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	Duration	Yrs. Ms. Days 00 02 04
	EXHIBIT	40

Form No.XXXII**Part – A**

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

	<p style="text-align: center;"><u>IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS Nilanga , AT Nilanga (COURT NO.1) DISTRICT- Latur (Presided over by Smt.A.S. Gunjawate)</u></p> <p style="text-align: center;">Regular Criminal Case No.47/2026</p>
	Crime No.: I- 58/2025 Police Station : Kasarsirsi Police Station, Tal. Nilanga, Dist. Latur.
COMPLAINANT	State of Maharashtra Through Police Station Kasarsirsi, Tal. Nilanga, Dist. Latur.
REPRESENTED	APP Shri. V. N. Mehetre, for the state.
ACCUSED	1. Roshansing Bablusing Tak, Age : 20 years, Occ. : Agriculturist, Resided at Sanjaynagar, Deulgaonraja, Tal.Deulgaonraja, Dist, Buldhana
REPRESENTED BY	Advocate Shri. H. V. Gaikwad for the accused No.1.

Part – B

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

Date of Offence	23/03/2025 to
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	24/03/2025
Date of F.I.R.	24/03/2025
Date of filing of charge-sheet	02/02/2026
Date of framing of charges	11/02/2026
Date of commencement of evidence	16/02/2026
Date of which Judgment is reserved	09/04/2026
Date of the Judgment	09/04/2026
Date of the Sentencing order, if any	--

Accused Details

Rank of accused	Name of the accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during trial for purpose of Section 428, Cr.PC.
1.	Roshansing Bablusing Tak	08/12/2025	-	331(4), 305(a), 3(5) of BNS	acquitted	--	--

JUDGMENT**(Delivered on 09/04/2026)**

Accused no 1 is facing trial for the offence punishable under Sections 331(4), 305(a) and 3(5) of Bhartiya Nyaya Sanhita, 2023.

The prosecution's case, in brief, is as under:-

2) The informant is owner of Vishvakarma Jewellers situates at Madansuri Tq. Nilanga Dist. Latur. On 23.03.2025 at 4.30 p.m., the complainant closed his shop. He locked it and went to his house at Harijawalga. On 24.03.2025 at. 5.56 a.m he received phone call of Vyankat Sheware, who is vegetable

seller and his shop is in front of informant's jewellery shop. He informed to the informant that the door of his shop were broken. Then the informant immediately went to his shop. He saw that the door/shutter was broken. He entered in the shop and find that the cupboard was opened, cash counter was left in disarray by someone, CCTV camera was without DVR. The boxes for silver ornaments were opened. The cable wire of CCTV camera was cut. He phone called to his cousin Kiran Suresh Potdar, his friend Parmeshwar Jaypal Birajdar and told them the incident. His friend Parmeshwar gave information of the incident to Kasarsirsi Police Station. Police arrived there. Police called Finger Print Expert and police of local crime branch. Then the informant again inspect the shop. He found that the silver chain, Bracelet, waist chain, Silver anklet, Ganpati idol, Laxmi idol, toe rings, and Silverware in the shop etc of total 4 kg 684 gram silver were stolen. Then he lodged complaint against unknown person. The Officer in-charge of the police station registered the offence by bearing Cr. no. 58/2025 P.S.I. Mr. A.M.Patil conducted spot panchnama and seizer panchnama. He recorded the statement of witnesses. It revealed during investigation that accused no.1 and co accused had committed the theft by lurking house breaking at night. Hence, he presented charge-sheet in the Court.

3) Charge is framed against accused no.1 vide Exh.10 through video conference. It was read over and explained to him. He abjured the guilt and claims to be tried. The statements of the accused no.1 were recorded U/sec.351

of B.N.S.S. vide Exh.38. Defence of accused as explicit from the statements U/sec.351 of B.N.S.S. and cross-examination of prosecution witnesses, is of total denial.

4) Heard Mr. V. N. Mehetre Ld. A.P.P. for the prosecution and Mr. H. V. Gaikwad Ld. Advocate for accused no 1.

5) For just analysis of the evidence and determination of guilt of accused, following points arise for my determination to which I record my findings alongwith reasons as follows :

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	In between 23.03.2025 at 11.00 p.m to 24.03.2025 at about 5.56 a.m, the accused in furtherance of common intention with other co accused dishonestly took silver chain, Bracelet, waist chain, Silver anklet, Ganpati idol, Laxmi idol, toe rings, and Silverware in the shop etc. of total 4 kg 684 gram silver in possession of informant Ganesh Shivhaji Potdar, without his consent moves that property in order to such taking and committed theft?	No
2)	On above date, time and place accused	

	in furtherance of common intention with other co accused committed lurking house-trespass or house-breaking in vishwakarma Jewelers intending to commit theft?	No
3)	What order?	Accused No.1 is acquitted.

6) Prosecution has examined in all eight witnesses. P.W.1 Ganesh Shivaji Potdar (Informant Exh.11), PW.2 Shivaji Dattu Kolnure (Spot Panch Exh.14), PW.3 Vyankat Maruti Shevare (Eye witness Exh.22), PW.4 Pramod Nanasaheb Deshmukh (Exh.24), PW.5 Pravin Mohanrao Rathod (Investigation Officer (Exh.27), PW.6 Ajay Madhavrao Patil (Investigation Officer Exh.30), PW.7 Satish Namdev Suryawanshi (Seizure Panch Exh.35) and PW.8 Nabab Ansarmiya Shaikh (Seizure Panch Exh.37). Prosecution relied on Spot panchanama (Exh.15), Complaint (Exh.12), Seizure panchanama (Exh.25). The accused preferred not to adduced any evidence.

Point No. 1 :

7) Ld. Advocate for the accused submitted that initially the complaint was lodged against unknown person by informant. No details of stolen property, especially the quantity and weight of the stolen property not furnished by the informant. There is no evidence that the stolen articles were in possession of informant before the incident. The accused is arrested only in suspicion. The seizure panchnama

creates doubt. The discovery of stolen property is suspicious and not proved beyond the reasonable doubt. Hence, he prayed to acquit the accused. However, the Ld. App for state argue that the defence counsel suggested to the witness no.4 in his cross-examination which discloses connection of the accused with theft. The incriminating statement bring on record by cross-examination that the stolen articles were weighted from goldsmith at Ahmedpur and the certificate took from that goldsmith is incriminating in nature in a manner would definitely bind the accused. Therefore, the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his clients. In support of his argument, he relied on judgment in **BALU SUDAM KHALDE & ANO VS. STATE OF MAHARASHTRA, CR APPEAL NO.1910 OF 2010.**

8) The informant deposed that on 24/03/2025 at about 5.50 am he had received phone call of Vyankat Shevare. Vyankat Shevare informed him about the theft in his shop. He further informed that the shutter/door of his shop was broken. Then, immediately the informant went to his shop. He saw that the shutter of his shop was broken. In the electricity light, he saw that the cupboard, counter drawer was opened and was left in disarray. CCTV camera was without DVR. The boxes for silver ornaments were opened. The cable wire of CCTV camera was cut. He phone called to his cousin Kiran Suresh Potdar, his friend Parmeshwar Jaypal Birajdar and told them the incident. His friend Parmeshwar gave information of

the incident to Kasarsirsi police station. Police arrived there. Police called Finger Print Expert. Finger Print Expert came at his shop. They took finger prints on the articles at his shop for analysis. He found that the silver chain, Bracelet, waist chain, Silver anklet, Ganpati idol, Laxmi idol, toe rings, and Silverware in the shop etc of total 4 kg 684 gram silver were stolen. Then, he lodged complaint against unknown person. Then, on 30/11/2025 police called her in the police station. Police informed the informant who committed the theft in his shop and the recovery of stolen articles. The police informed him that four persons committed that theft and one of the accused was arrested. Then, the accused apprehended by the police was shown to him. Then, the informant recorded his supplementary statement on 08/12/2025 which is at Exh.13. In cross-examination, the informant stated that the police namely Mr. Deshmukh of Kasarsirsi Police Station told him the arrested accused committed theft. The said police officer Mr. Deshkmukh examined as PW No.4 at Exh.24. He deposed that on 30/11/2025 when he was on patrolling duty he received information from his confidential informant that one unknown person came in front of MIT college, at Latur-Renapur road for selling stolen property. Accordingly, the PW.No.4 and other officers trapped the accused. The accused found with white colour sack. In that sack, he found anklet, waist chain and rings. The accused told him that the said property was stolen property and he took it in the theft in Vaishnavi jewellery Ahemdpur and the jewellery shop at Madansuri. Then, the PW No.4 seized all silver articles in his possession. The said

seizure panchnama was submitted in Ahmedpur Police Station in another crime.

9) The testimony of PW No.4 verified by his cross-examination. In his cross-examination, with reveals that the seized silver articles were weighted at the shop in Ahemdpur. He does not recollect the name of the shopkeeper where the seized jewellery was weighted. He took the certificate from that goldsmith. The said certificate and seizure panchnama was in Ahmedpur Police Station in another crime. All articles were seized in card board box. The said box was sealed. The said box was opened on 30/11/2025 at Ahmedpur in jewellery shop for weight of that articles. Then, the said box was again sealed and handed over to the constable of Ahmedpur Police Station. At that time, the said box was not sealed by conducting panchnama. The report of seized property from goldsmith was not received by PW No.4. PW No.6 is Investigation Officer who investigated the said outlets. He searched the stolen property and accused who committed this offence. He got information from local crime branch that the accused in the theft at Madansuri was in the custody of local crime branch, Latur and the said accused confessed that he committed theft at Madansuri by house breaking. He further received information that the said seized property was in custody of another police station. Then, he took custody of that seized property from police station. He weighted that articles in jewellery shop at Ahmedpur. He received 108 anklets from Ahmedpur Police Station. From the evidence of

P.W. No.6, it is evident that he took custody of seized property on 09/12/2025. At that time, he weighted that seized property in Rohit Jewellers at Ahmedpur. At that time, no panchnama was conducted. At that time, the said 108 anklets were not sealed. He received that anklets from Mr. Rathod the police of Ahmedpur Police Station. After the weight of that articles, he took in his custody without any panchnama and without seal. The receipt of weight of that articles was not produced with charge-sheet. The said seized property had been taken out of the box from two to three times. The panchnama was not conducted or the box was not sealed on every time when it was removed from the box. This fact discloses there was procedural lapse in handling the seized property. The seizure panchnama was not on record.

10) In this circumstances, the evidence of seizure panch is very important peace of evidence. The seizure panch in this offence were examined at Exh.35 & 37 as a P.W. No.7 & 8. PW No.7 &8 admitted their signature on seizure panchnama at Exh.25. The Ld. APP argued that therefore the spot panchnama is proved and hence, its contents can be considered in evidence. In spite of the confrontation by the Ld APP with the contents of seizure panchnama, Satish (PW No.7) maintain that he does not know the contents. Admission of mere signature does not amount to proof of truthfulness of the contents. PW No.8 deposed that the said panchnama was done in his presence. The police seized 108 silver anklets from accused. He identify the 108 anklets produced by VMR

No.28/2025 are the same silver anklets seized by police by seizure panchnama at Exh.24. On his testimony it reveals that only 108 silver anklets were seized by police. However, the PW No.4 who conducted the seizure panchnama stated that he found anklets, waist chain and rings. From the testimony of witnesses, I found discrepancy in the seized articles.

11) In order to prove the truthfulness of contents in seizure panchnama, prosecution examined PW No.4. The said seizure panchnama was conducted by PW No.4. PW No.4 deposed that he seized silver anklets, waist chain and rings. He failed to give the details (quantity of that articles). The seizure box was opened two to three times without any panchnama. All these facts creates suspicion that which articles were seized by PW No.4 in the custody of accused. The said silver articles are not seized as per the procedure. Moreover, the PW No.7 & 8 failed to identify the person in whose custody the stolen property were seized by police. PW No.8 failed to identify the accused (appeared through VC). There is no eyewitness of this offence. It is not proved that the stolen property recovered from the accused.

12) PW. No.2 is spot panch witness. He was present while conducting spot panchnama at Exh.15. He stated that on 25.05.2025 police conducted spot panchnama in Vishwakarma jewellery shop at Madansuri. At that time, Ram yernale, Kiran Potdar, Ganesh Potdar and police were present with him. He found the door/shutter of Vishwakarma shop was broken. The

wire of CCTV footage was cut. The police took finger prints on cupboard and other places in that shop. From his evidence, the spot panchnama at Exh.15 is proved. It is evident the situation of Vishwakarma Jewellery shop which discloses the theft by house breaking was committed in that shop. Hence, the prosecution's case has to be accepted that theft was committed in Vishwakarma Jewellers at Madansuri and was committed by house breaking at night.

13) PW No.3 Vyankat Shevare informed to the PW No.1 about broken shutter of his shop. Thus, his evidence is corroborate the evidence of informant that the offence of house-breaking was committed. PW No.5 deposed that upon receiving the information about incident, he investigated the offence. He conducted the spot panchnama at Exh.15. The finger print experts took finger prints from spot of incident. The panchnama of fingerprints is on record at Exh.28. Then, he handed over the investigation of this offence to PW No.6.

14) Though, it is proved that theft by house-breaking at night was committed, the proof of the accused had committed that offence is essential to convict the accused for the offence punishable under Sections 331(4), 305(a), 3(5) of BNS. Similarly, object Not just the object found, but the place from which it is produced and the accused's knowledge of it is essential to convict the accused. The informant lodged the complaint that silver anklets, bracelet, waist chain, Ganpati idol, Laxmi idol, silverware and toe rings in his shop where

stolen. The informant failed to give the quantity of that ornaments. Further, he failed to give the evidence that he was in possession of that articles before the said offence. There is no evidence on record that the seized 108 silver anklets were in possession of informant and the said 108 silver anklets were stolen from his shop. The informant failed to give the details to identify the seized anklets were the same anklets stolen from his shop. Mere recovery of 108 silver anklets from this accused is not sufficient to conclude that the said silver anklets were stolen from his shop and by this accused.

15) In offence under Sections 331(4), 305(a), 3(5) of Bhartiya Nyay Sanhita, the information received from accused required to be proved. When any fact is discovered as a result of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered. In the present case, there is no memorandum panchanama as per section 23 of the Bharatiya Sakshaya Adhinyam, 2023. Thus, it is pertinent to note that the fact of discovery of stolen silver articles in consequence of information received from accused is not proved.

16) The fact of recovery of stolen property by the discovery memorandum as per section 23 of the Bharatiya Sakshaya Adhinyam, 2023 is not proved. Consequently, as per Section 119(a) of the Bharatiya Sakshaya Adhinyam,

2023 authorizes courts to presume the existence of certain facts based on natural events, human conduct, and public/private business. This provision allows the court to infer facts, such as assuming stolen goods in possession imply theft, unless evidence proves otherwise. Accordingly, the court may presume facts that possession of stolen goods shortly after theft suggests the possessor is the thief or receiver. But in this case the accused were not found in possession of stolen goods immediately after the commission of this offence. The accused was arrested approximately after six months from the commission of offence. Further, it is not proved the stolen property were recovered from the accused. Thus the presumption under Section 119(a) of the Bharatiya Sakshya Adhiniyam, 2023 is not attract to this case.

17) In the light of above discussion, the suggestion of The defence counsel to the witness no.4 in his cross-examination does not discloses connection of the accused with theft. The incriminating statement bring on record by cross-examination that the stolen articles were weighted from goldsmith at Ahmedpur and the certificate took from that goldsmith is not found incriminating in nature. In **BALU SUDAM KHALDE & ANO VS. STATE OF MAHARASHTRA, CR APPEAL NO.1910 OF 2010**, it is observed that the suggestion that the accused was wearing a shirt of cream colour and not white colour at that time. The said suggestion proves the presence of accused on the spot at the time of occurrence. Therefore, the accused cannot get away on the plea that his

counsel had no implied authority to make suggestion in the nature of admission against his client. The above observations are not helpful to the accused because the recovery and dis-recovery of stolen property from this accused is not proved. The said recovery is appears doubtful. In the light of above discussed evidence, the mere mere questions to discover the information where and who weighted the seized articles does not amount admission of incriminating statement. I do not find any incriminating statement in that questions asked in cross-examination of PW no.4.

18) It is pertinent to note that no evidence is led by the prosecution so as to prove that accused no. 1 had stolen silver chain, Bracelet, waist chain, Silver anklet, Ganpati idol, Laxmi idol, toe rings, and Silverware in the shop etc. of total 4 kgm 684 gram silver. In all prosecution has failed to prove the charge against accused no.1 beyond reasonable doubts. Therefore, I conclude that the theft by house-breaking at night by this accused is not proved. None of the offences are proved. In the result, **point no.1 & 2, I answered negative.**

Point No. 3 :-

19) In view of above discussion, accused no.1 is entitled for acquittal of the offences levelled against him. Hence, I proceed to pass the following order.

ORDER

1.	Accused No.1 Roshansingh Babalusingh Tak is Resided at Sanjaynagar, Deulgaonraja, Tal.Deulgaonraja, Dist.Buldhana is
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	hereby acquitted of an offence punishable under Sections 331(4), 305(a), 3(5) of Bhartiya Nyay Sanhita vide section Section 265(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.
2.	Bail bonds of accused No.1 stands cancelled.
3.	seized 108 silver anklets are handed over to its original owner after appeal period as per rule.
4.	In view of provisions of section 481 (A) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, accused No.1 is directed to furnish fresh P.B. and S.B. of Rs.25,000/- to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment.

Date : 09.04.2026
Place : Nilanga.

(Smt A. S. Gunjawate)
Judicial Magistrate, First Class,
(Court No.1) Nilanga

Part 'C'

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

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESES

A.Prosecution.

Rank	Name	Nature of evidence
PW 1	Ganesh Shivaji Potdar	Informant.
PW 2	Shivaji Dattu Kolnure	Spot Panch
PW 3	Vyankat Maruti Shevare	Eye Witness
PW 4	Pramod Nanasaheb Deshmukh	Eye Witness.
PW 5	Pravin Mohan Rathod	Investigation Officer

PW 6	Ajay Madhavrao Patil	Investigation Officer.
PW 7	Satish Namdev Suryawanshi	Seizure Panch
PW 8	Nawab Ansarmiya Shaikh	Seizure Panch

B.Defence witnesses, if any

Rank	Name	Nature of evidence (Eyewitness, police witness, expert witness, medical witness, panch witness, other witness)
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C.Court witnesses, if any

Rank	Name	Nature of evidence (Eyewitness, police witness, expert witness, medical witness, panch witness, other witness)
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A. LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**Prosecution**

Sr. No.	Exhibit Number	Description
1.	Exh.12	Complaint
2.	Exh.15	Spot Panchnama.
4.	Exh.25	Seizure Panchnama

B.Defence

Sr. No.	Exhibit Number	Description
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C. Court Exhibits :

Sr. No.	Exhibit Number	Description
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D. Material Objects :

Sr. No.	Material Object Number	Description
1.	VMR No.28/2026	108 silver anklets