

MHAU030108962013



Presented on	: 25.09.2013
Registered on	: 25.09.2013
Decided on	: 20.05.2026
Duration	: <u>12Y. 07M. 25D.</u>

Form No.XXXII**Part 'A'**

(Title Page of Judgment)

[Para 44(i) of Chapter VI of Criminal Manual]

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
AT : AURANGABAD.

Presided over by : R. S. Jambotkar(Date of Judgment : 20rd May, 2026)**Regular Criminal Case No.1543/2013****Exh. No.55.**

Crime No.I-53/2013 for the offence punishable under Sections 454 and 380 read with Section 34 of Indian Penal Code registered with Satara Police Station, Tq. Dist. Aurangabad.

Complainant/ Prosecution	:	The State of Maharashtra, Through : Police Station Officer, Satara Police Station, Tq. And Dist. Aurangabad.
Asst. Public Prosecutor	:	Smt. M. S. Raut.
Accused	:	1. Salman Khan Samsheer Khan Age : 21 years, Occu. Labour, R/o, Shatabdi Nagar, Aurangabad. 2. Anil Shivnath Sargar Age : 25 years, Occu. Cooking, R/o, Behind Chelipura P.S., Aurangabad.
Advocate for accused	:	Shri. K. P. Pradhan.

Part 'B'

[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	:	19.04.2013
Date of FIR	:	20.04.2013
Date of Charge-sheet	:	04.09.2013
Date of Framing of Charge	:	03.03.2022
Date of commencement of evidence	:	27.10.2021
Date on which Judgment is reserved	:	----
Date of the Judgment	:	20.05.2026
Date of the Sentencing Order, if any	:	----

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.PC.
1	Salman Khan Samsher Khan	07.05.2013	09.05.2013	U/Sec. 454 & 380 r/w. Sec.34 of IPC.	Acquitted	----	----
2	Anil Shivnath Sargar	07.05.2013	09.05.2013	U/Sec. 454 & 380 r/w. Sec.34 of IPC.	Acquitted	----	----

Part 'C'

[Para 44(iii) of Chapter VI of Criminal Manual]

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

RANK	NAME	NATURE OF EVIDENCE
PW 1	Ashok Karbhari Rindhe (Exh.40)	Informant
PW 2	Ajaykumar D. Kachmnde (Exh.43)	Police Witness
PW 3	Digambar F. Choundhe (Exh.33)	Spot Panch

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
NIL		

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
NIL		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution :**

Sr.No.	Exhibit Number	Description
1	Exhibit P-41/PW 1	Complaint
2	Exhibit P-44/PW 2	Memorandum panchnama
3	Exhibit P-45/PW 2	Seizure panchnama
4	Exhibit P-46/PW 2	Letter regarding muddemal

B. Defence:

Sr.No.	Exhibit Number	Description
NIL		

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
NIL		

D. Material Objects :

Sr.No.	Exhibit Number	Description
1	Muddemal Receipt No.42/2013, Dt.09.06.2013	1. Three gold ring weight 15 gram, 2. Two gold dorle and 22 gold beads weight 10 gram, 3. Gold tops weight 5 gram.

: J U D G M E N T :
(Delivered on 20th May, 2026)

Accused were charged for the offence punishable under Sections 454 and 380 read with Section 34 of Indian Penal Code (for short "IPC").

2] Prosecution case, in brief, is as under -

On 19.04.2013, at 05.10 to 05.40 p.m., informant received call from his daughter that there was house trespass and theft in his house. At that time, informant was attending funeral of his relative. Informant's daughter gave keys and informant went to the house and found that, the door of house was broke and all cupboards were opened. Informant verified and found that, gold ornaments and cash were not there. So, informant realize there was theft by somebody else by making house trespass. Thereafter, the informant lodged the FIR against the accused at Satara Police Station.

3] On the basis of the report, Crime No.I-53/2013 was registered by Satara Police Station, Taluka and District Aurangabad for the offence punishable under Sections 454 and 380 read with Section 34 of the IPC.

4] After registration of crime, investigation was conducted. Statement of witnesses were recorded, spot panchnama was prepared. After completion of investigation, charge-sheet was filed against them.

5] My learned Predecessor has framed Charge (Exh.30) against the accused for the offence punishable under Sections 454 and 380 read with Section 34 of Indian Penal Code. The accused pleaded not guilty and claimed to be tried by taking defence of total denial.

6] After examination of prosecution witnesses, statement of the accused under Section 313 of the Code of Criminal Procedure were recorded at Exh.50 and 51 respectively. The accused have denied all the incriminating circumstances put to them. In rebuttal, they have not led any oral or documentary evidence in the matter.

7] Heard Learned A.P.P. for the State and learned advocate for the accused.

8] Considering the evidence which has come on record following points arise for my determination and I have recorded my finding against each of them with reasons thereon as under -

Sr. No.	Points	Findings
1)	Does the prosecution prove that, on 19.04.2013, in between 17.10 to 17.40 hours, at the house of informant, at Girija Shankar Vihar, Plot No.95, Satara Parisar, at Aurangabad, you accused in furtherance of your common intention with accused No.2 committed house breaking by entering into a house in the possession of informant used as human dwelling in order to	In the Negative.

	committing of any offence punishable with imprisonment and thereby you have committed an offence punishable under Section 454 read with Section 34 of IPC ?	
2)	Does the prosecution prove that, on aforesaid date, time and place, you accused in furtherance of your common intention committed theft of gold ornaments and also cash from the house of informant and thereby committed an offence punishable under Section 380 read with Section 34 of IPC ?	In the Negative.
3)	What order ?	As per final order.

REASONS

AS TO POINT NO.1 & 2 -

9] (PW-1) was the informant. He stated that, on 19.04.2013 he received call from his daughter. He went on that day to attend funeral of his relative. He received call at 05.00 p.m. on that day and his daughter told him about theft in their house. So, informant went near Baba Petrol Pump and received key of his house. Then, he went to the house and found that, the house door was broken and the all cupboards were opened. So, he verified and found total 40 gram earring and other 70 to 80 grams gold ornaments including mangalsutra and cash of Rs.9,000/- were not there. So, he filed FIR. But, he received 2 gold rings on a bond. Police called him to identify the gold ornaments only identity.

10] This witness stated that, he did not called to his daughter, but his daughter called him, he was at Baba Petrol Pump, till he received the keys of a flat, he did not know about the theft. However, he visited the house, but his daughter was not there. He do not want to do anything.

11] (PW-2) was the I.O. he stated that, what he did in the investigation including panchnama of recovery at Exh.44 and 45 under Section 27 of the Indian Evidence Act. I.O. stated that, accused gave statement before panch and accordingly recovery was done vide Exh.45. This I.O. stated that, in house in which they went recovery there were many person and accused told I.O. that, that house owned by accused.

12] (PW-3) is the spot panch who prepared spot panchnama at Exh.34.

13] Here the material important was that, there was theft in the house of informant and once he received the information of theft. He visited the house and verified there was theft. So, he gave FIR. Naturally FIR was against the unknown person. It was to see whether the recovery done from accused or not. But, as per the I.O. accused was in custody gave statement before panch and then they went to the house of accused and recovered the muddemal vide panchnama Exh.44 and 45. But, the recovery was done from the house of accused under Section 27 of the Indian Evidence Act. This panchnama needs to be proved by panch and

not by I.O. The independent panch shall required to state that he was called when accused was in police custody gave voluntarily statement before him that, he will show the place were muddemal kept and then they went and recovery done by making panchnama. But, this was not proved by panch. Further, this recovery shall required to be made for the isolation place and not the public place and not from the house of accused. The recovery under Section 27 of the Indian Evidence Act from the house of accused was itself doubtful and not proved by panch. So, the recovery cannot be said to prove the accused. The spot panch was the formal. So, no evidence that, really recovery done from accused or from the instance of accused. So, considering the nature of offence prosecution fails to prove that stolen property recovered from accused. There was no evidence that, accused committed house trespass or lurking house trespass. So, prosecution fails to prove that, accused committed trespass or lurking house trespass or committed theft beyond reasonable doubt. Accordingly, I answer point No.1 and 2 in the **“Negative”**.

AS TO POINT NO.3 -

14] I have already answered on point No.1 and 2 in the negative, the prosecution has not proved their case beyond reasonable doubt. Thus, prosecution failed to prove that accused committed the offence punishable under Sections 454 and 380 read with Section 34 of the Indian Penal Code. Hence, I proceed to pass following order -

ORDER

- 1] Accused **Salman Khan Samsheer Khan** and **2. Anil Shivnath Sargar** are acquitted for the offence punishable under Sections 454 and 380 read with Section 34 of the Indian Penal Code vide Section 248(1) of the Code of Criminal Procedure, 1973.
- 2] Their bail bonds are stands cancelled and surety discharged.
- 3] Seized muddemal i.e. 1. Three gold ring weight 15 gram, 2. Two gold dorle and 22 gold beads weight 10 gram and 3. Gold tops weight 5 gram be handed over to it's owner after appeal period is over, if not given.
- 4] Accused shall comply with the provision under Section 437(A) of the Code of Criminal Procedure, 1973 by furnishing personal and surety bond of Rs.15,000/- each.

[Dictated and Pronounced in open Court.]

Date: 20.05.2026.

(R. S. Jambotkar)
Chief Judicial Magistrate,
Aurangabad.

CERTIFICATE

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

Name of the Stenographer : Gajanan R. Tehere
Stenographer Grade-II.
Court : (Shri. R.S. Jambotkar) C.J.M.,
Aurangabad.
Date : 20.05.2026
Judgment/Order signed by
the Presiding Officer on : 20.05.2026
Order uploaded on : 20.05.2026
