

MHST170000572020



Presented on : 29/01/2020

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Decided on : 09/07/2026

Duration : Yrs. Ms. Days.

: 06 : :05: :11:

IN THE COURT OF ADDITIONAL SESSIONS JUDGE VADUJ
AT : VADUJ, DISTRICT : SATARA.

(Presided over by Vidyadhar B. Kakatkar)

CRIMINAL APPEAL NO. 02/2020

EXHIBIT NO. 16

Siddheshwar Sukhdev Gharge,

Age: 29 Years, Occu.: Agriculture,

R/o- Kharshinge,

Taluka Khatav, Dist. Satara

... Appellant

Vs.

The State of Maharashtra

Through Pusegaon Police Station

... Respondent

Advocate for Appellant - :Shri. K.S. Khamkar

Advocate for Respondent - :Additional Public Prosecutor

J U D G M E N T

(Delivered on: 9th July, 2026)

The present appeal arises from the judgment and order of conviction dated 04/01/2020, passed by the learned Judicial Magistrate First Class, Vaduj, in Regular Criminal Case No. 191/2014.

The accused was charge-sheeted by the Pusegaon Police Station for the offence punishable under Section 379 of the Indian Penal Code.

2. Briefly stated, the prosecution case is that on 10/06/2014, at about 1.30 p.m., the accused visited the jewellery shop of the complainant, Eknath on motorcycle No. MH-01-AF-8783 where the complainant and his wife were present. The accused parked the motorcycle in front of the shop. On his request, the complainant showed him certain gold ornaments. The accused selected a gold chain and a ring and asked the complainant to prepare the bill, which amounted to Rs. 66,067. He then wore the chain and ring.

3. When the complainant demanded payment, the accused placed his helmet, motorcycle key, and a white pouch on the counter and said he would fetch the money from the motorcycle's dicky. He went outside, pretended to open the dicky, suddenly started the motorcycle, and fled towards Satara without making payment. Although the complainant attempted to chase him on his motorcycle, he could not apprehend the accused.

4. Thereafter, the complainant experienced a rise in blood pressure, sought medical treatment, and lodged a report with the police. Consequently, Pusegaon Police Station registered Crime No. 68/2014 for the offence punishable under Section 379 of the Indian Penal Code. The police arrested the accused, who was subsequently released on bail. Upon completion of the investigation, the Investigating Officer filed the charge-sheet. The learned trial Court framed a charge at Exhibit 16 for the offence punishable under Section 379 of the Indian Penal Code. The accused pleaded not guilty

and claimed trial.

5. The learned Trial Court, after appreciating the oral and documentary evidence and hearing both sides, convicted the accused and sentenced him to suffer rigorous imprisonment for 2 years and to pay fine of Rs.1000/- in default to suffer imprisonment for one month. Aggrieved thereby, the accused has preferred the present appeal on the following grounds.

1. The learned Trial Court failed to properly appreciate and scrutinise the oral and documentary evidence adduced by the prosecution.
2. The learned Trial Court failed to consider that the prosecution witnesses were interested witnesses and closely related to the complainant, and that their evidence required scrutiny.
3. The learned Trial Court erred in relying upon the prosecution evidence, which, according to the appellant, is unreliable, inconsistent, and unsupported by independent corroboration.
4. The learned Trial Court failed to appreciate that the First Information Report was lodged after an unexplained delay of about one month, rendering the prosecution case doubtful and an apparent afterthought.
5. The learned Trial Court failed to consider that the spot panchnama and the alleged recovery of the ornaments were not proved in accordance with law.
6. The learned Trial Court convicted the appellant under Section 379 of the Indian Penal Code without properly appreciating the facts and circumstances of the case and in the absence of reliable independent evidence.

7. The learned Trial Court failed to consider that the prosecution did not examine the Investigating Officer, thereby leaving several material aspects of the investigation unproved.
8. The learned Trial Court overlooked the material contradictions, inconsistencies, and omissions in the evidence of the prosecution witnesses.
9. The learned Trial Court failed to consider that the complainant did not produce any purchase bill or other documentary evidence to establish ownership or possession of the alleged stolen gold chain and ring.
10. The learned Trial Court failed to appreciate that the identification of the appellant was not conducted in accordance with law and, therefore, erroneously relied upon such identification while recording the conviction.

On these and other grounds urged during arguments, the appellant has prayed that the appeal be allowed, the impugned judgment and order of conviction be quashed and set aside, and that he be acquitted of the charge.

6. Having considered the prosecution case, the defence, the evidence on record, and the submissions of the learned counsel for the accused and the learned Additional Public Prosecutor, the following points arise for determination, and my findings thereon are recorded below.

Sr. No.	POINTS	FINDINGS
1	Has the prosecution proved that on 10/06/2014, at about 1.30 p.m., at Mauje	In the negative.

	Pusegaon, Taluka Khatav, District Satara, the accused dishonestly removed one gold chain and one gold ring from the jewellery shop of the complainant, without his consent and without paying the sale consideration, with the requisite dishonest intention, thereby committing an offence punishable under Section 379 of the Indian Penal Code?	
2	Which offence, if any, has the prosecution proved against the accused?	No any offence.
3	Whether the impugned judgment and order of conviction warrant interference?	In the affirmative.
3	What order?	The appeal is allowed as per the final order.

REASONS

As to Point Nos. 1 to 3: -

7. Before considering the evidence on record, it is necessary to bear in mind that, to establish the offence punishable under Section 379 of the Indian Penal Code, the prosecution must prove the following essential ingredients beyond reasonable doubt:

1. The movable property in question, namely the gold chain and the gold ring, was in the possession of the complainant.
2. The accused moved or took the said movable property out of the complainant's possession.
3. Such taking or moving of the property was without the complainant's consent.

4. The accused acted with dishonest intention, namely, with the intention of causing wrongful gain to himself or wrongful loss to the complainant.
5. The dishonest intention existed at the time the accused took the property.
6. The removal of the property amounted to "theft" within the meaning of Section 378 of the Indian Penal Code, thereby attracting punishment under Section 379.

8. Before advertng to the evidence, it is pertinent to note that the custody of the articles allegedly left by the accused at the complainant's shop was handed over to the complainant on an interim basis.

9. The prosecution examined PW-1 Vinayak Shankar Jadhav as a panch witness. According to him, the police prepared the spot panchnama of the complainant's jewellery shop in his presence. He also proved the seizure of the helmet, a bunch of keys, and a light sky-blue envelope allegedly left by the accused on the shop counter.

10. However, the panchnama was drawn on 29/07/2014, whereas the incident had occurred on 10/06/2014. Thus, for nearly one and a half months, the helmet, bunch of keys, and envelope remained in the custody of the complainant before their seizure by the police. In his cross-examination, PW-1 Vinayak stated that the police had called him to the complainant's house and that the panchnama was prepared there. This version is inconsistent with the contents of the panchnama, which records that it was prepared at the complainant's shop. The discrepancy creates doubt regarding the actual place where the panchnama was drawn.

11. This doubt assumes greater significance because the articles allegedly left by the accused remained in the complainant's custody from the date of the incident until the preparation of the panchnama. The inconsistency regarding the place of the panchnama diminish the evidentiary value of the seizure.

12. The prosecution examined the complainant, Eknath, as PW-2 at Exhibit 29. He deposed that on 10/06/2014, at about 1.00 to 1.15 p.m., the accused visited his jewellery shop and selected a gold chain and a gold ring worth Rs. 66,067. After wearing both ornaments, the accused placed his helmet and motorcycle key on the counter, stated that he would retrieve the money from his motorcycle, and then fled the scene on the motorcycle. PW-2 further stated that he suffered a rise in blood pressure after the incident and, therefore, lodged the report after about one month. He identified the accused before the Court. He also deposed that the stolen ornaments were subsequently recovered and returned to him. According to him, the accused had arrived on motorcycle No. MH-AF-8783. He further stated that he identified the accused during the test identification parade held in Satara Jail, and the memorandum thereof is at Exhibit 31.

13. In his cross-examination, PW-2 admitted that three to four customers were present in the shop at the relevant time, though no sale had taken place. He further admitted that the police station is situated within a three- to four-minute walk of his shop. He stated that he could not lodge the complaint on the date of the incident because he was admitted to the hospital of Dr Suresh Jadhav due to high blood pressure. However, he admitted that his wife was not ill

and that she could have lodged the report, but she did not. He further admitted that even after his discharge from the hospital, he had no difficulty in approaching the police after four to six days, yet no report was lodged. He also stated that he discussed the contents of the complaint with his wife before lodging it and that it was prepared based on her account.

14. PW-2 further admitted that he and his wife attended the test identification parade at Satara Jail in the company of three to four police personnel. According to him, they remained together throughout the proceedings and returned together. He also stated that the panchnama of the identification parade bore only his and his wife's signatures.

15. The principal challenge raised by the learned counsel for the accused concerns the inordinate delay in lodging the First Information Report. The alleged incident occurred on 10/06/2014, whereas the FIR was lodged only on 29/07/2014, after a delay of one month and nineteen days.

16. The explanation offered by PW-2 is that he experienced a rise in blood pressure and remained admitted to the hospital of Dr. Suresh Jadhav. PW-3, the complainant's wife, corroborated this by stating that her husband remained admitted for two days after the incident. Undoubtedly, mere delay in lodging an FIR is not fatal if the prosecution satisfactorily explains it. However, in the present case, the explanation does not withstand scrutiny. The complainant remained hospitalized for only two days. Despite his admission that the police station was barely three to four minutes away from his

shop and that he was physically capable of approaching the police within four to six days after his discharge, no report was lodged for nearly one month and nineteen days. Significantly, the complainant also admitted that his wife was in good health and could have immediately reported the matter to the police, but she failed to do so.

17. The complainant and his wife belong to a business family and would reasonably be expected to appreciate the need to promptly report an alleged theft of valuable gold ornaments. The prosecution has failed to provide any satisfactory explanation for the prolonged, unexplained delay in invoking criminal law.

18. In these circumstances, the unexplained delay of one month and nineteen days materially undermines the credibility of the prosecution case. The delay casts serious doubt on the truthfulness of the prosecution's version and renders the complainant's testimony unsafe to accept without substantial independent corroboration.

19. The evidentiary value of the identification parade is also seriously undermined. PW-2 deposed that the parade was conducted in the presence of himself, his wife, and three to four police personnel. He further admitted that he and his wife remained together throughout the proceedings. Significantly, he did not state that an Executive Magistrate supervised the identification parade. On the contrary, he stated that only he and his wife signed the panchnama prepared during the parade.

20. A test identification parade must be conducted in accordance with the prescribed procedure to ensure fairness and to eliminate the possibility of suggestion or tutoring. The evidence of

PW-2 casts serious doubt on whether the parade was conducted in a fair and lawful manner. The prosecution has failed to establish that the identification parade was held under the supervision of the Executive Magistrate or that the prescribed safeguards were observed. In these circumstances, the test identification parade loses much of its evidentiary value. Consequently, it would be unsafe to rely on such a defective identification parade to establish the identity of the accused.

21. The prosecution examined the complainant's wife as PW-3 at Exhibit 33. She substantially supported the prosecution's case. She deposed that the accused selected a gold chain and a gold ring, wore both ornaments, asked the complainant to prepare the bill, and placed his helmet and motorcycle key on the shop counter. Thereafter, on the pretext of fetching money from his motorcycle, he went outside and fled towards Satara. According to her, her husband attempted to chase the accused but was unable to apprehend him. She further stated that her husband's blood pressure rose after the incident and that he remained admitted to the hospital for two days, after which the complaint was lodged.

22. During her cross-examination, PW-3 stated that the motorcycle's registration number was MH-01-8783. She also admitted that Pusegaon Police Station is located near their shop. She denied the remaining suggestions put to her. However, a material inconsistency emerges from her evidence. While the complainant stated that the value of the ornaments was Rs. 66,067, PW-3 deposed that their value was Rs. 66,600/-. Though not decisive on its own, the discrepancy assumes significance when considered alongside the

other infirmities in the prosecution's case.

23. Lastly, the prosecution examined PW-4, Suryakant Baburao Parkhi, as a panch witness to the memorandum statement and the recovery at Exhibit 36. He deposed that on 21/08/2014, the police called him to the complainant's shop, where the complainant, his wife, the accused, another panch witness, and the police were present. According to him, the accused stated that he had concealed the stolen ornaments in his friend Mahendra Parte's house in Koparkhairane, Mumbai. The police recorded the memorandum at Exhibit 37. Thereafter, PW-4, the accused, the complainant, and the police proceeded to Koparkhairane. On reaching the house of Mahendra Parte, the accused entered the premises, produced the ornaments, and the police seized them under the recovery panchnama at Exhibit 38.

24. It is true that PW-4 was not cross-examined despite having sufficient opportunity. Nevertheless, the Court is duty-bound to scrutinise his testimony independently, as the burden always rests on the prosecution to establish its case beyond reasonable doubt. On such scrutiny, certain circumstances cast doubt on the recovery. PW-4 stated that the accused's memorandum statement was recorded at the complainant's shop. Ordinarily, such a statement is expected to be recorded at the police station or at the place of interrogation, in the presence of independent panch witnesses. The prosecution has not explained why the memorandum was recorded at the complainant's shop.

25. Further, PW-4 stated that he, the complainant, the accused, and the police proceeded to Koparkhairane. He did not state that the other panch witness accompanied them. More importantly, he did not depose that the accused himself led the police party to Mahendra Parte's house. His evidence is silent on how the police located that house or whether the accused guided them to the place of recovery. Another significant omission is that the prosecution failed to show the allegedly recovered gold chain and gold ring to PW-4 during his examination before the Court. Consequently, PW-4 did not identify the recovered articles as those allegedly seized under the recovery panchnama.

26. In these circumstances, despite the absence of cross-examination, the evidence relating to the memorandum and recovery does not inspire complete confidence. The unexplained circumstances surrounding the memorandum's recording, the uncertainty regarding the discovery, and the failure to identify the recovered articles before the Court substantially diminish the evidentiary value of the alleged recovery.

27. A significant lacuna in the prosecution case is its failure to examine the Investigating Officer. Consequently, the investigation in the present case has not been proved before the Court. The prosecution has therefore failed to explain the circumstances under which the accused came to be suspected and arrested.

28. There is no evidence showing that the accused was previously acquainted with the complainant or his wife. In such circumstances, a properly conducted test identification parade

assumes considerable importance. Admittedly, the accused was seen by the complainant and his wife before the complainant and his wife identified him in Court. As already observed, the prosecution has failed to prove that the test identification parade was conducted in accordance with law. Consequently, the dock identification of the accused loses substantial evidentiary value.

29. The incident allegedly occurred on 10/06/2014, whereas the complainant identified the accused before the Court only on 30/06/2018, nearly four years later. In the absence of a valid test identification parade, it would be unsafe to place implicit reliance on such a delayed dock identification.

30. The prosecution has also failed to establish the identity of the allegedly stolen ornaments. Although the prosecution claims that the gold chain and gold ring were recovered during the investigation, the relevant witnesses did not properly identify them before the Court.

31. Another circumstance that creates doubt is the alleged seizure of a faded sky-blue envelope. According to the prosecution, the accused had left the envelope on the shop counter along with his helmet and motorcycle key, and the police subsequently seized it. However, neither the complainant nor his wife referred to this envelope in their examination-in-chief, despite its specific mention in the First Information Report. This omission further weakens the prosecution's case and casts doubt on its version of the articles allegedly left behind by the accused.

32. Viewed cumulatively, these omissions and deficiencies create a serious gap in the chain of circumstances the prosecution sought to establish. The prosecution has thus failed to prove the guilt of the accused beyond reasonable doubt.

33. Another significant omission is the prosecution's failure to examine Mahendra Parte, in whose house the stolen ornaments were allegedly concealed and from which they were allegedly recovered. Mahendra Parte was a material witness to the alleged recovery. His non-examination, without any explanation, invites an adverse inference against the prosecution and weakens the evidence relating to the recovery.

34. Further, according to the prosecution, the accused made the disclosure statement in the complainant's shop in the presence of the complainant and his wife. If that were so, the complainant and PW-3 ought to have deposed to the making of such disclosure in their oral evidence. Significantly, neither of them made any reference to the alleged disclosure statement.

35. Moreover, the memorandum statement itself does not clearly disclose the exact place where it was recorded. This omission assumes importance in view of the inconsistent evidence regarding the place where the statement was recorded.

36. These omissions are material, not merely procedural. When considered alongside the other infirmities in the prosecution's evidence, they seriously undermine the credibility of the alleged discovery and recovery and create a reasonable doubt about the prosecution's case.

37. I have gone through the impugned judgment and order. The learned Trial Court also erred in placing undue reliance on the alleged recovery of the ornaments under Section 27 of the Indian Evidence Act. According to the prosecution, the accused made a disclosure statement, pursuant to which the gold chain and ring were recovered from the house of one Mahendra Parte at Koperkhairane, Mumbai. However, as discussed above there are material discrepancy in the evidence regarding recovery of stolen articles. Notwithstanding these material deficiencies, the learned Trial Court accepted the alleged recovery as fully proved and treated it as a significant incriminating circumstance without subjecting the evidence to the strict scrutiny mandated by law.

38. The learned Trial Court further erred in treating the alleged recovery as conclusive proof that the accused had committed the theft. The evidentiary scope of Section 27 of the Indian Evidence Act is limited. It renders admissible only that portion of the information supplied by an accused in police custody which distinctly relates to the fact thereby discovered. A discovery under Section 27 is merely one incriminating circumstance and cannot, by itself, relieve the prosecution of its obligation to establish every essential ingredient of the offence beyond reasonable doubt.

39. The impugned judgment fails to examine whether the prosecution proved the foundational facts necessary to invoke Section 27 or whether the alleged discovery, viewed in the light of the other evidence on record, was sufficient to connect the accused with the commission of the offence. Instead, the learned Trial Court treated the alleged recovery as determinative of the accused's guilt,

while overlooking serious infirmities in the prosecution case, including the unexplained delay in lodging the First Information Report, the doubtful test identification parade, the failure to examine the Investigating Officer and Mahendra Parte, deficiencies in proving the memorandum and recovery, and the absence of satisfactory proof identifying the recovered ornaments as the stolen property. Consequently, the findings based on the alleged recovery cannot be sustained.

40. The defence's failure to specifically contend that no theft occurred or that the accused did not visit the complainant's shop does not absolve the prosecution of its burden to prove its case beyond reasonable doubt. The burden of proof always rests with the prosecution and never shifts to the accused. A conviction cannot rest on omissions in cross-examination when the prosecution's evidence itself suffers from material inconsistencies, omissions, and legal infirmities. The prosecution must stand or fall on the strength of its own evidence and not on the perceived weakness of the defence.

41. The accused has filed a plea at Exhibit 15, stating that he does not claim the seized muddemal property. The gold chain and gold ring were already handed over to the complainant on interim custody during the pendency of the trial. No other person has laid any claim to the said property. In these circumstances, the interim custody of the said ornaments deserves to be confirmed in favour of the complainant.

42. For the reasons discussed above, the prosecution has failed to prove beyond reasonable doubt that the accused committed the

offence punishable under Section 379 of the Indian Penal Code. The prosecution has also failed to establish the commission of any other offence against the accused. Accordingly, Points Nos. 1 and 2 are answered in the negative.

43. The learned Trial Court failed to appreciate the evidence in its proper perspective and recorded a conviction despite several material infirmities in the prosecution case. Accordingly, the impugned judgment and order of conviction warrant interference by this Court. Accordingly, Point No. 3 is answered in the affirmative. I proceed to pass the following order:

ORDER

1. The appeal is allowed.
2. The judgment and order dated 04/01/2020 passed by the learned Judicial Magistrate First Class, Vaduj, in Regular Criminal Case No. 191/2014, convicting the appellant for the offence punishable under Section 379 of the Indian Penal Code, is hereby quashed and set aside.
3. The appellant–accused Siddheshwar Sukhdeo Gharge is acquitted of the offence punishable under Section 379 of the Indian Penal Code.
4. The appellant–accused shall furnish a personal recognisance bond in the sum of Rs. 50,000/- with one solvent surety in the like amount in compliance with Section 437A of the Code of Criminal Procedure.
5. The gold chain and gold ring having already been handed over to the complainant on interim custody, the interim custody of the said ornaments is made absolute in favour of the complainant, subject to the

result of any further proceedings, if any.

6. The fine amount, if deposited by the appellant/accused pursuant to the impugned judgment and order, shall be refunded to him after the expiry of the appeal period.
7. The black-coloured Honda Shine motorcycle bearing registration No. MH-01-AF-8783, having blue stripes on the petrol tank and side panels, Chassis No. ME4JC366K78051795, and Engine No. JC36E9112262, seized in connection with the present offence, is already given to the applicant/accused on interim custody, the interim custody of the such motorcycle is made absolute in favour of the applicant/accused subject to the result of any further proceedings, if any.
8. The remaining muddemal articles being worthless be destroyed after the expiry of appeal period.
9. The Record and Proceedings be transmitted to the learned Trial Court forthwith along with a copy of this judgment.

Place : Vaduj
Date : 09/07/2026

(Vidyadhar B. Kakatkar)
Additional Sessions Judge, Vaduj

CERTIFICATE

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

(S.A. Pawar)
Stenographer