


<u>MHSO180003902025</u> 	Received on : 03.03.2025
	Registered on : 04.03.2025
	Decided on : 30.03.2026
	Duration : 1 year, 27 days
<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,</u> <u>MANGALWEDHA, DIST. SOLAPUR</u>	
[Presided over by - V.K. Patil]	
<u>Regular Criminal Case No. 65/2025</u> <u>Exhibit No. 44</u>	
FIR DETAILS	F.I.R No. 452/2024, Mangalwedha Police Station, Mangalwedha, Dist. Solapur. Offences punishable under Section 454, 457, 380 r/w 34 of The Indian Penal Code.
INFORMANT	STATE OF MAHARASHTRA Through Police Station Officer, Mangalwedha Police Station, Mangalwedha, Dist. Solapur.
REPRESENTED BY	Mr. A.B. Kshirsagar, Mr. J.V. Chelekar and Mr.N.D. Bhadule, Learned A.P.P. for the State.
ACCUSED	Ashikarya @ Ashok Chaparu Kale Age : 35 years, Occ. : Nil, R/at : Bhandarkavathe, Tq. South Solapur, At present r/o. Naikwadi wasti, Mohol. (From 06.01.2025 till today accused is in jail.)
REPRESENTED BY	Mr. V.R. Kshirsagar, Learned Advocate for the accused.

Part - “B”
(Para 44 (iii) of Chapter VI of Criminal Manual)

Date of Offence	09.06.2024 to 12.06.2024
Date of complaint	12.06.2024

Date of Framing of charge	10.03.2025
Date of commencement of evidence	06.08.2025
Date on which judgment is reserved	30.03.2026
Date of the Judgment	30.03.2026
Date of the Sentencing order, if any	30.03.2026

ACCUSED DETAILS

Rank of the accused	Name of the 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 the purpose of section 428 of Cr. P.C.
A-1	Ashikarya @ Ashok Chhaparu Kale	06.01.2025	---	under Section 454, 457, 380 r/w 34 of the Indian Penal Code.	Convicted.	As per the final order.	From 06.01.2025 to 30.03.2026.

Part "C"

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

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

List of Prosecution Witnesses:

RANK	NAME	EXH.	NATURE OF EVIDENCE
PW-1	Santosh Uttam Bhuse	20	Complainant
PW-2	Nagesh Vasant Babar	23	Panch
PW-3	Nagesh Ambadas Ingale	27	Panch
PW-4	Ravi Kuber Fund	28	Panch
PW-5	Kisan Bharat Choudhari	30	Panch
PW-6	Rupali Santosh Bhosale	34	Complainant's wife
PW-7	Dattanand Tanaji Mohare	35	Goldsmith
PW-8	Purushottam Prakash Dhapate	37	I.O.
PW-9	Dayanand Dadasaheb Hembade	38	Witness
PW-10	Nagnath Jayjayram Khune	40	I.O.

List of Defence Witnesses:

RANK	NAME	NATURE OF EVIDENCE
DW-1	Nil	Nil

List of Court Witnesses:

RANK	NAME	NATURE OF EVIDENCE
CW-1	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

List of Prosecution Exhibits:

SR. NO.	EXH. NO.	DESCRIPTION
1	21	Complaint
2	22	Supurtnama
3	24, 25	Memorandum and seizure panchanama
4	26	Memorandum panchanama
5	29	Spot panchanama
6	31, 32	Memorandum and seizure panchanama
7	41	Arrest panchanama

List of Documents Admitted by Defence:

SR. NO.	EXH. NO.	DESCRIPTION
1	Nil	Nil

List of Defence Exhibits:

SR. NO.	EXH. NO.	DESCRIPTION
1	Nil	Nil

List of Court Exhibits:

SR. NO.	EXH. NO.	DESCRIPTION
1	Nil	Nil

Material Objects:

SR. NO.	MATERIAL OBJECT	DESCRIPTION
1	M.R. NO. 6/2025	5 grams golden mani mangalsutra
2		5 grams golden ear rings (pinjara and zhubbe)
3		5 grams 2 golden rings

JUDGMENT
(Delivered on 30th March, 2026)

Accused is charged and facing trial for the offence of lurking house-trespass or house-breaking, lurking house-trespass or house-breaking by night and committing theft in house, which is punishable under section 454, 457 and 380 r/w 34 of Indian Penal Code, 1860 (hereinafter referred as "I.P.C." in short).

FACTS OF PROSECUTION'S CASE IN BRIEF ARE AS UNDER :

2. On 09/06/2024 at about 02:00 p.m., the informant Santosh Uttam Bhuse and his wife locked their house and went to Dongargaon along with their children to visit his parents. On 12/06/2024 at about 08:00 a.m., when they returned home, they noticed that the door of their house and the latch were broken. After entering the house, they found that the cupboards were open and the articles in the house were lying scattered. On further checking, they found that one ladies gold ring weighing about half tola, gold beads of mangalsutra, gold ear ornaments (pinjara and zhubbe) and three gold rings each weighing about half tola, total valued at about Rs.1,50,000/-, were missing and stolen. Therefore, the informant lodged a report regarding the said incident at Mangalwedha Police Station.

3. Report was pertaining to commission of cognizable offence, and therefore, as per Section 154(1) of Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C." in short) Crime No. 452/ 2024 came to be registered against the accused u/s. 454, 457 and 380 r/w 34 of I.P.C. Assistant Police Inspector Mr. B.B. Pingle conducted the initial

investigation and recorded the First Information Report and spot panchnama. Thereafter, further investigation was carried out by PW No.8 Purushottam Dhapte Police Sub Inspector, who recorded statements of witnesses. Subsequently, as the accused was traced by Assistant Police Inspector Nagnath Khune of the Local Crime Branch, the investigation was transferred to him. P.W. No.10 Khune arrested the accused, recorded his statement leading to discovery, effected recovery of stolen property and, after completion of investigation, filed the charge-sheet under section 173(2) of the Cr.P.C.

4. Present case is the police case, hence procedure of warrant trial instituted upon police report as per chapter XIX of Cr.P.C. was followed. Satisfaction as to the compliance of section 207 of Cr.P.C. regarding supplying of police report along with documents was made under Section 238 of Cr.P.C. Upon considering the police report and documents sent with it under section 173 of Cr.P.C., there was sufficient ground for presuming that the accused has committed aforesaid offences, which this Court is competent to try. Therefore, as per Section 240 of the Cr.P.C., at Exh.4, charges for these offences came to be framed by my learned predecessor in writing against the accused. Charges were read over and explained to the accused in a language to which he is accustomed and he was asked, whether he pleads guilty of the offences or claims to be tried. The accused did not plead guilty, pleaded innocence and claimed to be tried.

5. After examination of witnesses for prosecution and before accused is called on for his defence evidence, he is examined at Exh.43

and questions were put to him as per section 313 (1) (b) of Cr.P.C., to enable him to personally explain the circumstances appeared in prosecution's evidence against him. Accused did not produce any evidence in his defence under section 243 of the Cr.P.C. From the examination of accused, cross examination of prosecution witnesses and the argument advanced, defence of accused is of total denial and false implication.

6. Perused record. Heard Mr. N.D. Bhadule learned A.P.P. for the State and Mr. V.R. Kshirsagar learned advocate for the accused. Following points arise for my determination to which I record my decisions as per section 354 of Cr.P.C. against each of them with reasons stated below :

Sr. No.	POINTS	FINDINGS
1.	Whether prosecution proved that in between 09-06-2024 at 02-00 p.m. to 12-06-2024 at about 08.00 a.m accused in furtherance of their common intention committed lurking house trespass by entering into the house of informant ?	Yes.
2.	Whether prosecution proved that on the aforesaid date, time and place, accused in furtherance of their common intention committed lurking house trespass after sunset and before sunrise by entering into house of informant for the purpose of committing theft ?	No.
3.	Whether prosecution proved that on the aforesaid date, time and place, accused in furtherance of their common intention committed theft in the house of the informant?	Yes.

4.	What Order?	Accused is convicted.
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REASONS FOR THE FINDINGS

Ingredients Of Section 454, 457 and 380 of the I.P.C.

7. Section 378 of I.P.C. defines ‘theft’ and section 379 prescribes punishment for it. Section 380 provides for theft in dwelling house etc. Following are the essentials to prove the offence of theft;

- i. Dishonest intention to take property;
- ii. The property must be movable;
- iii. It should be taken out of possession of another person;
- iv. It should be taken out without the consent of that person; and
- v. There must be some removal of the property in order to accomplish the taking of such property.

8. To prove the offence of theft in dwelling house, following ingredients must be satisfied;

- i. there must be a theft;
- ii. such theft must be committed either in building, tent or vessel;
- iii. such a building, tent or vessel must be used as human dwelling, place of worship or for the custody of property.

9. Section 442 of I.P.C. provides for house trespass, section 443 provides for lurking house trespass, section 444 provides for lurking house trespass by night, section 445 provides for house breaking and section 457 provides for lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment. To prove

offence under section 457 prosecution has to prove following essential ingredients;

- i. There must be house trespass or house breaking;
- ii. Such house trespass or house breaking must be committed in building, tent or vessel;
- iii. Such building etc. must be used as human dwelling, place of worship or for the custody of property;
- iv. Such house trespass must be committed after taking precautions to conceal the presence called lurking house trespass;
- v. Such lurking house trespass or house breaking must be committed after sunset or before sunrise i.e during night.

Ingredients (i) to (iv) supra, are also the fundamental components of offence punishable under section 454 of the I.P.C.

POINT NO. 1 TO 4 :

10. P.W. No.1 Santosh Bhuse (informant) and PW No.6 Rupali Bhuse, wife of the informant, have corroborated each other on material aspects of the prosecution case. They have deposed that on 09/06/2024, they had locked their house at Saptashrunji Nagar, Mangalwedha, and had gone out. They have further deposed that on 12/06/2024, when they returned home, they found that the door of their house was broken and the cupboards were open. They noticed that the gold ornaments kept in the house were missing and stolen. They have stated that three gold rings each weighing about half tola, one ladies gold ring having the letter "S", gold ear ornaments (pinjara and zhubbe) and a gold mangalsutra were stolen from their house. Therefore, they lodged a report at Mangalwedha Police Station on 12/06/2024. They have further

deposed that they received information from the police that the stolen ornaments were recovered. They were called to the police station for identification. After seeing the ornaments, they identified them as the same ornaments stolen from their house. The ornaments were later returned to them by order of the Court.

11. In cross-examination, both witnesses have remained firm on the main aspects of their evidence. However, they have admitted that they are not sure whether any other local person had entered their house before they entered it. They have stated that they cannot say with certainty whether the theft was committed by local persons or by some other person.

12. PW No. 4 Ravi Fund, panch witness, has deposed that on 13/06/2024, at the house of the informant Bhuse situated at Saptashruni Nagar, Mangalwedha, the Assistant Police Inspector Pingle prepared the spot panchnama in his presence. He has further deposed that the door of the house was found forced open and the latch was broken. The articles in the house were lying scattered, the cupboard in the adjoining room of the hall was open and the articles therein were found scattered. In the cross-examination, PW No.4 has stated that he is acquainted with the police and has friendly relations with them and that he was called by the police to act as a panch for the spot panchnama. He has also admitted that he is not aware of the exact boundaries of the spot and does not know the direction of the entrance of the informant's house. Further, he has remained firm on the remaining aspects of his evidence.

13. PW No.2 Nagesh Babar, panch witness, has deposed that on 09/01/2025, at Mohol Police Station, in his presence, in the presence of another panch Nagesh Ingale, police staff and Assistant Police Inspector Khune, the accused Ashok Kale made a statement that he would show the place where he had concealed the stolen ornaments. Accordingly, a memorandum panchnama at Exh. 24 was prepared. He has further deposed that as per the statement of the accused, he along with the other panch witness, the accused and police staff went in a government vehicle from Mohol Police Station via Kurul Road to Naikwadi Vasti, near a tin shed. On reaching there, as per the say of the accused, they entered the tin shed and the accused took out the gold ornaments concealed there and handed them over to the police in their presence. The ornaments were kept wrapped in cloth inside a round container placed in a metal box in the tin shed. He has further stated that the police called goldsmith D.M. Mohare at the spot and the ornaments were weighed on an electronic weighing scale. The ornaments included a necklace, ear ornaments (zhubbe) and rings. The goldsmith examined the ornaments and stated that they were made of gold. Thereafter the police seized the said ornaments in presence of panch witnesses and a seizure panchnama at Exh. 25 was prepared. At the time of panchnama, photographs marked as Article 'A' and 'B' were taken. He has also stated that on 09/01/2025, no other panchnama was prepared in his presence. However, upon being asked by the prosecution, he has stated that a panchnama regarding the statement of Rajesh Hanumant Gaikwad at Exh. 26 was also prepared. He has identified the accused before the Court.

14. In the cross-examination, this witness has stated that he does not know the name of the police officer who recorded the memorandum panchnama. He has further stated that he cannot state the exact description or identification marks of the place where the recovery was made. He has admitted that he has good relations with the police and that he has acted as a panch witness in R.C.C. No.58/2025. Further, he has remained firm on the remaining aspects of his evidence.

15. PW. No. 3 Nagesh Ingale has deposed that on 09/01/2025, at Mohol Police Station, in his presence, the accused Ashok Kale stated that he would produce the stolen gold ornaments. He has further deposed that thereafter he, the accused, Assistant Police Inspector Khune and other police staff went from Mohol Police Station, in a government vehicle, via Shivaji Chowk and Kurul Road to Shaikh Vasti, as per the say of the accused. At that place, there was a tin shed. The accused took out seven to eight small cloth bundles kept in a container in the said tin shed and handed them over to the police. Photographs were taken at the spot and thereafter the said bundles were taken to Mohol Police Station in the government vehicle. But, further he stated that he does not know what contents were written in the panchnama by the police. As this witness did not support the prosecution, he was cross-examined by the prosecution, but he did not support the prosecution case as expected. Moreover, in the cross-examination, he has admitted that no memorandum panchnama or statement of the accused was recorded in his presence.

16. PW No. 5 Kisan Chaudhari, panch witness, has deposed that on 12/01/2025, in his presence and in the presence of police, the accused stated that he would show where the stolen gold was kept.

Accordingly, a memorandum panchnama at Exh. 31 was prepared. He has further deposed that as per the statement of the accused, he, another panch witness Pise, Assistant Police Inspector Khune and other police staff proceeded from Siddheshwar Sugar Factory side via Hotgi Road to Panmangrul, Taluka Akkalkot, to the house of the accused's in-laws. He has stated that, as per the say of the accused, they entered a tin shed at the said place. The accused took out three cloth bundles kept there. From the first bundle, he produced a gold necklace and one ring; from the second bundle, three rings; and from the third bundle, a bormal and a ganthan, and handed them over to the police and the goldsmith in presence of the panch witnesses. Then, the goldsmith weighed the ornaments and confirmed that they were made of gold. Thereafter, Assistant Police Inspector Nagnath Khune seized the said gold ornaments and prepared a seizure panchnama at Exh. 32. Photographs marked as Article 'C' and 'D' were taken.

17. In the cross-examination, PW No. 5 has stated that he acts as a panch witness in several cases at the instance of the police. He does not know the registration number of the vehicle used for the said procedure. However, he has remained firm on the remaining aspects of his evidence.

18. PW No.7 Dattatraya Mohare - goldsmith has deposed that on 09/01/2025, he was contacted by Police Head Constable Hembade from Mohol Police Station and was called to examine certain gold ornaments. Accordingly, he went along with Police Head Constable Hembade to a place near a tin shed, where Assistant Police Inspector Khune, other police staff, panch witnesses and the accused were present.

The accused produced the ornaments from the said place, which were handed over to the police, and thereafter the same were given to him for examination. He examined the ornaments, weighed them on an electronic weighing scale and stated that they were made of gold and issued a receipt to that effect. He has also identified the accused before the Court.

19. PW No.9 Dayanand Hembade has deposed that, on receiving information from Assistant Police Inspector Khune that the accused had disclosed the place where the stolen ornaments were kept, he went to Shaikh Vasti, Mohol. The accused produced the stolen ornaments at the said place and that he was instructed to bring a goldsmith for verification. Accordingly, he brought PW No.7 Mohare to the spot. He has further stated that at the time of recovery, Assistant Police Inspector Khune, police staff, panch witnesses and the accused were present and he has identified the accused before the Court.

20. In the cross-examination, PW No.7 has stated that he cannot state the exact location of the spot and that he does not know the name of the accused. He has also admitted that the receipt issued by him is not produced on record and that he cannot state the exact weight of the ornaments. However, PW No.7 and 9 both have remained firm on the material aspects of recovery and identification.

21. PW No. 8 Purushottam Dhapte, Investigating Officer, has deposed that the initial investigation of the present offence was carried out by Police Inspector Pingle. Thereafter, as per the orders of the superior officers, the further investigation was handed over to him, and during the course of investigation, he recorded statements of some

witnesses. Further, he has stated that as the accused in the present offence was traced by Assistant Police Inspector Nagnath Khune of Local Crime Branch, Solapur Rural, the further investigation was transferred to him as per the orders of the superior officers. He has identified the accused before the Court. In the cross-examination, he remained firm on the material aspects of his evidence.

22. PW No. 10 Nagnath Khune Investigating Officer, has deposed that on 06/01/2025, he received credible information in Crime Register No.452/2024 of Mangalwedha Police Station that the accused Ashok @ Ashikarya Kale had committed the present offence. Accordingly, he traced and arrested the accused and prepared an arrest panchnama at Exh.41. He has further deposed that during interrogation, the accused made a statement leading to discovery that he had concealed the stolen property and would produce the same. Accordingly, memorandum panchnama at Exh. 24 was recorded in presence of panch witnesses PW No. 2 and 3. Thereafter, as per the statement of the accused, he along with the accused, panch witnesses and police staff proceeded in a government vehicle to a tin shed at Naikwadi Plot. The accused entered the shed and brought out cloth bundles. On opening one bundle, it was found that it contained an aluminium container with a steel box inside, from which the accused produced seven small cloth bundles containing gold ornaments. The accused stated that the said ornaments were stolen in various offences. The said ornaments were taken into custody in presence of panch witnesses. PW No.7 goldsmith examined the ornaments, confirmed that they were made of gold and weighed them. Thereafter, the ornaments produced by the

accused were seized and a memorandum panchnama at Exh. 25 was prepared. Further, he recorded the statements of panch witnesses, the goldsmith and police staff present at the time of panchnama and on completion of investigation, filed a charge-sheet against the accused.

23. In the cross-examination, PW No. 10 has stated that he does not know the house number of the place where the panchnama was conducted and that no documents regarding the said place were collected. He has admitted that there are other houses in the vicinity and the area is a residential locality. He has further admitted that the receipt given by PW No.7 regarding the ornaments being of gold is not produced on record. However, he has remained firm on the material aspects of recovery and investigation.

24. The learned Assistant Public Prosecutor argued that the evidence of the informant and his wife is consistent and reliable and clearly establishes the incident of theft. The spot panchnama shows that house breaking had taken place. It is also argued that, from the evidence of panch witnesses, the stolen property was recovered at the instance of the accused from the place shown by him. The evidence of the Investigating Officer establishes the chain of investigation, including tracing of the accused, his arrest, recording of his statement leading to discovery and subsequent recovery. The recovered ornaments were duly identified by the informant and the accused has failed to give any satisfactory explanation regarding the same. Therefore, The prosecution has proved the offence beyond reasonable doubt and therefore the accused be convicted.

25. The learned advocate for the accused argued that the evidence led by the prosecution is inconsistent, incomplete and doubtful in nature. There are material discrepancies in the testimony of the witnesses. The panch witnesses are not independent witnesses, as they are acquainted with the police and have acted as panch witnesses in several cases, and therefore their evidence cannot be relied upon. The recovery is not trustworthy, as the place from where the ornaments were allegedly recovered is not properly identified and no independent corroboration regarding the same is available on record. PW No.3 has not supported the prosecution. Due to such inconsistencies, the entire recovery becomes doubtful. The receipt issued by the goldsmith is not produced on record and the exact weight and details of the ornaments are not proved, which creates doubt about the identity of the seized property. Further, it is submitted that the prosecution has failed to prove the case beyond reasonable doubt and the evidence is only circumstantial and insufficient to connect the accused with the offence. Therefore, it is prayed that the accused be acquitted by giving benefit of doubt.

26. After going through the entire oral and documentary evidence on record and after considering the arguments of both sides, it is revealed that this case is not based on any direct eye-witness. The prosecution case mainly rests on circumstantial evidence and the recovery of stolen property. In such a situation, it is necessary to examine whether each circumstance is properly proved, whether all the circumstances fit together, and whether they form a complete chain pointing only towards the guilt of the accused. In this regard, the principles laid down by the Hon'ble Supreme Court in

Sharad Birdhichand Sarada v. State of Maharashtra [(1984) 4 SCC 116] are helpful. It has been held that, “*the chain of circumstantial evidence must be complete and should not be broken, and it must point only towards the guilt of the accused.*”

27. The evidence of the informant Santosh Bhuse and his wife shows that on 09/06/2024, they had locked their house and gone out. When they returned on 12/06/2024, they found that the door of the house was broken and the latch was forced open. The cupboards inside the house were open and the articles were lying scattered. They also noticed that their gold ornaments were missing. This condition of the house clearly indicates that it was not a simple disturbance, but a case of house breaking followed by theft.

28. On considering the evidence of PW No.1 and PW No.6, it revealed that both of them have supported each other on material aspects. There are no material contradictions in their evidence. Their version is consistent and is also supported by the contents of the First Information Report. They have stated that some local persons might have entered the house before them, or they are not sure about it. However, this is only a possibility. Mere possibility is not sufficient to create a reasonable doubt. Therefore, this does not affect the main version given by them.

29. The evidence of PW No. 4 also supports the prosecution case. He has stated about the broken door, damaged latch and scattered condition of the house. His evidence supports the version of the informant. Though, he has admitted that he knows the police, that by itself is not sufficient to discard his evidence.

30. Therefore, on overall consideration of the evidence, it clearly revealed that there was unauthorized entry into the house, the door was broken open and gold ornaments were stolen. Thus, the incident of house breaking and theft stands proved.

31. On perusal of the entire evidence on record, it appears that after the incident of theft is proved, the most important and decisive circumstance is the recovery of stolen property from the accused. Particularly in cases where there is no direct eye-witness, it appears that the link between the accused and the offence is mainly established through such recovery and therefore, this aspect requires careful scrutiny.

32. PW No.2 Nagesh Babar, PW No.5 Kisan Chaudhari and PW No.10 Nagnath Khune (Investigating Officer) have consistently deposed that the accused, while in their presence, stated that he would show the place where the stolen ornaments were concealed and thereafter led them to the spot and produced the ornaments from cloth bundles kept at the said place, which were seized in presence of panch witnesses. From the combined reading of their evidence, it clearly appears that the recovery was made at the instance of the accused and the entire process is natural, consistent and reliable.

33. In this regard, it is necessary to refer to Section 27 of the Indian Evidence Act, 1872, which reads as follows:

“Provided that, when any fact is deposed to as discovered in consequence 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, may be proved.”

34. The Hon’ble Supreme Court, in **State of Himachal Pradesh v. Jeet Singh [(1999) 4 SCC 370]**, has observed that, “*when an accused gives information leading to recovery of an article from a place known to him, such discovery becomes admissible in evidence and the fact discovered includes not only the object but also the place from which it is recovered and the knowledge of the accused.*”

35. Similarly, the Hon’ble Supreme Court in **Aftab Ahmad Ansari v. State of Uttaranchal [(2010) 2 SCC 583]** has held that, “*recovery of material objects at the instance of the accused is a strong incriminating circumstance and lends assurance to the prosecution case when proved by reliable evidence.*”

36. In this case, it appears that the ornaments were recovered from the place shown by the accused. Therefore, it reveals that such recovery is not merely a statement, but becomes an objective piece of evidence against the accused.

37. Moreover, Section 114 of the Indian Evidence Act, 1872 provides as follows:

“The Court may presume the existence of any fact which it thinks likely to have happened... Illustration (a): That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.”

38. In this case, it appears that the stolen ornaments were recovered within a short time and have been identified by the informant. However, it is clear that the accused has not been able to give any satisfactory explanation in regard to possession of seized gold ornaments. Therefore, the said presumption applies against him.

39. Further, Section 106 of the Indian Evidence Act, 1872 reads as follows:

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

40. The Hon’ble Supreme Court, in State of **Rajasthan v. Kashi Ram [(2006) 12 SCC 254]**, has held that *“when the accused fails to explain facts within his special knowledge, an adverse inference can be drawn against him.”*

41. In the present case, it appears that how the stolen ornaments came into possession of the accused is a fact within his special knowledge, but he has failed to explain about the same.

42. Further from the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, it appears that he has simply denied the allegations and has not offered any explanation regarding the recovery of gold ornaments. Mere denial by the accused cannot be treated as a valid explanation.

43. PW No.3 has not fully supported the prosecution case. However, it appears that his evidence does not affect the core of the prosecution case regarding recovery. The evidence of PW No.7, the

goldsmith, reveals that when he examined the seized ornaments, he found them to be made of gold. Thus, it appears that the recovery of stolen gold ornaments is not only proved, but also stands technically corroborated by independent evidence.

44. On overall consideration of the entire evidence, legal provisions and judicial pronouncements, it appears that the recovery of stolen property from the accused is not an isolated circumstance, but forms the central link in the chain of circumstances. The accused has led to the recovery, the ornaments have been identified, and no satisfactory explanation has been offered by the accused in regard to possession of stolen gold ornaments. Thus, it reveals that the chain of circumstances is complete and points only towards the guilt of the accused.

45. Therefore, based on the above discussion, it appears that there was illegal entry into the informant's house by committing house breaking. The consistent evidence of PW No.1 and PW No.6, along with the spot panchnama proved through PW No.4, clearly establishes the offence of house breaking. Therefore, it reveals that the offence punishable under Section 454 of the Indian Penal Code is proved against the accused. Hence, Point No.1 is answered in the 'affirmative'.

46. Further, it appears that the gold ornaments belonging to the informant were removed from his house during his absence without his consent. The recovery of the said gold ornaments from the accused and their identification clearly establishes that the theft was committed by the accused. In the absence of any explanation, the presumptions under Section 114 (Illustration 'a') and Section 106 of the Evidence Act applies

against the accused. Therefore, it reveals that the offence punishable under Section 380 of the Indian Penal Code is proved against the accused. Hence, Point No.3 is answered in the 'affirmative'.

47. However, as regards Point No.2, it appears that there is no clear and specific evidence on record to establish that the offence was committed specifically during night time. The incident has occurred within a span of days and the essential ingredient of "by night" is not proved. Therefore, it reveals that the offence punishable under Section 457 of the Indian Penal Code is not established against the accused. Hence, Point No.2 is answered in the 'negative'.

48. After holding the accused guilty for the offences punishable under Sections 454 and 380 of the Indian Penal Code, it is necessary to hear him on the question of sentence as required under Section 248(2) of the Code of Criminal Procedure, 1973. The said provision mandates that "*the Magistrate shall hear the accused on the question of sentence.*" Therefore, I am pausing here to hear the accused, his learned advocate and A.P.P. on the point of sentence.

Date : 30.03.2026

(V.K. Patil)
Judicial Magistrate First Class,
Mangalwedha.

49. Accordingly, the accused, his learned advocate and the learned Assistant Public Prosecutor were heard. It was argued on behalf of the accused that he belongs to a poor and economically weak family and he is the sole earning member. He has the responsibility of maintaining his aged parents, wife and minor children and therefore, he

may be extended the benefit of the Probation of Offenders Act, 1958. Per contra, the learned Assistant Public Prosecutor strongly opposed the said submission and argued that the accused had committed house breaking and theft of valuable gold ornaments from the house of the informant. Such offences not only affect an individual but also create a sense of insecurity in society. Therefore, leniency should not be shown in such cases.

50. On consideration of the rival submissions, it becomes necessary to examine whether the benefit of probation can be extended to the accused. Section 4 of the Probation of Offenders Act, 1958 provides that “*the Court may release the offender on probation of good conduct.*” However, such benefits are not automatic. While considering the same, the nature of the offence, its seriousness, its impact on society and the loss caused to the victim are required to be taken into account. In this case, the accused has committed house breaking and theft of valuable ornaments from the house of the informant. House breaking is a serious offence as it directly affects the sense of safety and security of a person in his own house. Therefore, this is not a fit case to extend the benefit of probation to the accused.

51. While determining the sentence, it is necessary to consider the punishment prescribed under Sections 454 and 380 of the Indian Penal Code. Section 454 provides for punishment up to three years, whereas Section 380 provides for punishment up to seven years along with fine. This itself indicates the seriousness of the offences. The accused belongs to a poor background and is the sole earning member of his family, which is a mitigating circumstance. However, the nature of the

offence, namely house breaking and theft, is a serious aggravating circumstance. Therefore, a balance is required to be struck between these factors so that the sentence is just and also acts as a deterrent. Hence, I am of view that, a sentence of rigorous imprisonment for two (2) years for each of the offences under Sections 454 and 380 of the Indian Penal Code, along with a fine of Rs.2,000/- each, would meet the ends of justice.

52. As regards whether the sentences are to run consecutively or concurrently, Section 31 of the Code of Criminal Procedure provides that “*the Court may direct that the punishments shall run concurrently.*” Since both the offences arise out of the same transaction, it appears appropriate to direct that the sentences shall run concurrently.

53. Further, considering the loss suffered by the victim, it is necessary to award compensation under Section 357A of the Code of Criminal Procedure, which provides that “the Court may direct that the whole or any part of the fine recovered be applied in compensating the victim.” In this case, though some of the stolen property has been recovered, the victim has suffered mental and emotional distress due to the incident and his sense of security has been affected. Therefore, in order to ensure victim-centric justice, it is just and proper to award compensation. Accordingly, out of the total fine amount of Rs.4,000/-, an amount of Rs.2,000/- is directed to be paid to the informant as compensation. Therefore, in the result, in answer to Point No. 4, I pass the following order :

ORDER

1]	The accused Ashikarya @ Ashok Chhparu Kale is hereby acquitted as per section 248 (1) of Criminal Procedure Code, 1973, for the commission of offence punishable under section 457 of Indian Penal Code, 1860.
2]	The accused Ashikarya @ Ashok Chhparu Kale is hereby convicted as per section 248 (2) of Criminal Procedure Code, 1973, for the commission of offence punishable under section 454 of Indian Penal Code, 1860 and he is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2000/- and in default, to further suffer rigorous imprisonment for one month.
3]	The accused Ashikarya @ Ashok Chhparu Kale is hereby convicted as per section 248 (2) of Criminal Procedure Code, 1973, for the commission of offence punishable under section 380 of Indian Penal Code, 1860 and he is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2000/- and in default, to further suffer rigorous imprisonment for one month.
4]	After the appeal period, as per section 357A of the Criminal Procedure Code, 1973, out of fine amount of Rs.4000/-, an amount of Rs.2000/- be paid as compensation to victim informant Mr. Santosh Bhuse, residing at Mangalwedha, Taluka - Mangalwedha, District - Solapur and remaining amount of Rs.2000/- be credited to State Government.

5]	Both the aforesaid substantive sentences shall run concurrently.
6]	Accused to surrender his bail bonds and his surety stands discharged.
7]	Set off from the date 06.01.2025 till today be given to the accused Ashok @ Ashikarya Chhaparu Kale as per section 428 of the Criminal Procedure Code, 1973.
8]	Interim custody of seized gold ornaments given to the informant, is confirmed after appeal period.
9]	No recommendation is made under section 357A of Criminal Procedure Code, 1973, to the District Legal Service Authority, Solapur.
10]	Copy of this judgment be given to the accused immediately, free of costs, as per section 363 (1) of the Criminal Procedure Code, 1973.
11]	Judgment is delivered as per section 353(1)(c) of the Criminal Procedure Code, 1973.

Date : 30.03.2026

(V.K. Patil)
Judicial Magistrate First Class,
Mangalwedha.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Judgment are same word for the word as per original Judgment.

Name of Steno : - Smt. S.M. Gaddam,
Court Name : - Smt. Vrushali K. Patil.
Judicial Magistrate F.C., Mangalwedha.
Date of decision. : - 30.03.2026
P.O. signed on :- 30.03.2026
Judgment uploaded on :- 30.03.2026