTV footage entering the house of victim. The certificate of authentication is identified to have been signed by him which is produced at Exh.99. PW22 also states that he has seen the video footage along with police,

but he can not confirm as to what was the colour of the clothes worn by the person entering the house of victim and he volunteers to say that the said person appeared to be a mason as his clothes were stained.

[20.2] The DVD containing video footage from the CCTV camera installed at the house of PW22 is produced at Exh.102 and the said footage was played in the Court's computer and shown to PW22 whereby he states that this footage pertains to 13.04.2021 and the same was handed over to the police. He also states that the purple colour pillar seen in the footage is the pillar of his house and the maroon colour scooter seen near the house is his scooter and the house next to the pillar is the house of victim Hiriben and in the CCTV footage on 13.04.2021 at 11:23:29 a person wearing blue colour design full sleeve shirt is seen entering the house of victim, but his face is not identifiable and therefore, he can not say with certainty as to whether the said person is accused or not.

[20.3] In his cross-examination PW22 admits that he has not seen the incident. He confirms that the house next to victim's house on the other side is also under his ownership. He further admits that opposite to the house of victim there is house of Jitendra Babubhai Lodhari and behind victim's house there is house of Vinod Samji Modi and next to the house of victim there is narrow road which leads to the next street. He confirms about having given name of mason Nayan Dabhi as the person who is suspected of having committed the present offence and he confirms about the said Nayan Dabhi having commissioned masonry work at the house of victim prior to 3 to 4 years of the

incident and he volunteers to say that he was told by persons in the locality that Nayan Dabhi used to visit victim and he has never seen Nayan Dabhi visiting the house of victim. He confirms about presence of police, presence of relative of victim and other persons at the house of victim when he went there after being informed about the incident.

[20.4] PW22 also confirms that DVR of his camera was not seized and that he has not undergone any computer course. He also admits of having not obtained the video footage from the DVR on a DVD and having handed over the same to the police, but he volunteers to say that the police extracted the footage from the DVR on a DVD and he states that the police had taken footage on a Pen-Drive, but he does not know when the DVD of footage was prepared.

[20.5] PW22 specifically admits that the police did not prepare any DVD at his house in his presence and confirms that the certificate produced at Exh.99 was prepared by the police and he only appended his signature, but the contents of the certificate were not read over to him. He also states that he requested the police to read the contents of the certificate, but the police did not let him read it and only obtained his signature. He confirms about having no knowledge of Section-65B(4)(c) of the Indian Evidence Act.

[20.6] Thus the CCTV footage obtained from the camera placed at the house of PW22 who is neighbour of victim is not proved in accordance of law inasmuch as the certificate produced at Exh.99 is not issued or prepared by the PW22 and the DVD

produced before the Court at Exh.102 is not the one prepared by PW22 rather it appears that the police took video footage from the DVR from the house of PW22 on Pen-Drive and thereafter prepared DVD. The non recovery of DVR from the house of PW22 coupled with non-issuance of authentication certificate by the person who extracted the relevant footage from the DVR tends to erode the credibility of the said DVD and its contents produced at Exh.102.

[20.7] The panchanama for recovery of CCTV footage from the house of PW22 is produced at Exh.91. The panch witnesses to the said panchanama are examined as PW20 and PW21. PW20 states that he was called upon at the Kamlabag Police Station for repairing of a computer at the police station and in his presence panchanama for seizure of DVD was prepared and he was instructed to sign the same and therefore, he appended his signature on the said panchanama produced at Exh.91. He further states that he does not know as to how the DVD was procured and what was the data in the said DVD and he was also not informed about these things by the police. He also states that even the DVD was not taken out from the cover and shown to him. PW20 was permitted to be cross-examined by the learned P. P., however, he denies to the suggestions of prosecution with regards to production of DVD by PW22 in his presence and sealing of the same as well as the contents of the said DVD in the form of video footage being played and shown to him. In his cross-examination by the defence, it is admitted by PW20 that he had gone to the police station for repairing computer and he was instructed by the police to sign some already prepared papers and that apart from appending signature

in the panchanama and panch slip, he does not know anything. He also confirms about police having not played any DVD and recovered or seized such DVD in his presence. The deposition of PW21 is also identical to PW20.

[20.8] As per the panchanama produced at Exh.91, the DVD was produced by PW22 on 23.08.2021 at the police station and the certificate of authenticity produced at Exh.99 is also purported to have been signed by PW22 on 23.08.2021, however, the deposition of PW22 reveals that he did not prepare such DVD from the DVR of camera installed at his house. Further, PW22 also does not mention anything about having visited police station for the purpose of handing over the DVD. Hence, the circumstance of recovery of DVD produced at Exh.102 and the certificate of authenticity produced at Exh.99 are highly suspected and therefore, it can not be relied upon.

[20.9] In this regard, it would be apt to refer the observations of Hon'ble Apex Court in the case titled **Arjun Panditrao Khotkar Versus Kailash Kushanrao Gorantyal in Civil Appeal Nos.20825-20826 of 2017** wherein it was held as thus.

72. The reference is thus answered by stating that:

(a) *Anvar P.V. (supra)*, as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in *Tomaso Bruno (supra)*, being per incuriam, does not lay down the law correctly. Also, the judgment in *SLP (CrI.) No. 9431 of 2011 reported as Shafhi Mohammad (supra)* and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

(b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness

box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in *Anvar P.V. (supra)* which reads as “...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...” is thus clarified; it is to be read without the words “under Section 62 of the Evidence Act,...” With this clarification, the law stated in paragraph 24 of *Anvar P.V. (supra)* does not need to be revisited.

(c) The general directions issued in paragraph 62 (*supra*) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice’s Conference in April, 2016.

[20.10] It is thus the settled legal position that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with. Therefore, in order to rely upon the footage extracted from DVR of CCTV camera, it would be necessary to obtain authentication certificate in terms of Section-65B of the Indian Evidence Act under from the person under whose control the camera was in operation or the person who extracted the relevant footage from the DVR.

[20.11] In the case at hand, PW22 is the owner of the house where the CCTV camera was installed, but the process of preparing the DVD from the DVR of his camera was not done by PW22 and it has rather come on record that the police extracted the relevant footage on a Pen-Drive of his DVR and thereafter, the DVD was prepared. The person who prepared such pendrive is not disclosed on record. Besides the date on which the footage extracted is also not on record and the panchanama produced at Exh.91 is also not proved in accordance with the law inasmuch as in addition to the panch witness not supported to the drawing of panchanama, the PW22 who is mentioned to have produced the DVD in the presence of the panch witness at Kamlabag Police Station has also not supported the case of prosecution. Therefore, the DVD at Exhibit-102 cannot be read into evidence as it is not proved in accordance with the law.

[21] The prosecution has examined Jinabhai Rajabhai Katara as PW23. He states that he was serving as Police Head Constable at LCB, Porbandar in the year-2021 and a team consisting himself and Police Sub Inspector Mr. N. M. Gadhavi and other police persons namely Ranjitsinh Amubha, Police Head Constable Piyushbhai Kachara, Prakash Gordhanbhai, Vajashi Maldebhai was formed to detect offence of murder of victim Hiriben and upon perusal of the CCTV camera footage of Suresh Kanjibhai Khokhari (PW22) in respect of 13.04.2021 a person wearing cap was seen going towards house of victim and upon verifying the CCTV footage of Mayur Madhubhai Soneri (PW30) whose house is located at the back side of victim's house, the same person wearing a cap was seen moving around and therefore, the said footage was shown to the police informers

and it was conveyed by the informers that the said person was the accused Arjan and therefore, the accused was called at the LCB Office and interrogated tactfully by PSI Mr. N. M. Gadhavi in his presence whereby the accused confessed about having murdered the victim and having looted one gold earring and two gold bangles. He further states that the accused also confessed about having sold the bangles at Balvi Jewelers and the earring at Mahakali Jewelers and therefore, the accused was taken into custody in terms of Section-41(1)(i) of the Cr.P.C. and handed over to the Kamlabag Police Station.

[21.1] In his cross-examination by the defence, PW23 denies to the suggestion that person named Nayan Dabhi was cited as suspect in the complaint. He claims ignorance as to who investigated the accidental death report. He admits that the accused was not interrogated by any other Investigating Officer apart from P.S.I. Mr. N. M. Gadhavi and he(PW23) did not interrogate the accused. He confirms that investigation in respect of the person who murdered the victim was jointly carried out by police officials on the basis of suspicion and the accused was called upon on the basis of suspicion. He also states that he does not remember the exact date on which the CCTV footage of the camera installed at the house of PW22 (Sureshbhai) and PW30 (Mayurbhai) were seen by him and confirms that thereafter he has not seen the footage. He also admits that Mr. N. M. Gadhavi took a video on his phone while they were seeing the CCTV footage of the house of these witnesses PW22 & PW30 and the video recorded in the mobile phone of Mr. N. M. Gadhavi was shown to the informers. He denies to the other suggestions of the defence.

[21.2] It may be noticed here that PSI Mr. N. M. Gadhavi, who as per the PW23 interrogated the accused, has not been examined as witness by the prosecution. Further, as noted hereinabove PW22 has stated that he can not identify the person seen in the footage of his camera as the face is not clearly visible. Moreover, the footage taken from the camera is not supported by any authentication certificate and the DVR has been collected and therefore, the footage of camera installed at the house of PW22 can not be taken into consideration and the same does not clearly establish the involvement of accused as the person seen in the footage.

[21.3] The prosecution has examined Mayur Madhubhai Soneri as PW30. He states that victim Hiriben was residing in the same area where his house is located and that CCTV camera has been installed at his house. He further states that the incident of death of Hiriben took place prior to two years and the house of victim is located after one street on the back side. He states that the Kamlabag Police came to his house and thereafter, LCB Police also came to his house and the Kamlabag Police had taken away the DVR machine along with Hard Disk wherein CCTV camera footage was recorded. He identified his signature in the certificate produced at Exh.130 and states that he had not seen the footage. He also confirms that the DVD produced at Mark-36/3 was not given by him to the police. In his cross-examination, it is admitted by PW30 that the house of victim is located at a distance of around 150 feet from his house and that his house and the house of victim are located in two distinct streets. He confirms about other residential houses located next

to his house and a flour mill right in front of the house of victim. He also confirms that the certificate produced at Exh.130 was typed and brought by the police and at the instance of police he appended his signature. However, he states that the contents of certificate were explained to him and therefore, he appended signature. PW30 admits that he has no knowledge about Section-65B(4)(c) of the Indian Evidence Act.

[21.4] It is thus evident from the deposition of PW30 that he had not seen the video footage produced at Mark-36/3 and as per PW30 the DVR of his CCTV footage camera was taken by the police from his house, but he did not prepare any DVD and hand over to the police. The certificate issued purported to have been issued by the PW30 is produced at Exh.130 and though PW30 voluntarily states that he was explained the contents of the said certificate and therefore he appended his signature, it is evident from the certificate that PW30 transferred the CCTV footage data of 13.04.2021 on distinct DVDs and the entire process was under his monitoring and that the footage shows transfer in accordance with the original data and no changes have been made therein. The said certificate is signed by PW30 and there is no signature of any police person or technical person who carried out the process of transferring the CCTV footage data from the DVR to the DVD.

[21.5] Moreover, the panchanama in respect of the said DVD collection from PW30 is produced at Exh.92 and the panch witnesses of this panchanama examined as PW20 & PW21 have not supported the case of prosecution and have merely identified their signatures on the panchanama produced at Exh.92 and the

panch slips produced at Exh.93 & Exh.94. PW20 and PW21 states that they were at the Kamlabag Police Station for computer repairing work and they were instructed by the police to sign some already prepared papers and that apart from appending signature in the panchanama and panch slip, they do not know anything. They also confirms about police having not played any DVD and recovered or seized such DVD in their presence. They do not know as to how the DVD was procured and what was the data in the said DVD and they were also not informed about these things by the police.

[21.6] Thus, panchanama produced at Exh.92 is not supported by the panch witnesses and even if the contents of the panchanama are read into evidence on the basis of deposition of the Investigating Officer, the same do not correspond and confirm as to what has been deposed by the PW30. As per the panchanama produced at Exh.92, PW30 produced two DVDs containing video footage of his CCTV camera in respect of 13.04.2021. However, PW30 states that he had not seen any footage and the police had taken the DVR from his house, therefore, though PW30 is shown to have issued certificate of authentication since he does not mentioned about having prepared the DVD from the DVR and since the person who prepared the DVD has not been examined or cited as witness by the Investigating Officer. The said footage cannot be inferred as being proved in accordance with the law and therefore, this aspect would dissuade the Court from placing reliance on such video footage.

[21.7] PW36 Mukesh Natvarlal Dave states that on

22.08.2021 on account of Police Inspector Mr. J. R. Patel of Kamlabag Police Station being on leave the investigation of the present case was assigned to him and he recorded statement of police witnesses and the witness PW22 produced CCTV footage copy from the DVR of his camera on 23.08.2021 and also furnished certificate of authenticity which was included in the investigation papers and the DVD was seized in terms of panchanama produced at Exh.91. He also states about submission of DVD and authentication certificate by PW30. PW36 has also produced muddamal DVD containing muddamal article-14 as Exh.181 & Exh.182. In his cross-examination by the defence, it is admitted that CCTV footage DVDs collected by him during the course of investigation were not sent to FSL analysis. He also confirms about having not seized the DVR from which the DVDs were made. It is also admitted that the statement of Police Head Constable Jayesh Jethabhai who has obtained hash value was not recorded. Further, the fact remains that a person who has obtained hash value of the DVDs has not been examined as witness and the DVDs produced at Exh.181 & Exh.182 are not sent for analysis; and therefore, the same cannot be read in evidence.

[22] PW33 Arshibhai Bhimshibhai Sisodiya states that he was assigned investigation of this case along with complaint and other 14 documents and upon perusal of the same, it was revealed that the complainant Arjanbhai Ranabhai Ranavaya had lodged a complaint that victim Hiriben was smothered to death and he had suspicion over person named Nayan Dabhi. He states that after being assigned the investigation, he prepared panchanama of the house of victim and recorded the statement of

neighbours of victim as well as the suspect and also obtained details of the bank account of victim and made a report for suspect detect test, however, thereafter he retired on account of superannuation and therefore, further investigation was assigned to PSI Mr. K. I. Modi. PW33 has also produced request letter and other documents obtained by him during the course of investigation.

[22.1] In his cross-examination by the defence, PW33 admits that the investigation in respect of present case was with him from 22.04.2021 to 30.04.2021 and that he did not collect any CCTV footage during his investigation. He also confirms about having recorded statement of Suresh Kanji Khokhari (PW22) on 22.04.2021. He confirms about having recorded the statement of suspect Nayan alias Hako Bharatbhai Devjibhai Dabhi (the suspect in FIR) on 28.04.2021 and also admits that the said suspect narrated in his statement that he had commissioned masonry work at the house of victim for Rs.1,20,000/- and that victim would ask him to come whenever he prepared non-vegetarian food and he visited house of victim, had meals with her and that the victim had aggressive nature and would shout and scream at him at time and that he had taken a loan of Rs.1,200/- and after having taken such loan on account of demand by the victim he returned Rs.500/- and sum of Rs.700/- was due to be paid, therefore, the victim would call him time and again and demand the outstanding amount. PW33 admits about having sent request for suspect detection test (SDT) of the suspect Nayan Dabhi to verify as to whether the facts narrated by the said suspect in his statement were correct or not, and also confirms about having signed letter for SDT of the accused to the

Forensic Psychology Department, DFS, Gandhinagar on 29.04.2021.

[22.2] It needs to be noted that as per the prosecution, the accused was arrested on 30.05.2021 whereas the CCTV footage in DVD were seized in terms of panchanama produced at Exh.91 & Exh.92 on 23.08.2021. As per the say of PW23 prior to arrest of the accused, the video footage of the house of PW22 & PW30 were seen. But, there is no document supporting such contention of PW23. Further, even the authentication certification was signed by PW22 & PW30 produced at Exh.99 & Exh.130 respectively are dated 23.08.2021. PW22 states that the police came to his house and saw the video footage in his presence after the incident, but he does not mention any specific date on which the video footage was seen by the police in his presence. PW22 states that on the said day, his statement was recorded and thereafter, another statement was also recorded by the police. PW23 who claims to have seen the video footage does not mention anything about having recorded the statement of PW22 and therefore, in the absence of any clarification as to whether the video footage was seen prior to tracking down the accused or after the arrest; coupled with the fact that the whereabouts and custody of video footage till 23.08.2021 when the DVD containing video footage from the camera installed at the house of PW22 & PW30 were produced before the police station, it would not be safe to rely on these video footages for the purpose of inferring involvement of the accused.

[22.3] The prosecution has examined Ranjitsinh Amubha Dayatar (Police Witness) as PW26. He states that he was serving

as Police Head Constable at LCB, Porbandar in the year-2021 and a team consisting himself and Police Sub Inspector Mr. N. M. Gadhavi and other police persons namely Police Head Constable Piyushbhai Kachara, Prakash Gordhanbhai, Vajashi Maldebhai was formed to detect offence of murder of victim Hiriben and upon perusal of the CCTV camera footage of Suresh Kanjibhai Khokhari (PW22) in respect of 13.04.2021 a person wearing cap was seen going towards house of victim and upon verifying the CCTV footage of Mayur Madhubhai Soneri (PW30) whose house is located at the back side of victim's house, the same person wearing cap was seen moving around and therefore, the said footage was shown to the police informers and it was conveyed by the informers that the said person was Arjan Masaribhai Odedra and therefore, the said accused was called at the LCB Office and interrogated by PSI Mr. N. M. Gadhavi in his presence whereby the accused confessed about having murdered the victim and having looted one gold earring and two gold bangles. He further states that the accused also confessed about having sold the bangles at Balvi Jewelers and the earring at Mahakali Jewelers and therefore, the accused was taken into custody and handed over to the Kamlabag Police Station. The said witness has identified the accused in the Court.

[22.4] In his cross-examination by the defence, PW26 admits to the suggestion that person claimed Nayan Dabhi was cited as suspect in the complaint. He claims ignorance as to who has brought the accused from Ranavav to LCB Office. He claims ignorance as to who investigated the accidental death report. He claims ignorance as to whether PSI Mr. M. N. Dave has interrogated the accused or not. He admits that he has neither

interrogated the accused nor taken statement of the accused. He admits that the accused was called upon on the basis of suspicion. He denies that there was no any proof against the accused until he was called upon to the LCB Office. He volunteers to say that the presence of accused was seen in the CCTV footage on the day of incident. He admits that he has seen the accused first time when he was called the LCB Office and not seen him ever before. He admits that he can not identify whether the accused was the same person who was seen in the CCTV footage or not. Thus, PW26 also fails to confirm that the person seen in the video footage is the present accused.

[22.5] The Investigating Officer who carried out major part of the investigation in the present case is examined as PW35- Kirankumar Ishvarlal Modi. He has narrated about the investigation carried out by him and produced the documents collected during the course of investigation. He states that on 09.08.2021 on account of transfer elsewhere, the investigation of this case was handed over to PSI Mr. J. R. Patel. In his cross-examination by the defence, he admits that he studied the papers of investigation done by the previous officer and that he did not record any further statement of the complainant and he also confirms that Nayan Dabhi was cited as suspect in the complaint and the previous officer did not record any further statement of the complainant. He confirms about no recovery of mobile phone or sim-card or other articles or cash during his investigation. He admits of not having collected the DVRs of the CCTV footage and volunteers to say that the data of CCTV footage from the DVR was obtained by other Investigating Officer Mr. M. N. Dave (PW36) and confirms that he did not extract any data from

the DVR, however, he volunteers to say that the video data from the shop of PW6 was obtained from the DVR through technical person Vijay Ramdebhai Odedra (PW18) and Ranjitbhai Arjanbhai Karavadra (PW19). It may be noted that these two persons are examined at Exh.18 & Exh.19 and they are cited as panch witnesses to the panchanama in respect of seizure of CCTV footage from the shop of PW6.

[22.6] PW18 states that he was at the Kamlabag Police Station and was told to sign in the panchanama and therefore, he appended the signature and apart from the appending signature in the panchanama produced at Exh.87, he has no information about the contents thereof. PW19 also states accordingly and both these witnesses were permitted to be cross-examined by learned P. P., however, nothing fruitful to the case of prosecution was elicited in their cross-examinations by learned P. P. whereas in the cross-examination by the defence, these witnesses admitted that apart from having appended signatures in already prepared papers, they do not know anything about the panchanama and that no DVD was shown or seized in their presence.

[22.7] Thus, the CCTV footage collected from the DVR of the camera installed at the shop of PW6 is also not proved in accordance with the law. Further, the Investigating Officer claims that PW18 & PW19 are technically sound persons; whereas these witnesses PW18 and PW19 plainly denied about having done anything in respect of transferring data from DVR to DVD. Therefore, the prosecution has not been able to prove the video footage collected during the course of investigation in accordance with the law and therefore these footage cannot be

read in evidence. Accordingly, since the CCTV camera footage is not proved in accordance with the law and since the identity of accused is not established as the person seen in the footage, the circumstance of video footage also cannot be made the basis of inferring guilt on the part of accused.

Analysis of evidence of discovery/recovery of clothes of accused:

[23] The prosecution has examined witnesses Hardikbhai Virambhai Vaja as PW9 and Jitesh Jethabhai Keshvala as PW12 who are panch witnesses to the Arrest Panchanama of accused (Exh.54). However, they do not support the case of prosecution with regards to drawing up of Arrest Panchanama as claimed by prosecution and identify their signature at panchanama produced at Exh.54. In their cross-examinations by the defence, it is admitted that apart from appending signatures in the panchanama, they have no other information.

[23.1] The panch witness to Discovery Panchanama pertaining to discovery of clothes of accused worn at the time of incident has been examined as PW10 Kaushikgar Ranchhodgar Goswami. He states that he was called upon at the Police Station where the police staff and accused were present. He further states that he does not remember whether the police asked name and address of accused in his presence or not. He further states that he does not know the name of accused. He further states that he along with the accused and police staff went to the Karli Bridge from where shirt and cap were discovered at the instance of accused under the said bridge and thereafter, they went to Ranavav at the house of accused from where pant, footwear and mask were discovered at the instance of accused and the said

articles were seized by police in presence of the present panch witness. However, the panch witness states that he cannot identify the said clothes and articles. He further states that detailed panchanama (Exh.56) was drawn in his presence and he has appended his signature in the panchanama. He has also identified his signatures on panch-slips of muddamal articles-4, 5, 6 & 7 Mark-D, E, F, G. produced at Exh.57, Exh.58, Exh.59 & Exh.60. He has identified the accused who was shown to him through video conference from the Jail.

[23.2] In his cross-examination by the defence, PW10 admits that he is a rickshaw driver and that police usually makes him sign as panch witness and that upon denial to sign the panchanama there is an apprehension of harassment by the police to him. He states that he usually appends signature in the panchanama without reading it when the police come to him for signature. He admits that he did not read the contents of panchanama at the time of appending his signature in the present case and hence, he does not know about the contents of the panchanama. He admits that he does not know the name of accused.

[23.3] Perusal of deposition of the said panch witness PW10, reveals that he appended signature in the panchanana (Exh.56) under the apprehension of harassment of police without knowing the contents of the panchanama and that he usually appends his signature without reading the panchanama whenever the police come to him for signature. Though the Discovery Panchanama (Exhibit-56) was prepared in his presence, he does

not identify the clothes and articles seized during the panchanama.

[23.4] The panchnama at Exhibit-56 is prepared by PW35-the investigation officer Mr. K. I. Modi. Perusal of deposition of PW35 as well as the panch witness PW10 do attribute authorship of concealment of shirt and navy blue coloured cap to the accused in their deposition and even in the panchnama the same is not recorded. These articles are claimed to have been discovered at the instance of accused from the bushes near Kurly bridge, however, in the absence of attribution of authorship of concealment of these articles to accused would be an impediment to believe that these articles were concealed by accused and later discovered at his instance. The panchnama also records that a pant, a mask and a pair of slippers was discovered at the instance of accused from a cloth bag hanged in the bathroom of the house of accused. This aspect is also does not inspire confidence, inasmuch as it would be highly improbable for a person to keep the pant, mask and slippers in the bathroom of his house and conceal shirt and cap at a different place.

[23.5] Further, the clothes worn by the accused at the time of incident have not been identified by any of the witnesses. The FSL report produced at Exh.167 clearly indicate that the shirt, cap, pant, mask and footwear seized and sampled as belongings of accused are reported to have no trace of human blood. Also, the finger clippings of accused sampled as 'J' were reported to have no trace of blood or skin. The FSL report further indicates that the blood trace found on the mattress cover had trace of human blood categorized as belonging to Group-A whereas the

pillow cover is reported to have no trace of blood and the droplets of blood found on the gown worn by the victim were traced to be human blood, but the group of blood could not be ascertained and the blood sample of accused is reported to have Group-A.

[23.6] Thus, the FSL report does not aid the case of prosecution in any manner, therefore even if the discovery of clothes at the instance of accused is believed the same would not have any impact on the issue of involvement of accused in the present case. Further, the absence of any traces of blood or skin on the pillow cover also tends to create serious infirmity in the case of prosecution as it is claimed that the victim was smothered to death by using pillow.

Analysis of recovery of rickshaw and mobile phone of accused & reconstruction panchnama:

[24] The panch witness to Panchanama of seizure of vehicle rickshaw & mobile has been examined as PW11 Jignesh Tapubhai Thanki. However, he does not support the case of prosecution with regards to drawing up of Panchanama of seizure of vehicle rickshaw & mobile as claimed by prosecution and identifies his signature at panchanama produced at Exh.66. He states that he was called upon at the Police Station and was made to append his signature on already prepared paper. He identifies his signature on panch-slip of muddamal article-9 produced at Exh.67. In his cross-examination by the defence, he admits that apart from appending signature in the panchanama, he has no other information. He also admits that the police has not seized any rickshaw or mobile in his presence. Another witness to this

panchnama is examined as PW13 and he also does not support the case of prosecution.

[24.1] The panchnama at Exhibit-66 pertaining to recovery of rickshaw and an android phone does not aid the case of prosecution in any manner, as the ownership of these articles is not proved and these articles are not recovered from the accused. Besides, there is nothing on record to indicate as to how these articles are connected to the incident in question. The investigation officer has produced request letters seeking call detail records with tower location and customer application forms of various mobile numbers but no such documents have been produced & exhibited on record. Therefore, recovery of mobile phone from the auto-rickshaw and the auto-rickshaw also does not help the prosecution in connecting the accused to the offence.

[24.2] The prosecution has examined witness Nagajanhai Lilabhai Bhutiya as PW13, who is panch witness to the above referred panchnama of recovery of auto richshaw and mobile phone produced at Exhbit-66 as well as the reconstruction panchnama produced at Exhibit-72. He also does not support the case of prosecution with regards to drawing up of Reconstruction Panchanama as claimed by prosecution and identifies his signature at panchanama produced at Exh.72. He states that he was called upon at the Police Station and was made to append his signature on already prepared paper. In his cross-examination by the defence, he admits that apart from appending signature in the panchanama, he has no other information. He also admits that the police has not seized any muddamal in his presence. He admits

that the police has not brought him to any place and no person gave description of incident at the time of preparing panchanama.

[24.3] The prosecution has examined witness Vijaybhai Bhikhubhai Chauhan as PW17. However, he does not support the case of prosecution with regards to drawing up of Panchanama of seizure of blood-sample of accused & Reconstruction Panchanama as claimed by prosecution and identifies his signature at panchanama produced at Exh.76 & Exh.72. He states that he was called upon at the Police Station and was made to append his signature on already prepared paper. In his cross-examination by the defence, he admits that apart from appending signatures in the panchanamas, he has no other information. He admits that the police has not seized any blood-sample in his presence. He also admits that the accused has not mentioned or shown any facts about the incident in his presence.

[24.4] It would be relevant to note that at the time of drawing of the reconstruction panchnama at Exh.72 the accused was in police custody and nothing had been discovered or recovered during the process of the said panchanama, therefore the provisions of Sections 25 to 27 of the Indian Evidence Act would be applicable. Section 25 provides that no confession made to a police officer shall be proved as against a person accused of any offence, whereas section 26 provides that no confession made by any person while he is in police custody shall be proved against such person, unless it be made in the immediate presence of a Magistrate. The Hon'ble Supreme Court in case titled **Perumal Raja @ Perumal vs. State, Rep. by Inspector of Police**, reported in AIR 2024 SC 460, observed thus

"19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied."

[24.5] In the case at hand, it is clearly evident that at the time of making confessional statement during the demonstration panchnama, the accused was admittedly in the police custody. Moreover, considering the fact that nothing had been discovered or recovered through the said panchanama, and having regard to the contents of the reconstruction panch at Exhibit-72, the same would not be admissible in evidence.

[24.6] The panch witness to Panchanama of seizure of blood-sample of accused has been examined as PW14 Rameshbhai Keshubhai Sodhatar. However, he does not support the case of prosecution with regards to drawing up of Panchanama of seizure of blood-sample of accused as claimed by prosecution and identifies his signature at panchanama produced at Exh.76. He states that he was called upon at the Police Station and was made to append his signature on already prepared paper.

In his cross-examination by the defence, he admits that apart from appending signature in the panchanama, he has no other information. He also admits that the police has not seized any blood-sample in his presence. It needs to be noted that since the FSL report does not aid the case of prosecution, this panchnama is insignificant.

Exoneration of person cited as suspect in the complaint:

[24.7] PW35- the investigation officer, who conducted major part of investigation, confirms that previous Investigating Officer Mr. A. B. Sisodiya (PW33) had requested for suspect detection test of suspect Nayan Dabhi as he was not satisfied with the authenticity of the statement given by the said suspect. He also confirms that as per Exh.172 the Forensic Psychological Department, Gandhinagar informed vide letter dated 05.06.2021 to keep the suspected person for suspect detection test from 23.06.2021 to 25.06.2021 for constant 3 days. He also admits that suspected was not made to remain present before Gandhinagar in furtherance of letter dated 05.06.2021, however, he volunteers to say that prior to received of the said letter, the present accused was tracked down by PSI Mr. N. M. Gadhavi and therefore, it was not necessary to refer the suspect to DFS Gandhinagar for suspect detection test. PW35 confirms that he did not record any statement of PSI Mr. N. M. Gadhavi.

[24.8] Thus, it is evident that though the previous officer deem it fit to refer the suspect Nayan Dabhi to DFS Gandhinagar for suspect detection test, the subsequent Investigating Officer did not deem it necessary to refer the suspect to DFS Gandhinagar despite having received the letter produced at

Exh.172 requesting to keep the suspected person for 3 consecutive days. Moreover, the person who track down the accused the person involved in the present offence PSI Mr. N. M. Gadhavi has not been examined as witness. Therefore non-reference of the suspect for suspect detection test, coupled with the admission of PW35 that the previous investigation officer doubted the statement of suspect to be true, also renders the case of prosecution vulnerable.

[24.9] PW37 Hasmukhbhai Bhaishankarbhai Dhandhaliya states that he was transferred from Kutiyana Police Station to Kamlabag Police Station on 24.08.2021 and was assigned the investigation of present case and therefore, he studied the previous investigation papers and drafted charge-sheet and forwarded it to Dy.S.P., Porbandar and after approval he filed the charge-sheet. In his cross-examination by the defence, he admits of having not recorded any further statement of the complainant. He also confirms that there is no mention of any gold ornament being stolen or looted from the victim in the present case prior to lodging of complaint as well as in the complaint. He also confirms about not recording any further statement of the complainant and non forwarding of the CDs and DVDs to FSL for analysis. Thus, none of the investigation officers recorded any further statement of the complainant and therefore the contention of gold ornaments is deposed by the complainant for the first time in his deposition before the Court and hence the entire case of prosecution is rendered doubtful.

Appreciation of evidence in its entirety:

[25] Thus, upon over all appreciation of the deposition of

all the Investigating Officers who conducted the investigation, it is clearly evident that no further statement of the complainant was recorded. This Court is mindful of the fact that recording of further statement of the complainant is not necessary in all cases. However, in the present case since the complaint as well as the previous statement of the complainant on the day of incident do not mention anything about victim's ornaments found to be missing or that the single earring was found on the body of victim. The non recording of further statement of the complainant renders the case of prosecution highly vulnerable; and therefore, since there is nothing to indicate that the single earring which is attributed to have been produced by the complainant for matching it with the earring recovered from the PW6 was handed over to the complainant at the time of postmortem examination of victim's body; and since there is no specific mention in the complaint or previous statement of the complainant recorded on 13.04.2021 or in the complaint recorded on 24.04.2021 that the victim usually wore gold ornament or that she had gold ornaments, and that those gold ornaments were found missing from the victim's dead body at the time of incident; the inference of guilt on the part of accused on the basis of recovery of gold ornament from PW6 after it was sold by the accused to PW6 would not be legally correct.

[25.1] The CCTV footage relied upon by the prosecution have not been proved in accordance with the law and even after having received the DVDs from PW22 & PW30, the Investigating Officer has not bothered to send the said DVDs for FSL analysis. Moreover, the DVR of CCTV camera installed at the house of PW22 & PW30 have not been recovered and the

authentication certificate produced by these two witnesses have not been proved in accordance with the law. Therefore, the case of prosecution as far as it alleges the involvement of accused fails.

[25.2] Further, the postmortem report was prepared on 14.04.2021 and it was specifically opined that the cause of death is cardio-respiratory failure on account of Asphyxia due to smothering, however, no effort appears to have been made by the Investigating Officer to register offence, and complaint was registered after delay of about 8 days on 21.04.2021, and such delay has remained unexplained.

[25.3] Hence, in absence of any scientific evidence linking the accused to the evidence and having regard to the absence of any material linking the accused to the offence of murder, this Court is of the view that the accused deserves to be extended the benefit of doubt.

[25.4] It is settled legal position that under the criminal jurisprudence, a case based solely on circumstantial evidence requires an unbroken, complete chain of circumstances pointing exclusively to the guilt of the accused. The legal standard set by the Supreme Court of India (notably in *Sharad Birdhichand Sarda v. State of Maharashtra*) dictates that the evidence must exclude every other reasonable hypothesis consistent with the innocence of the accused.

[25.5] As noted above, the Non-mention of Theft/Loss of gold ornaments in the first statement at Exhibit-30 as well as in

the complaint at Exhibit-31 tends to shake the veracity of prosecution case regarding loot of gold articles from the deceased being the motive for murder. The complaint forms the foundation of investigation and if the complainant failed to report that any gold ornaments were missing or stolen from the victim's body or house, the sudden emergence of a theft/robbery motive after arrest of accused creates a very strong doubt in the case of prosecution that the subsequent claims of recovered stolen property appear as an afterthought or a fabricated attempt by the police to tie the accused to the alleged offence.

[25.6] Moreover, the absence of purchase bills, receipts, or appraisal records makes it difficult to legally establish that the ornaments belonged to the victim. Further, mere identification of the ornaments by the complainant in his deposition before the court without a prior, formal Test Identification Parade (TIP) and without mention of specific, unique identification marks on the gold, coupled with non-recording of any further statement of the complaint, the identification of gold ornaments by the complainant, would have a lower evidentiary value and the same cannot be belived without any corroboration. Besides, gold ornaments are often mass-produced and common in design; hence, the recovery of gold ornaments does not tend to connect the accused with the offence.

[25.7] Even if the court assumes the recovered gold articles was sold by the accused, the mere possession or sale of allegedly stolen goods does not automatically prove the alleged murder. Under Section 114(a) of the Evidence Act, possession of stolen property leads only to a presumption of *theft* or *receiving stolen*

property (Section 379/411 IPC), not murder (Section 302 IPC), unless there is strong, contemporaneous evidence linking the accused directly to the act of killing. Further, if one earring was allegedly found on the victim's body, this fact must have been mentioned in the Inquest Report, the post mortem report. Therefore, the subsequent claim that a matching earring was "found on the body" constitutes a major & material contradiction, and such unexplained discrepancies appears to be a clear sign of police embellishment or planting of evidence to create artificial corroboration. Hence, in the absence of proof of ownership & identification of gold articles the accused cannot be held guilty even for theft of gold ornaments.

[25.8] The CCTV footage showing an *unidentified* person entering or near the victim's house merely proves that *someone* visited or passed by. Without a formal Test Identification Parade, facial recognition, or corroborated physical matching, the video footage fails to establish that the said person was the accused. Further, in violent crimes like murder, the forensic evidence in the form of bloodstains, DNA, fibers on the accused's clothing creates a vital link. The absence of any stains or scientific connection renders the prosecution case without physical proof linking the accused to the assault. Also, the failure to show the seized clothes for identification to witnesses renders the claim that the accused was wearing those specific clothes on the day/time of the incident without any support.

[25.9] The prosecution's case rests entirely on an incomplete chain of circumstantial evidence riddled with "snaps". Suspicion, no matter how strong, cannot take the place of legal

proof (*Sharad Birdhichand Sarda v. State of Maharashtra*). In the absence of a complete chain, missing motive, contradictory and inconsistent evidence, and unproved identity in the CCTV footage, the accused is entitled to a clear benefit of the doubt. Hence, the prosecution has failed to prove commission of offence punishable under section 302, 450 and 397 of IPC by the accused beyond reasonable doubt, and consequently **the point of determination no. 2 to 4 are held in the negative.**

[26] Accordingly, following final order is passed.

:: O R D E R ::

(a) The accused **ARJAN @ MANDO MASARIBHAI ODEDRA** is given benefit of doubt; and is accordingly acquitted, under Section 235(1) of The Code of Criminal Procedure, from the charges leveled against him for having committed offences punishable under section Sections-302 450 & 397 of the Indian Penal Code in respect of offence registered with the Kamlabag Police Station vide Crime Register No.11218009210368/2021.

(b) The accused is in judicial custody and he is ordered to be set free if not required in any other offence.

(c) The accused is directed to furnish personal bond of Rs. 50,000/- (Rupees Fifty Thousand Only) with one surety of the like amount as per Section 437(A) of Code of Criminal Procedure.

(d) The accused has filed no claim pursish in respect of gold

ornaments. Hence, Valuable muddamal articles no. 1 to 3 be handed over to the rightful owner by the Chief Judicial Magistrate, Porbandar in terms of section 452(3) of CrPC, after conducting inquiry in this regard.

(e) The muddamal article auto-rickshaw and mobile phone be handed over to the accused, after expiry of appeal period.

(f) Other non-valuable Muddamal articles be disposed of by destruction in accordance with the procedure laid down by the law after the expiry of appeal period.

File be consigned to record room and a copy of this order be forwarded to District Magistrate in accordance with section 365 of CrPC.

Signed and pronounced in the open Court today
on this **31st DAY OF JULY, 2026 at PORBANDAR.**

Date:- 31.07.2026.
Place:- Porbandar

(**M. A. BHATTI**)
Sessions Judge,
PORBANDAR
Code No. **GJ01506**