IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.684 OF 2018

Farid Khan s/o Feroj Khan
Age 30 years, Occ. Business,
R/o Beed By Pass, Aurangabad
(Presently at Yerwada Jail) … **APPELLANT**

VERSUS

The State of Maharashtra
(Copy to be served upon the
Public Prosecutor at the
Hon'ble High Court of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Shri Satej S. Jadhav, Advocate holding for
Shri Chaitanya C. Deshpande, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.685 OF 2018

Numan Khan s/o Abdul Kayyum Khan
Age 28 years, Occ. Business,
R/o Asefiya Colony, Aurangabad
(Presently inJail) … **APPELLANT**

VERSUS

The State of Maharashtra
(Copy to be served upon the

Public Prosecutor at the
Hon'ble High Court of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Shri Satej S. Jadhav, Advocate holding for
Shri Zia-ul-Mustafa, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.893 OF 2018

Juber Khan s/o Shabbir Khan
Age 27 years, Occ. Business,
R/o Islampura, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon … **APPELLANT**

VERSUS

The State of Maharashtra
through Police Station Officer,
Begumpura Police Station,
Aurangabad, Dist. Aurangabad
(Copy to be served on Additional
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad) … **RESPONDENT**

.....

Shri Satej S. Jadhav, Advocate holding for
Shri Sanket N. Suryawanshi, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.894 OF 2018

Habib Khaled s/o Habib Mohammad
Age 28 years, Occ. Business,
R/o Yunus Colony, Katkat Gate,
Aurangabad … **APPELLANT**

VERSUS

The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Shri Satej S. Jadhav, Advocate holding for
Shri S.D. Nagode, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.1011 OF 2022

Syed Najer Ali s/o Sayed Naser Ali
Age 40 years, Occ. Convict,
Through P.S.O., Begumpura,
Aurangabad … **APPELLANT**

VERSUS

The State of Maharashtra
Through P.S.O., Begumpura,
Aurangabad
(Copy to be served upon the
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad) … **RESPONDENT**

.....

Shri R.A. Jaiswal, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.319 OF 2019

Syed Jahir @ Shera s/o Bakhar Qureshi,
Age 33 years, Occ. Business,
R/o Near Toteki Masjid, Chelipura,
Tq. & Dist. Aurangabad … **APPELLANT**

VERSUS

The State of Maharashtra
At the instance of Begumpura
Police, Aurangabad … **RESPONDENT**

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Shri A.K. Bhosale, Advocate for appellant
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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WITH

CRIMINAL APPEAL NO.588 OF 2023

Imran Mehandi @ Dilawar s/o
Shaikh Nasir, Age 48 years,
Occu. Servicing Centre,
Asefiya Colony, Aurangabad … **APPELLANT**

VERSUS

The State of Maharashtra
Through the Police Inspector,
Begumpura Police Station,
Aurangabad … **RESPONDENT**

.....

Shri Satej S. Jadhav, Advocate holding for
Shri Chaitanya C. Deshpande, Advocate for appellant (appointed)
Shri S.D. Ghayal, Addl. P.P. with
Shri B.B. Bhise, Addl. P.P. for respondent, assisted by
Shri P.D. Bachate, Advocate with S/Shri A.D. Khot &
Azeem Qureshi, Advocates for complainant.

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 9th MAY, 2024

Date of pronouncing judgment : 11th JUNE, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

The challenge in this group of 7 Criminal Appeals is to a judgment and order of conviction and consequential sentence, dated 27/8/2018, passed by a Court constituted for trial of offences under the Maharashtra Control of Organised Crimes, 1999 (learned Special Judge (MCOC), Aurangabad) (Trial Court) in Special Case No.17/2012 (MCOC). Eleven accused were tried for offences punishable under Sections 302, 365, 120-B r/w 34 of the Indian Penal Code read with Sections 3(1)(ii) [ought to have been 3(1)(i)], 3(2) and 3(4) of the

Maharashtra Control of Organised Crime Act, 1999 (MCOCA for short) read with Sections 3, 4 r/w 25 and 27 of the Arms Act and Section 135 of the Maharashtra Police Act. Eight of them (accused Nos.1 to 7 and 9) have been convicted. The rest have been acquitted. Eight out of nine convicts have preferred the present appeals. For better appreciation, the order of conviction and consequential sentence, impugned in these appeals, is reproduced below:

1) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan, [7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 302 read with 34 of The Indian Penal Code and are sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- [Rupees Five Thousand] each in default to suffer rigorous imprisonment for six months.

2) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan,

[7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 364 read with 34 of The Indian Penal Code and are sentenced to suffer rigorous imprisonment for life each and to pay a fine of Rs.5,000/- [Rupees Five Thousand] each, in default to suffer rigorous imprisonment for six months.

3) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan, [7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 201 read with 34 of The Indian Penal Code and are sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- [Rupees One Thousand] each in default to suffer rigorous imprisonment for six months.

4) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan, [7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 3(1)(ii) of The

Maharashtra Control of Organised Crime Act and are sentenced to suffer rigorous imprisonment for life each and to pay a fine of Rs.5,00,000/- [Rupees Five Lacs] each, in default to suffer rigorous imprisonment for three years.

5) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan, [7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 3(2) of The Maharashtra Control of Organised Crime Act and are sentenced to suffer rigorous imprisonment for life each and to pay a fine of Rs.5,00,000/- [Rupees Five Lacs] each, in default to suffer rigorous imprisonment for three years.

6) The accused Nos.[1] Imran Mehandi @ Dilawar s/o Shaikh Nasir, [2] Syed Najer Ali s/o Syed Naser Ali, [3] Shaikh Imran @ Sultan s/o Shaikh Saifoddin, [4] Syed Jahir @ Shera s/o Bakhar Qureshi, [5] Numan Khan s/o Abdul Kayyum Khan, [6] Juber Khan s/o Shabbir Khan, [7] Habib Khaled s/o Habib Mohammad and [9] Farid Khan s/o Feroj Khan are convicted, under Section 235(2) of The Code of Criminal Procedure, of the offence punishable under Section 3(4) of The Maharashtra Control of Organised Crime Act and are sentenced to suffer rigorous imprisonment for five years

and to pay a fine of Rs.5,00,000/- [Rupees Five Lacs] each, in default to suffer rigorous imprisonment for three years.

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15) All the sentences shall run concurrently.

2. The facts in brief, giving rise to the present appeals are as follows :

P.W.34 Halim (informant) was the brother of Salim Qureshi (deceased). Both Halim and Salim were twins. They had one more brother Hamid. Salim (deceased) was financially better than his two other brothers. He was owner of "Roxy Theatre", Aurangabad. He was a politician as well. He was Ex-Corporator from Asefiya Colony Ward, of Aurangabad Municipal Corporation. Deceased Salim had two wives. His second marriage was interfaith. His second wife was Hindu by religion. Since the Municipal Corporation Ward of Asefiya Colony was reserved for Women, his second wife (Jyoti Khillare – Salma) was elected as a representative of the said Ward for a term of 5 years commencing from 2010.

3. It is also the case of the prosecution that, deceased

Salim was a money lender. There was a dispute between him and erstwhile owner of Roxy Theatre. He would operate his business from the theatre premises. He used to be there until late night everyday. P.W.28 Arshad, nephew of deceased Salim would look after accounts of the business of deceased Salim. He used to be at the office until 11.00 p.m.

4. It was 4 March 2012, the informant was with Salim in his (Salim's) office. Bismilla and Fahim (P.W.22) joined them by 11.00 p.m. Deceased Salim had asked for meals from his residence. Arshad (P.W.28) brought the same to the office. Salim, Halim, Bismilla and Fahim (P.W.22) took the meals. Little past 12.00 midnight, Salim Qureshi, Bismilla and Fahim left the office in Salim's car. Bismilla and Fahim alighted at Town Hall. Salim proceeded for his house in Asefiya Colony in his Wagon-R Car No.MH-20/BC-6365. Halim then closed the office and went his home.

5. Halim (informant) received a phone call of Arshad (P.W.28) by 3.00 a.m. He told Halim that Salim did not return home. Halim (informant) and Arhsad, therefore, went to Town Hall. Jaker (P.W.24), Bismilla and Fahim (P.W.22) met them there. They told Halim (informant) that, after having dropped

Bismilla and Fahim (P.W.22) at Town Hall, Salim went to his home in Asefiya Colony. Halim (informant), therefore, made a call to his nephew Salman (P.W.32), son of second wife of deceased Salim. Salman (P.W.32) told Halim (informant) his father to have not come home. Halim (informant) learnt that, one vehicle passed by Town Hall, fast. He also told them to have heard some noise emanating from the car. Halim (informant), therefore, went to that place to find spectacle of deceased Salim lying on the road. The spectacle was in broken condition. He also learnt that, one Omni Van had also passed fast therefrom. There were 3-4 persons in the Van.

6. Halim (informant) and others took search for Salim, but in vain. Halim, therefore, approached Begumpura Police Station and lodged First Information Report (F.I.R. - Exh.292), alleging his brother Salim to have been abducted. It was reported to the police that, there was a dispute between Salim and one Shaikh Javed Shaikh Chand over Roxy Theatre. It was a big deal. Shaikh Javed was resident of Hyderabad. He along with 2-3 persons had visited Aurangabad. It was further informed to the police that bullocks of one Rakesh, resident of Samta Nagar had gone missing. An F.I.R. was registered in relation thereto against one Jamil, Azhar and Mujahid, residents

of Sillekhana, Aurangabad. The said matter was settled by deceased Salim at his office. Moreover, Salim had accompanied Bismilla and Fahim (P.W.22) while leaving his office on the fateful night.

In short, Halim (informant) had suspected Salim to have been abducted by someone of the aforesaid suspects named in the F.I.R.

7. Based on the F.I.R. (Exh.292), a crime vide C.R. No.19/2012 was registered at Begumpura Police Station, Aurangabad for the offence punishable under Section 363 r/w 34 of the Indian Penal Code. Shri S.D. Shaikh (P.W.57), Police Inspector was initially entrusted with the investigation of the crime. During the investigation, the Wagon-R car of the deceased Salim came to be seized on 6/3/2012 from the place at Tapadia Ground. While the Wagon-R car of the deceased was seized, it was found to have been soiled from outside. Soil particles on the car were seized. The car was searched. Adhesive tapes were seized from the car. The Crime Branch officials were also making investigation on the directions of the Commissioner of Police. It appears that, on 10 March, the Crime Branch officials arrested appellant Imran Mehandi (original

accused No.1) and some other suspects. They were immediately handed over to the custody of Shri S.D. Shaikh (investigating officer). He arrested appellants Imran Mehandi, Najer Ali, Faridkhan and Numan Khan and other accused namely Shaikh Imran @ Sultan s/o Shaikh Saifoddin and Mohammad Shoeb.

8. On the morning of 11/3/2012, appellant Imran Mehandi expressed his desire to make a disclosure statement. P.W.57 Shri S.D. Shaikh, therefore, secured presence of two panchas. A Videographer (P.W.33 Ramdas) too was summoned. Appellant Imran Mehandi informed to have had abducted Salim from Town Hall in his own (Salim's) car. He (Imran Mehandi) accompanied by his associates (appellants herein and others) at that time. They took him to an isolated place at Padegaon – Mitmita area. Imran Mehandi assaulted Salim with knife. His associates dug a pit. Salim was buried therein after having made further assaults on him with knife. The disclosure statement made by Imran Mehandi was recorded in the presence of two panchas. A video recording thereof was also made. Shri S.D. Shaikh (P.W.57) had secured presence of Medical Officer Dr. Kailas (P.W.36) and Naib Tahsildar-cum-Executive Magistrate- Gangadhar (P.W.29). They arrived. The appellant Imran Mehandi led all of them to an open field at

Padegaon area and pointed out the place whereat Salim was buried. From the place pointed out by appellant Imran Mehandi, a dead body of Salim was exhumed. It was in highly de-composed condition. On the spot, inquest panchanama (Exh.123) and post mortem examination (Exh.303) were conducted. It was found that, hands and legs of the deceased were tied with adhesive tapes. A soil and those tapes were taken charge of under panchanamas. Halim (informant) identified the dead body to be that of Salim. Thereafter Sections 302 and 201 of the Indian Penal Code came to be invoked.

9. Thereafter the investigation was assigned to P.I. Shri Telure (P.W.60). During further interrogation of appellant Imran Mehandi, involvement of his some other associates was surfaced. They were arrested one after the other. The appellant Imran Mehandi again made a disclosure statement, pursuant to which a knife used in commission of the crime was recovered from a Nallah. It was seized under the panchanama (Exh.171 & 172). He made further disclosure statement (Exh.163) to have burnt the clothes of deceased Salim along with his belt and shoes at a particular place. He then led the police and panchas to the place wherefrom a strip of shoes, ash of clothes and half burnt belt came to be seized.

Moreover, the appellant Imran Mehandi did not like the deceased to have indulged in money lending. According to him, it was against the Islamic tenets. During the Municipal elections, wherein the second wife of the deceased was contesting from Asefiya Colony, hoardings were put up with a view to appeal the voters to not vote the one who indulged in money lending. Such appeal was said to have been made by appellant Imran Mehandi. During further investigation it was revealed that, appellant Imran Mehandi had criminal history. Number of crimes were registered against him and his associates. A proposal (Exh.527) was, therefore, put up for invoking provisions of the MCOCA. During investigation it was revealed that the crime was committed over supremacy in Asefiya Colony. One of the motives behind commission of the crime was to get Rs.50 Lakhs from the deceased. As such, it was found that it was an organised crime committed by an organised crime syndicate headed by appellant Imran Mehandi, and some of them assisted the organised crime syndicate in commission of the organised crime. The Commissioner of Police sanctioned the proposal (Exh.527). The investigation, therefore, came to be assigned to Shri Bahure (P.W.61), an officer in the rank of Dy. Superintendent of Police/ Assistant Commissioner of

Police. Even before invoking MCOCA, residential houses of some of the appellants including the appellant Imran Mehandi and his work place as well were searched.

Instruments like Tikav (pick axe), Spade etc. used in digging up a pit for burial of Salim were seized. All the seized articles were sent to CFSL for analysis and report.

During investigation, Call Data Records (CDRs) of certain cell phone numbers were obtained from Cellular Companies like Airtel, Reliance etc. During further investigation, appellants Najer Ali, Syed Jahir and Juber Khan expressed their desire to make confession. They were, therefore, produced before P.W.49 Somnath Gharge, an officer in the rank of S.P. He was Deputy Commissioner of Police, Headquarters. He recorded their confessional statements.

The C.A. reports were received. Adhesive tapes with which the hands and legs of the deceased were tied, matched with the adhesives tapes seized from the car. Moreover, the C.A. reports indicate the soil seized from the place whereat the deceased was buried and the remains of the soil found on the car matched. Upon completion of the investigation of the crime,

the proposed charge sheet (police papers) was submitted to P.W.13 Javed Ahmed, an officer in the rank of Additional Director General of Police, for according sanction for prosecution of the appellants and others for offences under the MCOCA. He accorded sanction (Exh.200). The charge sheet thereafter came to be filed before the Trial Court.

10. The Trial Court, framed the Charge (Exh.81). The appellants and others (acquitted accused) pleaded not guilty. Their defence was of false implication.

11. The prosecution, to establish the charge, examined 61 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence before it, convicted and consequently sentenced the appellants as stated above.

12. Heard. Learned Advocates appearing for the appellants would submit that, the case was entirely based on circumstantial evidence. They, therefore, relied on the judgment of the Apex Court in case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)** to submit that the circumstances relied on have not been proved as has been expected in view of the observations of the Apex Court in Sharad

Sarda's case (supra). According to the learned Advocates, the prosecution miserably failed to prove motive. According to them, motive plays an important role in case of circumstantial evidence. When the prosecution failed to prove motive, its case falls flat. Shri Satej Jadhav, learned Advocate representing the appellants in Criminal Appeal Nos.684/2018, 685/2018, 893/2018, 894/2018 and 588/2023 would submit that, there was no concrete evidence to indicate that deceased Salim was in fact abducted on the intervening night of 4 and 5 of March 2012. The evidence as regards last seen together has not been proved. Almost all the witnesses examined on behalf of the prosecution were either interested in the outcome of the prosecution case or were closely related to deceased Salim Qureshi, or belonged to his community. Our attention was drawn to arrest panchanamas (Exhs.469 and 473) of appellant Syed Najer and Shoeb (acquitted accused) to indicate overwriting therein, suggesting figure 302 to have been scored out. Learned Advocate meant to say that, before appellant Imran Mehandi made the alleged disclosure statement, pursuant to which the investigating agency allegedly came to know for the first time that the deceased Salim was murdered, he was very much in the know of Salim Qureshi to have been murdered. They were also in the know of the place whereat the deceased was buried. The alleged disclosure

statement (Exh.272) was, therefore, irrelevant and not admissible in evidence.

In support of their submissions, the learned Advocates placed strong reliance on the judgments of the Apex Court in case of **Boby Vs. State of Kerala (Criminal Appeal 1439/2009, decided on 12/1/2023) and Ravishankar Vs. State of Chhatisgarh (Criminal Appeal No.3869/2023, decided on 10/4/2024)**. The learned Advocate then adverted our attention to the Compact Disc (CD, Exh.206) containing videography of the alleged disclosure statement. The learned Advocate urged this Court to view the CD as it contains the appellant Imran Mehandi to have not made any disclosure statement. According to him, the CD simply indicates a slight movement of his lips. He would further submit that, the recording in the CD indicates that, one of the police officials was prompting the appellant Imran Mehandi to point out the place whereat a piece of tile was kept for identification of the place of burial of Salim. According to the learned Advocate, the simultaneous investigation was on by the Crime Branch official. Appellant Imran Mehandi and some of the other appellants were arrested by the Crime Branch official. The officer who took them into custody has not been examined. What had transpired during their detention by the Crime Branch official is not known. The same caused a great prejudice to the

appellants. According to the learned Advocate, the factum of murder of Salim Qureshi and his burial at a particular place had already been known to the Crime Branch officials. The same was communicated to P.W.57 Shri S.D. Shaikh, who simply made a farce of recording a disclosure statement of appellant Imran Mehandi to indicate that it was for the first time the police came to know about the murder of Salim Qureshi. Written notes of submissions have also been placed on record with brief reference to the evidence of each and every relevant witness and loopholes therein. Our attention was also drawn to the evidence of Naib Tahsildar and the Medical Officer. The evidence of Medical Officer indicates that, P.W.57 Shri S.D. Shaikh had been to him with a letter of requisition of his services. According to said witness, P.W.57 Shri S.D. Shaikh had been to him by 11.00 in the morning on the day on which appellant Imran Mehandi allegedly made a disclosure statement. Our attention was then adverted to the letter written by P.W.57 Shri S.D. Shaikh, wherein it has been mentioned that a murder took place and his services were required for on the spot post mortem examination. According to learned Advocate, this fact goes a long way to indicate the investigating officer to have already been in the know of the murder of Salim Qureshi before the disclosure statement allegedly made by appellant Imran

Mehandi. According to learned Advocate, the so called disclosure statement, made by Imran Mehandi, contained in the CD could not be heard in open Court i.e. even before the Trial Court and this Court as well.

13. Turning to the evidence of P.W.41 Shaikh Bashir, the learned Advocate would submit that, he was a got up witness so as to make out a case of last seen together theory. The statement of this witness was recorded 8 days after the alleged incident. It is unnatural that this witness on his own goes to the police station and even the Court to have his statements recorded. The conduct of the said witness was unnatural since he did not inform his family members. According to the learned Advocate, the deceased had number of enemies. Name of none of the appellants figured in the F.I.R. The F.I.R. was lodged against some others. Even some of the prosecution witnesses were detained, suspecting their involvement in the crime in question.

14. Turning to the provisions of the MCOCA, the learned Advocate would submit that, although the confessional statements are admissible in evidence, their probative value needs to be proved. The learned Advocate pointed out

inconsistency between two of the three confessional statements. The inconsistency brought to our notice pertains to the motive behind commission of the offence. In one of the confessional statements, it was stated that, sum of Rs.50 Lakhs were to be extorted from the deceased while the other confessional statement indicates that the deceased exploited poor persons and even misbehaved with Maulana of the Masjid. The learned Advocate would further submit that, two of the three appellants who allegedly made confessional statements have immediately retracted therefrom. According to him, there is no evidence to corroborate the confessional statements. The appellant Juber Khan who confessed, stated before the learned Chief Judicial Magistrate on his production, his statement to have had already been recorded on 9 March under duress. It was also pointed out that, one of the appellants who made confessional statement, was produced before the learned Chief Judicial Magistrate very late while the Statute mandates the production of the person making the confession before the Magistrate, forthwith.

The learned Advocate further submits that, forthwith means without unreasonable delay. The appellant Najer Ali was produced before the learned Chief Judicial Magistrate on 14 March instead of 13. As such, there was a delay of over 24 hours in his production before the learned Chief Judicial

Magistrate. It was also pointed out that, the disclosure statement bears the words "U.P.". The appellant Imran Mehandi, in his examination under section 313 of the Cr.P.C. and even during cross-examination of the concerned witnesses, it was suggested that "U.P." means "Under Pressure". The same suggests that the pressure was exerted to obtain his statement under Section 27 of the Evidence Act. According to learned Advocate, many of the witnesses did not stand by the prosecution. Some irrelevant evidence has been adduced. There is no evidence to indicate who was the owner of the Royal Servicing Centre, wherefrom certain articles allegedly used for digging up a pit were seized. The learned Advocate would further submit that, there was a gap of 30 minutes between the two visuals appearing in the video shooting. He would further submit that, the knife recovered pursuant to the alleged disclosure statement made by the appellant Imran Mehandi did not seem to have borne blood stains when it was seized. The knife was recovered from a Nallah. It was in water for some days. How come the C.A. report indicates the knife to have borne blood stains. The learned Advocate meant to say that the evidence has been fabricated and tampered with. On the question of application of MCOCA is concerned, the learned Advocate would submit that, the Special Court had passed an order directing the investigating

officer to invoke the provisions of MCOCA. The same indicates non-application of mind by the investigating officer. Our attention was drawn to the previous crimes registered against the appellants and others, relied upon to invoke the provisions of MCOCA. According to the learned Advocate, by no stretch of imagination, the offence in question could be termed to be an organised crime.

15. In short, according to the learned Advocates representing the appellants, the evidence has been fabricated so as to suit the prosecution case. The offence/s could not be said to have been proved beyond reasonable doubt. The learned Advocates ultimately urged for allowing the Appeals.

16. The learned A.P.P. and learned Advocate representing the informant would, on the other hand, submit that, the case of abduction is based on direct evidence. Evidence of P.W.30 Ferozkhan and P.W.41 Sk. Bashir was relied on in this regard. According to them, when the prosecution proved the deceased Salim Qureshi to have been abducted by the appellant Imran Mehandi and the rest of the appellants, it was, therefore, for them, to explain what they did with the deceased. The learned A.P.P. relied on Section 106 of the Evidence Act in this

regard. According to them, the dead body of Salim Qureshi was found to have been buried. The said fact came to the knowledge of the investigating machinery for the first time when the appellant Imran Mehandi made a disclosure statement and led the police authorities to the place whereat the dead body of Salim Qureshi was buried. According to learned Advocates, the hands and legs of the deceased were found to have been tied with adhesive tapes. According to them, the deceased would use Wagon-R car. The car was seized. During its search, three adhesive tapes were found. The C.A. report (Exh.555) indicates that the adhesive tapes which were seized during investigation, matched with each other in respect of hue, appearance and physico-thermal characteristics. According to them, there is ample evidence to indicate the deceased was abducted in his car itself. The car was later on abandoned. The same was evident from the disclosure statement made by appellant Jahir. According to them, although some of the witnesses did not stand by the prosecution, the evidence of the investigating officer could not be disbelieved. The place wherefrom the deceased was abducted, was identified since the spectacle of the deceased was found thereat. The spectacle has been identified by his real brothers and other close relatives. The prosecution did not have any reason to plant the spectacle at a particular place, since

when it was found and seized, the involvement of the appellants in the crime in question had even not come to light. According to learned A.P.P., the appellants had a strong motive to commit the crime. A 72 year old witness, who was looking after the affairs of the Masjid was examined. There was no reason to disbelieve his evidence, which indicates the deceased wanted to collect the donation for Masjid and appropriate the same for himself. He had even collected the same. The appellant Imran Mehandi did not like the same. Our attention was then drawn to evidence of P.W.24 Sk. Jakir, P.W.25 Sk. Abdul Sattar and P.W.32 Salman to indicate the deceased was involved in money lending business. According to them, there was even evidence to indicate that the appellant Imran Mehandi wanted to hold supremacy over deceased Salim Qureshi in the area of Asefiya Colony. Our attention then was drawn to the evidence of P.W.22 Sk. Fahim, P.W.28 Arshad and P.W.34 Halim to indicate the witnesses to have had seen the vehicles going fast from Town Hall area.

17. The learned A.P.P. then adverted our attention to the confessional statements of the appellants Juber, Syed Jahir and Najer to submit that those have been recorded in compliance with the mandate of Section 18 of the MCOCA and the relevant rules thereunder. According to him, the confessional statement

is a substantive piece of evidence. A reliance has been placed on the following judgments of Hon'ble Supreme Court of India:

(1) Mohd. Farooq Abdul Gafur & anr. Vs. State of Maharashtra etc. etc. (2010) 14 SCC 641

(2) State of Tamil Nadu Vs. Nalini (1999) 5 SCC 253.

18. According to learned A.P.P., if there is an acquittal from the offence under the Special Act, the confessional statements still do not lose their efficacy so far as regards offences under the Indian Penal Code or other offences with which the concerned were charged and tried along with offences under the Special Act. Written notes of submissions have also been placed on record, adverting to the evidence of the relevant witnesses and the role of the investigating officer. Only with a view to avoid repetition, we do not propose to refer to the submissions made by learned A.P.P. in his written notes of arguments.

19. Shri Bachate, learned Advocate relied on following set of judgments of the Apex Court and this Court, firstly to submit that, pecuniary advantage is not the only ground for invoking MCOCA. He brought to our notice the definition of the offence of organised crime and particularly the words, "other

advantage". According to the learned Advocate, the evidence was recorded six years after the incident. He meant to say that, no witness is expected have a photographic memory. Memory of a witness may not serve him a well at a time. There are, therefore, bound to be some inconsistencies inter-se the evidence of the witnesses. The inconsistencies which do not go to the root of the matter have to be ignored. The authorities relied on are as follows :-

1) State through Superintendent of Police, CBI/SIT Vs. Nalini & ors. etc. etc. (1999) 5 SCC 253

2) Review Petition (Crl.) Nos.446-447 of 2019 in Criminal Appeal Nos.1174-1175 of 2019 Manoharan Vs. State by Inspector of Police, Variety Hall Police Station, Coimbatore, decided on 7/11/2019

3) Zakir Abdul Mirajkar Vs. The State of Maharashtra & Ors. (2022 ALL MR 9Cri) 3798 (SC)

4) Abhishek Vs. State of Maharashtra & ors. (2022) 8 SCC 282

5) Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra, 2022 ALL MR (Cri) 3035

6) C. Muniappan & ors. Vs. State of Tamilnadu (2010) 9 SCC 567

7) Mohd. Farooq Abdul Gafur & anr. Vs. State of Maharashtra (2010) 14 SCC 641

8) State of Maharashtra Vs. Damu Gopinath Shinde & ors. (2000) 6 SCC 269

9) M. Nageswara Reddy Vs. State of Andhra Pradesh & ors. (2022) 5 SCC 791

10) Sucha Singh Vs. State of Punjab
(2001) 4 SCC 375

11) State of W.B. Vs. Mir. Mohammad Omar & ors.
(2000) 8 SCC 382

12) State of U.P. Vs. Krishna Gopal & anr.
(1988) 4 SCC 302

13) Manoharan Vs. State by Inspector of Police
(2019) 7 SCC 716

14) State of T.N. Vs. Kutty Alias Lakshmi Narasimhan
(2001) 6 SCC 550

20. Relying on the judgment in case of Abhishek (supra), the learned Advocate would submit that, the offence in question was an organised crime committed by the members of the organised crime syndicate headed by the appellant Imran Mehandi. According to him, we have to see the gist of the matter and not the form of sanction for prosecution. On the question of defective investigation is concerned, the learned Advocate would submit that, the benefit thereof should not go to the actual culprit. According to him, a law on this issue is well settled that the defect in investigation in itself cannot be the ground for acquittal. Relying on the authoritative pronouncements of the Apex Court in case of M. Nageswara Reddy (supra), he would submit that, merely because the witnesses are relations, their evidence cannot be brushed aside. He would further submit that, when there is a confession, there always happens retraction on legal

advice. According to him, the confessional statements have been duly corroborated by the other evidence. He would further submit that, confessional statement is a substantive piece of evidence against the maker himself and co-accused as well. In this regard, he relied on the judgment of the Apex Court in case Mohd. Farooq (supra) and State of T.N. Vs. Nalini (supra).

Learned A.P.P. and learned Advocate for the complainant ultimately urged for dismissal of the appeals.

21. We do not propose to detain ourselves with the submissions advanced by learned A.P.P. and the learned Advocate for the informant. Keeping in mind, their submissions and the authorities relied on, let us proceed to appreciate the evidence in the case. It needs no mention that, each criminal case has its peculiar facts and circumstances. The case has, therefore, to be decided on the evidence produced therein.

ADMITTED FACTS :

22. Deceased Salim Qureshi was a businessman and politician as well. He had two brothers. The informant was his twin brother. The deceased had two wives. His second marriage was interfaith. The second wife was Hindu by religion.

The deceased owned “Roxy Theatre”. There was a dispute between him and the erstwhile owners of the theatre. There is, however, evidence to indicate that the dispute was settled. Names of erstwhile owners figured in the F.I.R. only on suspicion.

23. The fact that deceased Salim Qureshi met with homicidal death is undisputed before us. The dead body of Salim was exhumed and subjected to on the spot post mortem examination on 11 March is also undisputed, although the said fact was disputed before the Trial Court. The dead body was identified by his brother (informant Halim). Moreover, there is a witness examined by the prosecution (P.W.59 Shrikant) to establish identity of the deceased, based on the DNA of his mother. As such, it is reiterated that, deceased Salim Qureshi met with a homicidal death is a fact not in dispute now. The post mortem examination report (Exh.303) indicates the deceased died of multiple stab injuries over face and neck.

24. The question is, whether the appellants are the authors of the crime they have been convicted for. The case is based on circumstantial evidence. Direct evidence has also been introduced as regards abduction of the deceased. In case of Sharad Sarda (supra), it has been observed :

"152. A close analysis of the decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned must or should and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in (Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made :

> "certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground

> for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. The F.I.R. (Exh.292) was lodged by P.W.34 Halim, the real brother of deceased Salim. It is in his evidence that, the deceased would operate his business from the premises of Roxy Theatre. The deceased used to sit in his office late night. Arshad (P.W.28), nephew of the deceased would look after accounts of the business conducted by the deceased. It is in his evidence that, on the given night i.e. on the intervening night of 4 and 5 March 2012, he was in the company of the deceased at his office. Bismilla and Fahim (P.W.22) were also with them. The deceased made a phone call to Arshad (P.W.28) and asked him to bring meal. He obeyed. They took meal and then left the office.

26. Although 61 witnesses were examined by the prosecution before the Trial Court, the evidence of certain relevant witnesses has only been referred to and relied on before us. The following circumstances were sought to be established to bring home the charge.

(1) Motive.

(2) Last seen.

(3) Abduction.

(4) Circumstances- Seizure of Wagon-R Car, seizure of adhesive tapes, particles of soil on the car and C.A. reports in that regard.

(5) Recovery of dead body of deceased Salim Qureshi pursuant to disclosure statement made by Imran Mehandi (appellant in Criminal Appeal No.588/2023).

(6) Confessional Statements.

27. Let us now advert to the evidence on record and appreciate the same to find whether the prosecution has successfully brought home the charge against the appellants, and the judgment and order impugned herein needs no interference.

MOTIVE :

28. Admittedly, deceased Salim was a businessman and politician as well. P.W.24 Jakir admitted in his cross-examination that the deceased would do money lending and used to advance finance to promoters and builders. Both, the appellants Imran Mehandi and the deceased Salim were the residents of Asefiya Colony. True, deceased Salim had second home at Sillekhana

area. According to the prosecution, Salim was eliminated by the appellant Imran Mehandi and his associates (co-appellants) only with a view to have supremacy over Salim (deceased) in Asefiya Colony. It is also the case of the prosecution that, in the Corporation elections for the year 2010, the second wife of deceased Salim was in the frey. Hoardings and posters were displayed at various parts within the limits of the concerned Ward with an appeal to the voters to not vote the one who indulged in money lending since it was against Islamic tenets. It was also the case of the prosecution that, appellant Imran Mehandi wanted to extort Rs.50 Lakhs from the deceased with a threat of eliminating him. An evidence in that regard appearing in the confessional statement of two of the three appellants was relied on.

29. Close reading of the evidence of the witnesses examined in this regard indicates none of them testified that such posters/ hoardings were displayed by appellant Imran Mehandi. The witness in that regard did not stand by the prosecution. It was also the case of the prosecution that the deceased wanted to collect contribution (*Chanda*) for a Masjid and misappropriate the same. The same was disliked by the appellant Imran Mehandi. A 72 year old Maulana (P.W.25 Abdul Sattar) was examined in that regard. He too did not stand by the

prosecution. Although he testified that the deceased had collected some contribution for Masjid, but he returned the same to the donors immediately.

30. About display of hoardings/ posters, P.W.22 Sk. Fahim and P.W.24 Sk. Jakir were examined in that regard. They did not stand by the prosecution. Although the learned A.P.P. cross-examined them extensively, it has simply been brought on record through the cross-examination of these witnesses what was stated by them to the police in their statements, under Section 161 of the Cr.P.C.

31. So far as regards other motives are concerned, we find no cogent and convincing evidence. Had the appellant Imran Mehandi really wanted to extort sum of Rs.50 Lakhs from deceased Salim, he would have made a demand therefor. There is no evidence at all to indicate that the deceased was eliminated for having not been fulfilled with the alleged demand of Rs.50 Lakhs. It is reiterated that, close reading of the entire evidence on record, we do not find the prosecution to have made out a particular motive for eliminating Salim Qureshi. True, in a case based on circumstantial evidence, motive plays a very important role, the same needs to be proved. It is, however, not an

absolute proposition of law. Many a time a motive remains locked in the mind of a culprit. If the evidence on record makes out an offence without there being proof of motive behind commission of the crime, the culprit does not get benefit thereof.

LAST SEEN :

32. It is further in the evidence of P.W.34 Halim (informant) that, by 2.00 a.m., he received a phone call of Arshad (P.W.28). Arshad told him Salim to have not reached his home. Fahim (P.W.22) too had made a phone call to Arshad (P.W.28) to inform Salim to have not reached home. He (informant) and Arshad, therefore, went on his motorcycle to Town Hall area. Fahim (P.W.22), Bismilla met them there. He learnt from them that someone told them to have seen a Wagon-R car went fast from Town Hall area. He, therefore, went to the house of Salim and made enquiry with his son Salman (P.W. 32) to find Salim to have not returned home. It is further in his evidence that, they learnt that appellants Imran Mehandi and Najer Ali and some others were in the vicinity of Town Hall area. They, therefore, went to the house of appellant Imran Mehandi to find him not home. It is further in his evidence that, he found spectacle of the deceased lying on the road. The evidence of the informant further indicates that, after having taken search for Salim, he

along with Fahim (P.W.22), therefore, approached Begumpura Police Station and lodged the F.I.R. (Exh.292).

33. It is true that, none of the appellants were named in the F.I.R. as suspects. On the contrary, the names of some others figured therein. The evidence of the informant would, therefore, be of not much incriminating against the appellants. It has relevance only for setting the criminal law in motion, since based on the F.I.R. (Exh.292), a crime vide C.R. No.19/2012 for the offence punishable under Section 363 r/w 34 of the Indian Penal Code was registered. Shri S.D. Shaikh (P.W.57), Police Inspector attached to the very police station was present. It was he who recorded the F.I.R. Then he took up the investigation of the crime. It is in his evidence that, he went to the place at Town Hall area and found the spectacle of Salim Qureshi lying on the road. He seized the same under the panchanama (Exh.249). The evidence indicates that, the spectacle was identified by the witnesses before the Court. It is true that there was no evidence to indicate that the deceased was sporting the very spectacle on the given day. No test identification of the spectacle was conducted during investigation. In our view, the same would not be of much assistance to the defence since all these things i.e. P.W.57 S.D. Shaikh visiting the place of alleged abduction on the

early morning of 5 March 2012, and drawing of the panchanama with seizure of the spectacle would not be so incriminating since involvement of the appellants in the crime in question had not come to light by then. Seizure panchanama, therefore, cannot be said to be a fabricated piece of evidence.

34. P.W.22 Sk. Fahim was admittedly a friend of the deceased. It is in his evidence that, on the night of 4/3/2012, he had been to the office of Salim Qureshi in Roxy Theatre along with Bismilla. Both Halim (P.W.34) and Arshad (P.W.28) were there. The evidence of Arshad (P.W.28) too reinforces the said fact. He had, however, left the office little past 11.00 p.m. His evidence would indicate that, he collected meal from the house of deceased Salim and carried it to the office whereat Salim and others took the same. The evidence of P.W.22 Sk. Fahim would further indicate that, by 12.45 a.m., all of them started in a Wagon-R Car of the deceased, registration number of which was MH-20/BC-6356. They travelled up to Town Hall area. He got down from the car since he had his two-wheeler parked thereat. Thereafter he was supposed to meet Salim at his residence. He, therefore, went to Salim's place to find him to have not returned home. The Wagon-R car was also not there. It is further in his evidence that, he therefore gave a phone call to Arshad

(P.W.28). Both Arshad (P.W.28) and the informant came to Town Hall area. He informed them to have learnt from one Majju that Salim went towards Begumpura in his car. The evidence of P.W.22 Sk. Fahim further indicates Salim's spectacle was found on the road. He accompanied the informant to Begumpura Police Station, whereat the F.I.R. was lodged by P.W.34 Halim.

35. It was the submission of the learned Advocate Shri Jadhav for the appellants that, there was no evidence to indicate Salim to have in fact been killed or alive on 4/ 5 March 2012. He adverted our attention to the evidence of Dr. Kailas Zine (P.W.36) and the post mortem report, that the evidence is silent to indicate the exact time of death of the deceased. Close reading of cross-examination of P.W.22 Sk. Fahim would indicate that suggestions in the nature of admissions were put to him on behalf of appellant Imran Mehandi. It is evident therefrom that, deceased Salim used to sit at his office in Roxy Theatre until late night every day. Both Bismilla and P.W.22 Fahim used to be in his company there. There is also evidence to indicate that, Salman (P.W.32), son of second wife of deceased, was also contacted on the given night. He too joined them (P.W.22 Fahim and P.W.34 Halim) to take search for Salim, but in vain. It was specifically suggested in paragraph 8 of the cross-examination of

P.W.22 Sk. Fahim that, he (P.W.22), Bismilla, Halim (informant, P.W.34), Arshad (P.W.28) and Jakir were taking search for Salim Qureshi. They were searching him from 4.00 a.m. onwards. As such, the evidence of the informant (P.W.34 Halim) and that of P.W.22 Fahim and P.W.28 Arshad, coupled with the suggestions given to P.W.22 Sk. Fahim in his cross-examination that they were making search for the deceased from 4.00 a.m. onwards, goes a long way to indicate that Salim Qureshi was very much there at his office on the intervening night of 4 and 5 March 2012. A stray sentence appearing in the evidence of P.W.57 Shri S.D. Shaikh that relations of deceased Salim were visiting the police station from 1 to 4 March 2012 would, therefore, be of little consequence. No specific suggestion was given to the said witness to indicate that they were visiting the police station in connection with Salim to have allegedly went missing even prior thereto.

36. So far as regards abduction of Salim Qureshi from Town Hall area is concerned, we do not have any direct evidence in that regard, although the learned A.P.P. relied on the evidence of P.W.30 Feroz Khan and P.W.41 Sk. Bashir. Both these witnesses did not stand by the prosecution. We have closely perused their evidence to find no shred of material to have been

brought on record during their cross-examination conducted by the learned A.P.P. They were simply confronted with their statements recorded under Sections 161 and 164 of the Cr.P.C. Even what has been stated by these two witnesses in response to the questions put to them by the learned A.P.P. would only amount to contradicting them with their previous statements. Those statements in any case would not partake the character of the substantive evidence.

37. True, P.W.41 Sk. Bashir partially supported the prosecution. It is in his evidence that, he was resident of Pragati Colony. He had acquaintance with deceased Salim. Deceased owned Wagon-R Car, No.MH-20/BC-6356. It is further in his evidence that, on the intervening night of 4 and 5 March 2012, he was returning from Ghati Hospital, Aurangabad after having met wife of one Hakim Tailor, admitted to Ghati Hospital for treatment. It was by 1.00 a.m. He was proceeding on his motorbike. The Wagon-R car of Salim Qureshi was proceeding ahead of him. One Omni Car suddenly came from opposite side and intercepted Wagon-R car. 4 to 5 persons got down from the Omni Car and dragged Salim from his driver seat and put him in the back sit of the Wagon-R car itself. He stopped there for a while. He then went to his house. In the morning he learnt

about abduction of Salim. It is further in his evidence that, after arrest of appellant Imran Mehandi and Najer Ali, he on his own approached the police and gave his statement. According to him, on arrest of the appellant, he could gather the courage to approach the police and give statement.

38. When this witness did not speak further in his examination-in-chief, the learned A.P.P., with the permission of the Court, referred the witness his statement recorded under Section 164 of the Cr.P.C. Then this witness deposed to have stated in his statement that, abductors were Imran Mehandi, Najer Ali, Ashfaq Pathan and others. What has been stated by this witness in his statement under Section 164 of the Cr.P.C. is appearing in paragraph 4 of his examination-in-chief. When we closely read his evidence, what has been brought on record by the prosecution is the fact that this witness, in his statement recorded under Section 164 of the Cr.P.C., has stated that, the abductors were appellants Imran Mehandi, Najer Ali, Ashfaq Pathan and others. Needless to mention that, this witness was referred to his statement recorded under Section 164 of the Cr.P.C. It needs no mention that, statement recorded under Section 164 of the Cr.P.C. can only be used for contradicting the witness who made the statement or for corroboration of his

substantive evidence before the Court. At the cost of repetition, it is stated that, P.W.41 Sk. Bashir, in no uncertain terms did depose to have witnessed the appellant Imran Mehandi, Najer Ali and others to have abducted Salim Qureshi in his own (Salim's) Wagon-R car. Mr. Satej Jadhav, learned Advocate for the appellants would submit that, evidence of this witness was unreliable for more than one reasons. This witness was a close friend of the deceased. The deceased would purchase properties in his name. This witness was residing as a tenant for some years in the premises owned by the deceased. It was further submitted that, statement of this witness was recorded 8 days after the incident. The witness did not share the incident with his family members or anyone else. The witness was also confronted with his police statement, wherein he did not state the Wagon-R car number. His police statement is also silent to record therein that Salim Qureshi's car was proceeding ahead of him and one Omni Car came from opposite direction and blocked the road with a view to abduct Salim Qureshi. The evidence in paragraph No.10 of his cross-examination contain material omissions in his police statement, which amounts to material contradictions. We, therefore, do not propose to rely on the evidence of P.W.41 Sk. Bashir in proof of factum of abduction of deceased Salim from Town Hall area by the appellants. The

person by name Munna who had seen the incident of abduction was not examined. There is, therefore, no question for the prosecution to rely on Section 106 of the Evidence Act to submit that, it is for the appellants/ abductors to explain what they did with the deceased after having abducted him (Salim) from Town Hall area on the intervening night of 4 and 5 March 2012.

39. We are, however, of the view that, the evidence of the informant P.W.34 Halim, P.W.22 Fahim would indicate that something had happened with the deceased at Town Hall area. The spectacle of the deceased was found on the spot. The said fact figures in the F.I.R. (Exh.292). The F.I.R. corroborates the evidence of the informant before the Court. The spectacle was seized under the panchanama drawn by P.W.57 Shri S.D. Shaikh in the presence of panch witness (P.W.27 Nasiruddin). There is, therefore, every reason for us to infer that something odd had happened with the deceased at or nearby the Town Hall area. The deceased was supposed to return to his home at Asefiya Colony or at his another house in Sillekhana area on the given night. He did not return. The factum of his not reaching home was realized immediately. Halim (informant) (P.W.34), P.W.22 Fahim and P.W.28 Arshad, therefore, took search for him until the wee hours of 5/3/2012 and ultimately lodged the report (F.I.R.

Exh.292). This fact undoubtedly goes a long way to infer that the deceased must have been taken into custody by the culprits from Town Hall area.

CIRCUMSTANCES

(SEIZURE OF CAR) :

40. P.W.1 Wasim is a panch witness. His evidence indicates that, Wagon-R car of Salim Qureshi was seized by P.W.57 Shri S.D. Sheikh little past 12.30 midnight on 6/3/2012 from Tapadia Ground. Evidence of P.W.1 Wasim and P.W.57 Shri S.D. Shaikh is consistent in this regard. Their evidence indicate that, the Wagon-R car was found abandoned at that place. On search of the car, 3-4 adhesive tapes were seized. There were particles of soil on the body of the car. Those were seized under the panchanama (Exh.124). Although P.W.1 Wasim was found to be the resident of very Colony whereat the deceased Salim would reside, we find no reason to disbelieve his evidence. We also rely on the evidence of the investigation officer P.W.57 Shri S.D. Shaikh in this regard, who had swung into action immediately on registration of the crime. True, P.W.1 Wasim could not state with which key P.W.57 Shri S.D. Shaikh could open the car. The same, however, be of little importance. Although before the Trial Court the appellants denied the

deceased to have owned the Wagon-R car, there is ample and convincing evidence of number of witnesses to indicate the said car was owned and used by the deceased. The owner of the car (P.W.43 Shahed Ahemad) was also examined in this regard. He too vouched for the same. The relevant C.A. reports would be referred to a little later.

Recovery of dead body of deceased Salim Qureshi pursuant to disclosure statement made by Imran Mehandi (appellant in Criminal Appeal No.588/2023)

41. As per the case of the prosecution, the appellant Imran Mehandi and some of the appellants were arrested by the police officials of the Crime Branch on the night of 10 of March 2012. Since the crime was registered and being investigated by P.I. - P.W.57 Shri S.D. Shaikh, Begumpura Police Station, he was summoned to the Crime Branch, and appellants Imran Mehandi and 5 others were delivered to the custody of P.W.57 who, in turn, arrested them under the arrest panchanamas (Exhs.468 to 473). It is true that, the learned Advocate for the appellants had every reason to contend that no Crime Branch official has been examined as a witness in the case. The same has, therefore, caused prejudice to the appellants. It is not known that since when the appellant Imran Mehandi and other appellants were taken into custody by the Crime Branch officials and what was

revealed during their interrogation. We are in agreement with the submissions made by learned Advocate for the appellants.

42. The other circumstances relied on by the prosecution is a disclosure statement (Exh.252) made by appellant Imran Mehandi on 11/3/2012, pursuant to which a dead body of Salim Qureshi came to be exhumed from Padegaon – Mitmita area. It was a statement under Section 27 of the Evidence Act, said to have been made by appellant Imran Mehandi on 11/3/2012 at 10.30 a.m. at Waluj MIDC Police Station. In this regard, we propose to refer to the evidence of P.W.28 Arshad and P.W.57 Shri S.D. Shaikh in common. P.W.57 Shri S.D. Shaikh had taken the custody of the appellant Imran Mehandi and arrested him under the panchanama (Exh.468) drawn on 10/3/2012. He thereafter got appellant Imran Mehandi and others medically examined. Since there was no lock-up in Begumpura Police Station, appellant Imran Mehandi was kept in the lock-up of MIDC Waluj Police Station. A station diary entry to that effect is produced on record. It is in his evidence that, during interrogation, appellant Imran Mehandi expressed his desire to make a disclosure statement. He, therefore, asked his one of the Assistants to secure presence of two panchas. Accordingly, presence of P.W.28 Arshad was secured in addition to one

another witness. It is further in the evidence of P.W.57 Shri S.D. Shaikh that, he also secured services of a videographer (P.W.33 Ramdas) to make video recording of a disclosure statement to be made by appellant Imran Mehandi and further relevant incidents. P.W.33 Ramdas was a videographer. It is he who did the video shooting of the alleged disclosure statement made by appellant Imran Mehandi and further events of he (Imran Mehandi) leading them to a secluded place – Padegaon – Mitmita and pointing out the same, on excavation of which a dead body of Salim Qureshi came to be exhumed. These three witnesses gave the evidence in one voice to state the appellant Imran Mehandi to have made a disclosure statement that he and his associates abducted Salim Qureshi from Asefiya Colony and took him to Kasambari Nagar, Padegaon Shivar and assaulted him there. Then dug a pit and buried him therein. True, most of the part of the aforesaid statement is inadmissible in evidence as being hit by Section 25 of the Evidence Act as confession to police. The question is, whether pursuant to the disclosure statement made by appellant Imran Mehandi the dead body of deceased Salim came to be exhumed from the place pointed out by him. Exh.253 is the panchanama in that regard. The same indicates the appellant Imran Mehandi led the police and panchas to that area and pointed out the place. It was dug up

and the dead body was exhumed. The evidence of P.W.57 Shri S.D. Shaikh indicates that, after appellant Imran Mehandi made a disclosure statement, he contacted the Tahsildar and the Medical Officer to avail their services for drawing of inquest on exhumation of body on the spot. Both these witnesses, namely Naib Tahsildar P.W.51 Gangadhar and the doctor Dr. Kailas Zine (P.W.36) testified that they went to Waluj Police Station in response to a call by police. Naib Tahsildar Gangadhar (P.W.29) testified that, on the directions of the Tahsildar, he went to the police station and then accompanied the police to the place pointed out by the appellant Imran Mehandi. His evidence indicates that the Tahsildar was informed on telephone by P.W.57 Shri S.D. Shaikh to make available the services of Executive Magistrate. The Naib Tahsildar-cum-Executive Magistrate (P.W.51 Gangadhar) testified accordingly.

43. The evidence of all these witnesses indicate that, a police team along with doctor and the Executive Magistrate was led by appellant Imran Mehandi to Padegaon – Mitmita area. The place was dug up. Dead body of Salim Qureshi was exhumed. On the spot post mortem was conducted. The Medical Officer who conducted the post mortem and panch witness to the inquest panchanama (Exh.123) testified that the

hands and legs of the deceased were tied with adhesive tapes. Those tapes were taken charge of by P.W.57 Shri S.D. Shaikh.

44. If we go by the oral evidence of P.W.57 Shri S.D. Shaikh and the panch witness Arshad (P.W.28), it may appear that, the appellant Imran Mehandi really did make a disclosure statement, pursuant to which a dead body of Salim Qureshi was exhumed from the place pointed out by him.

45. It is the case of the appellants that, panch witness Arshad (P.W.28) is none other than real nephew of the deceased Salim Qureshi. Our attention was adverted to his cross-examination, wherein he stated that, he had been to the Police Station, Waluj after having read in the newspaper Salim Qureshi to have been murdered. Independentness of this witness has also been challenged. Since there was a huge crowd, the question was raised as to why the investigating officer did not select independent person to act as panch witness. One has to agree with this fact. True, P.W.33 Ramdas also testified on the lines of the evidence of P.W.57 Shri S.D. Shaikh and P.W.22 Sk. Fahim as regards the disclosure statement, it is he who handed over the CD containing video recording of the disclosure statement made by appellant Imran Mehandi. We do not

propose to refer to the evidence of panch witness and the police officer who seized the CD delivered by P.W.33 Ramdas since both, the prosecution and the defence rely on the video recording contained in the CD. The CD was played before the Trial Court. A prayer was also made to this Court to view the same. It was the contention of the learned Advocate for the appellants that, no disclosure statement was in fact made by the appellant Imran Mehandi. The place whereat the dead body was buried had already been known to P.W.57 Shri S.D. Shaikh on 10 and suggestion to that effect was given to him in his cross-examination. Moreover, a confessional statement of appellant Juber was relied on in that regard to suggest that the same was recorded on 9 March. It was also pointed out that, a large number of persons had already gathered at the spot. Even our attention was drawn to the evidence of P.W.2 Niyaj who testified to have been there since 9.30 in the morning as he had learnt Salim Qureshi was killed and his body was supposed to be exhumed from that area. So far as regards oral evidence of P.W.28 Arshad (panch witness) and the police officer P.W.57 Shri S.D. Shaikh, to whom the disclosure statement was made, and the factum that the appellant Imran Mehandi took them to a particular place which was immediately dug up and the dead body was exhumed, is apparently proved by the evidence of

these witnesses. It is, however, always said that, document speaks louder than the words. The video recording of the so called disclosure statement contained in the CD is a document. We watched the CD three times to notice what has been allegedly stated by appellant Imran Mehandi at Waluj Police Station could not be heard. We only noticed a few movements of his lips. So far as regards the scene appearing in the CD, as to pointing out the place, we heard appellant Imran Mehandi to have said "रात मे यही कही बताया था". Our attention was also drawn to piece of a tile lying thereat allegedly placed to identify the spot of the burial. A piece of tile was very much visible.

46. We are conscious of the fact of legal position as regards relevancy of disclosure statement made under Section 27 of the Evidence Act. We have also perused the authorities relied on in this regard by the learned Advocates. Those authorities are – Boby and Ravishankar (supra) relied on by learned Advocate Mr. Jaiswal. A landmark judgment on this point is that of the Privy Council, in case of **Pulukuri Kotayya & ors. Vs. King-Emperor (1946 SCC OnLine PC 47)**, wherein it has been observed that :-

> The second question, which involves the construction of s. 27 of the Indian Evidence Act, will now be considered. That section and the two

preceding sections, with which it must be read, are in these terms. [His Lordship read ss. 25, 26 and 27 of the Evidence Act and continued:] Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and there upon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. On this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity, would all be admissible. If this be the effect of s. 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the

> legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A.", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

47. No one can dispute this legal position. In case of Boby (supra), there was no recording of the disclosure statement allegedly made by the appellant therein while in the case relied

on by learned Advocate Mr. Jaiswal, the police had already come to know the dead body to have been found before the disclosure statement was made.

48. According to the prosecution, the investigating officer P.W.57 Shri S.D. Shaikh for the first time came to know that Salim Qureshi was murdered and his dead body was buried at a particular place, only after appellant Imran Mehandi made a disclosure statement, relevant under Section 27 of the Evidence Act. Admittedly, Sections 302 and 201 of the Indian Penal Code came to be invoked immediately after recording of the said disclosure statement. The learned A.P.P. adverted our attention to all the station diary entries made since P.W.57 Shri S.D. Shaikh took custody of some of the appellants and did further investigation. True, all those entries have been made in the official course of business and could be relevant. Those entries are appearing in chronological order. The question is, whether it was really a disclosure statement, under Section 27 of the Evidence Act and relevant in the facts and circumstances of the case.

49. It is reiterated that, appellant Imran Mehandi and some of the appellants had already been detained by the Crime

Branch officials. None of the Crime Branch officials has been examined in proof of day and time on which they were in fact taken into custody or detained. True, they were handed over to P.W.57 Shri S.D. Shaikh in the night of 10 March and then they were arrested under relevant panchanamas by P.W.57 Shri S.D. Shaikh. Learned Advocate for the appellants has every reason to contend, based on the statement made by appellant Imran Mehandi that "रात मे यही कही बताया था" and the fact that, P.W.28 Arshad went to the police station after having read in the newspaper that Salim Qureshi was killed. Moreover, evidence of P.W.2 Niyaj indicates that he had been to the place by 9.30 in the morning itself after having learnt Salim Qureshi to have been killed, goes a long way to infer that the fact of murder of Salim Qureshi was within the public domain before he allegedly made a disclosure statement (Exh.252). A large crowd had already gathered around the place. It is reiterated that, in the video recording of the disclosure statement, we could not hear him to have made any statement relevant under Section 27 of the Evidence Act. At the material time only we could notice a few movements of his lips. True, the disclosure statement was seen to have been signed by the appellant Imran Mehandi, investigating officer P.W.57 Shri S.D. Shaikh and two other panch witnesses (P.W.22 Fahim and P.W.28 Arshad).

50. The evidence of Medical Officer Kailas Zine (P.W.36), who was summoned to conduct the post mortem examination on the spot, was also relied on to suggest that, it was P.W.57 Shri S.D. Shaikh, who had been to the hospital to deliver him a requisition letter to avail his services. The Medical Officer has tendered in his evidence a copy of the requisition letter received by him. We, however, do not propose to rely on this evidence, since the factum of recording of alleged disclosure statement at the relevant time at MIDC Waluj Police Station is evident from the CD. The evidence has been recorded six years after the alleged incident. It would, therefore, be a matter of memory of a witness to have not served him well and, therefore, inconsistency inter-se the evidence is appearing. In our view, the doctor must have been summoned with a telephonic call and then on his arrival he was given a requisition letter.

51. It is reiterated that, since in our view the factum of murder of Salim Qureshi was in the public domain about 2 – 3 hours before the appellant Imran Mehandi made the alleged disclosure statement, pursuant to which the dead body came to be exhumed, the same, therefore, could not be said to be relevant under Section 27 of the Evidence Act. P.W.57 Shri S.D. Shaikh must be presumed to have been in the know of all these

facts in advance and thereafter he recorded the statement of the appellant Imran Mehandi. The appellant Imran Mehandi might have disclosed all these facts to the Crime Branch officials when he was in their custody and after he was handed over to the custody of P.W.57 Shri S.D. Shaikh, he recorded the disclosure statement (Exhs. 252 and 253).

52. There is another aspect of the matter. The appellant Imran Mehandi had noted the words “U.P.” on his disclosure statement. It was suggested to the relevant prosecution witnesses and even in his statement under Section 313 of the Cr.P.C. He submitted that, “U.P.” means under pressure. True, the words “U.P.” has very many sheds of meaning. The similar thing had happened as regards another disclosure statement made by the appellant Imran Mehandi, pursuant to which some other articles relating to the crime in question came to be seized pursuant to his disclosure statement, to which a reference would be made a little later. Suffice it to say, for all the aforesaid reasons, we are hesitant to rely on the disclosure statement (Exh.252) and the pachanama of the recovery of the body (Exh.253).

53. The fact, however, remains that, the inquest

panchanama (Exh.123) and the post mortem report (Exh.303) conducted on the spot, indicate that the hands and legs of the dead body of Salim Qureshi were tied with adhesive tapes. Those were taken charge under the panchanama (Exh.124, Panch Witness P.W.2 Niyaj).

54. The investigation was thereafter transferred to Police Inspector Telure (P.W.60). It is in his evidence that, appellant Imran Mehandi made a disclosure statement in the presence of panch P.W.8 Mohd. Pasha. He disclosed to have burnt the clothes, shoes and belt of deceased Salim Qureshi. The appellant Imran Mehandi then led all of them to a secluded place nearby Hotel Meadows, wherefrom strips of shoes and burnt piece of a belt came to be seized. Those articles were identified by the relations of the deceased Salim Qureshi before the Court. On the said disclosure statement as well, the word “U.P.” has been appearing.

55. Close reading of the entire evidence on record would indicate that, there was nothing to suggest, on the given day the deceased Salim Qureshi to have sported the belt and clothes, ash whereof and the shoes, the strips whereof came to be seized. The disclosure statement (Exh.163 & 164) relating to

these facts, therefore, do not further the prosecution case.

56. There is another disclosure statement made by appellant Imran Mehandi to P.W.60 Telure. It was made in the presence of panch witness (P.W.9 Farook Khan). Pursuant to the said disclosure statement, the appellant Imran Mehandi led the police and panchas to one Nallah. A knife was said to have been thrown in the Nallah. There was water therein. A magnate was required to be used to find a knife in the Nallah. In the first attempt, the magnate could not catch the knife. On the second attempt the knife could be located and taken out with the aid of the magnate. This disclosure statement was made about 11 days after the incident. It is just surprising that the knife, after having been in water for little over 8 days, the Chemical Analyst could locate a human blood stain thereon. In our view, when the knife was seized, the seizure panchanama is silent to record any kind of stain thereon. At the cost of repetition, it is observed that, it is just difficult to concede to a fact that an article, after having been in water for little over 8 days, would retain on it a stain of blood. We, therefore, discard the C.A. report (Exh.540) in that regard. Even we accept the same, what the C.A. report indicates that, the stain was of a human blood. It is not that the stain matched with the blood group of the deceased.

57. Since 61 witnesses were examined before the Trial Court, on reading of the evidence of all of them, we found number of witnesses did not support the prosecution. 5 were the police constables, who carried seized muddemal to the office of Chemical Analyst, Aurangabad. One of the witnesses was examined in proof of DNA report to establish identity of the deceased. One of the witness was carrier in relation thereto. Number of witnesses were panchas to various disclosure statements and house search panchanamas. A passing reference is made thereto since it should not appear that we have not read evidence at all. It is surprising that, after appellant Imran Mehandi allegedly made a disclosure statement, pursuant to which the dead body was exhumed from a particular place, similar statements of appellant Numan Khan, Imran Saifuddin (acquiitted accused) and some others were recorded by the investigating officer in the presence of panch (P.W.31 Rahul). Those statements would be irrelevant under Section 27 of the Evidence Act in view of the fact of the dead body to have had already been exhumed from the very/ particular place long before their statements were recorded. Other evidence relates to disclosure statement made by one of the appellant Jahir indicating to have abandoned the Wagon-R car of the deceased after commission of the crime. The said statement was recorded

some days after the car was seized by P.W.57 Shri S.D. Shaikh by 12.30 midnight on 6 March itself. Then there are panchanamas about house search of the appellants and recovery of very many articles therefrom. Close reading of evidence in that regard would indicate none of the seized articles from the house of appellant Imran Mehandi (seizure of 60 and 72 articles on two different occasions) and seizure of articles from the house of Najer Ali (P.W.19 Vijay) and Syed Jahir (P.W.15 Shaikh Ayyub) to have no relevancy with the offence in question. We may observe that, the prosecution at least failed to show how the same was relevant in this case. One of the witnesses examined (P.W.44 Sakharam) was Executive Magistrate, who recorded statements under Section 164 of the Cr.P.C. Another witness is Circle Officer (P.W.38 Dattu), who drawn the sketch of the site wherefrom the dead body was exhumed. Three of the witnesses were Nodal Officers of Cellular Companies, namely Airtel and Reliance. They placed on record CDRs of certain cell phone numbers along with Certificate under Section 65-B of the Evidence Act. None of the parties to this appeal referred to and relied on their evidence.

58. The matter, however, do not rest hereat itself.

MCOCA.

59. During investigation of the crime, it was found that the appellants Imran Mehandi and Najer Ali were involved in number of crimes, more than one charge sheets have been filed against them. P.I. Telure (P.W.60), therefore, put up a proposal for invoking offences under the MCOCA. The said proposal is at Exh.527. The then Commissioner of Police, Aurangabad approved the proposal vide his order at Exh.320 (P.W.39). Based on the same, offence under Sections 3(1)(ii), 3(2) and 3(4) of the MCOCA came to be registered against the appellants. On completion of the investigation, the proposed charge sheet was submitted to P.W.13 Javed Ahmed, who accorded sanction (Exh.200) for prosecution of the appellants and others for the offences under the MCOCA. After invocation of the MCOCA, the investigation was assigned to investigating officer P.W.61 Bahure. During investigation, the appellants Juber Khan, Najer Ali and Syed Jahir expressed their desire to make a clean-breast/ confessional statements. It is in his evidence that, he received letter (Exh.390) from P.W.49 Somnath Gharge to produce them before him.

60. The proposal for invoking of MCOCA, approval thereto and sanction for prosecution under MCOCA has also

been challenged based on contents of these documents. We have to see the substance. Whether it was an offence of organised crime or any other offence under MCOCA, needs to be decided on the facts and evidence adduced in the case. Before adverting to the confessional statements and evidence in that regard, we need to apprise ourselves with certain relevant provisions of the said Act.

61. The statement of object and reasons of MCOCA indicates that, it was found expedient to make special provisions for prevention and control of and for coping of criminal activities by organised crime syndicate or gang and for matter connected therewith.

Organised crime has, for quite some years, now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with

terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

62. Then certain definitions contained in Section 2 of the MCOCA need to be adverted to. The same are, therefore, reproduced below :

2. (1) In this Act, unless the context otherwise requires,— (a) "abet", with its grammatical variations and cognate expression, includes,—

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate ;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate ; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate ;

. . . . . .

(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence ;

(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or

other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency ;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime ;

63. Section 3 of the MCOCA prescribes for punishment for organised crime and other offences. Section 3 reads thus :

3. (1) Whoever commits an offence of organised crime shall,— (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) . . . .

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a

minimum fine of rupees five lacs.

64. For being an organised crime within the meaning of Section 2(c) of the MCOCA, it has to be proved that it was a continuing unlawful activity of an organised crime syndicate. For an activity to be continuing unlawful activity,

(a) the activity must be prohibited by law;
(b) it must be a cognizable offence punishable with imprisonment of three years or more;

(c) it must be undertaken singly or jointly;
(d) it must be undertaken as a member of an organised crime syndicate or on behalf of such syndicate;

(e) in respect of which more than one charge-sheet have been filed before a Competent Court and the Court has taken cognizance thereof.

65. Filing of more than one charge sheet before the competent Court within the period of preceding ten years and the Court has taken cognizance of such offence has to be against organised crime syndicate (Ref : Prasad Shankar Purohit Vs. State of Maharashtra & anr. (2015) 7 SCC 440, Zakir Mirajkar Vs. State of Maharashtra (SC) 2022 ALL MR (CRI) 3798.

66. It has been observed in paragraph No.77 in Zakir Mirajkar's case (supra) that :-

> "77. . . . . It is settled law that more than one charge sheet is required to be filed in respect of the organised crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate."

67. For prosecution for the offence of abetment of organised crime, it is not necessary that more than one charge sheet to have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence. Abetment of an organised crime and the organised crime are two different and distinct offences. However, for an offence of being a member of an organised crime syndicate, in our view, the requirement of filing of more than one charge sheets as is required within the term of continuing unlawful activity, within the meaning of Section 2(1)(d), would be a condition precedent.

68. Let us now advert to the material on record to find whether the provisions of MCOCA have rightly been invoked. The proposal for invoking MCOCA was moved by Police Inspector Telure on his own. It is true, we have come across the papers indicating family member of the deceased to have filed a proceeding before the Special Court for invoking MCOCA and the Special Court to have given a direction thereon to investigate

and file report. However, in the proposal and sanction order, we do not find any reference to the Special Court's order. Validity of the Special Court passing such order is not in question before us.

69. The proposal for invoking the provisions of MCOCA is dated 31/3/2012. it is at Exh.527. Page Nos.1493 to 1495 contain 6 crimes including the present one, registered against the appellant Imran Mehandi and others. The status of those crimes is shown as pending investigation. These crimes are, therefore, not relevant for invoking the offence under MCOCA. On page 1496 of the Paper Book, the chart showing 4 previous crimes registered against the appellant Imran Mehandi and others has been given. For better appreciation, the same needs to be reproduced below:

अ. क्रं.	पोलीस ठाणे	गुन्हा नंबर व कलम	आरोपीचे नाव	जप्त मुद्देमाल	दोषारोपपत्र	गुन्हाची सद्य स्थिती
०१.	छावणी	३०५४/२००९ कलम ३,२५ शस्त्र अधिनियम	१. शेख इम्रान शेख नसीर उर्फ इम्रान मेहंदी २. सय्यद नाजेरअली सय्यद नासेरअली ३. शेख नासेर शेख चॉंद ४. परवेजखान अफजलखान ५. चौधरी शेख सोहेल शेख कासीम	दोन ऑटोमेटीक पिस्तोल, ९ mm., ५,५६ mm. बीएम–९७ केएफ, १२, Bore ७,६, mm चे, एकूण ७७ जिवंत काडतुसे.	५५/२००९ दिनांक २४. १२.२००९	आरसीसी नं. २२१९/०९ दिनांक २४. १२.२००९ पुढील तारीख ५.५.२०१२
२	क्रांती चौक	३७१/२०१० कलम ३७९, ३४ भादंवि.	१. शेख इम्रान उर्फ इम्रान मेहंदी पिता शेख नसीर	एक सिल्व्हर रंगाची बजाज पल्सर मोटार	४८/२०११ दिनांक १४. ०२.२०११	आरसीसीनं. ३६२/११ दिनांक १७.

			२. आबेद उर्फ छोटू याचेविरुध्द सीआरपीसी २९९ प्रमाणे दोषारोपपत्र दाखल.	सायकल		०३.२०११ पुढील तारीख ०९.०४. २०१२
३.	छावणी	३२३/१० कलम १४३, १४७,१४८,१४९,३२३, ४२७,५०४,५०६ भादंवि	१. इम्रान नशीर शेख उर्फ मेहंदी २. आसेफ खान समद खान ३. सय्यद नाजेर अली सय्यद नासेर अली ४. मीर ऐहेतेशाम अली जफर अली. ५. शेख जावेद शेख राजमंहमद	.....	८१/२०११ दिनांक २१. ०४.२०११	आरसीसीनं. ६५१/२०११ दिनांक १८.०५.२०११ पुढील तारीख २६.०४. २०१२
४.	छावणी	२३/२०११ कलम १४३,१४७,४४७,४२० ,४६७,४६८, ४७१, ५०६ भादंवि सह कलम ३(१) (ड) (१०) अजाजप्रका.व ७(१) (ड) नाहसं.	१. आसिफ खान अब्दुल समद खान २. मीर ऐहेतेशामअली जफर अली ३.मोहंमद मोबीनबी सिद्दीकी कमरोदीन सिद्दीकी ४. शेख इम्रान उर्फ मेहंदी शेख नसीर	.....	९५/२०११ दिनांक ०२. ०५.२०११	सेशन केस नं. २२/१२ पुढील तारीख २३.०४. २०१२

70. Only appellant Imran Mehandi and Syed Najer Ali are the accused in the crimes mentioned at Sr.Nos.1 and 3 of the above chart. As such, according to prosecution, it is an organised crime syndicate headed by appellant Imran Mehandi, of which Syed Najer Ali was the member. If it was found that the crime in question was an organised crime, then other appellants may be held guilty of offence of abetment of organised crime if the prosecution makes out a case of them to have consciously rendered any assistance to the organised crime syndicate of appellant Imran Mehandi and Najer Ali. Consciousness has to be in respect of their knowledge as to both Imran Mehandi and

Najer Ali constituted an organised crime syndicate and they are assisting the commission of their crime.

71. Let us take each of the four crimes seriatim. The first one pertained to an offence under Section 3 read with 25 of the Arms Act. The charge sheet in respect of the said crime was filed on 14/12/2009. Section 25 of the Arms Act prescribes punishment for certain offences. Sub-section (1-B) thereof reads thus :

> "(1-B) Whoever –
>
> (a) acquires, has in his possession or carries any fire-arm or ammunition in contravention of Section 3; "
>
> shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine:
>
> Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than two years."

72. The words 'two years and five years' have been introduced by an Amending Act 48 of 2019 w.e.f. 14/12/2019. Before that, the said offence was punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

73. The second crime pertains to the offence punishable under Section 379 read with Section 34 of the Indian Penal Code. The charge sheet was filed in February 2011. It pertained to the theft of a motorcycle. Section 379 of the Indian Penal Code reads thus :

> "379. **Punishment for theft**:- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

74. It is reiterated that, except appellant Imran Mehandi, none of the other appellants or acquitted persons was an accused in the said case.

75. The next offence alleged to have been committed relating to crime at Sr.No.3 is an offence punishable under Section 427 of the Indian Penal Code, which is punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. While punishment provided for offence under Sections 143, 147 and 148 of the Indian Penal Code is as follows :

143- which may extend to six months, or with fine, or with both.

147- which may extend to two years, or with fine, or with both.

148- which may extend to three years, or with fine, or with both.

76. It is only the crime at Sr.No.4 for which punishment provided for some of the Sections invoked is for a period more than three years, namely Sections 467, 468, 471 of the Indian Penal Code. In this case, however, except appellant Imran Mehandi, none of the appellants or an acquitted person was the co-accused with him. As such, the charge sheets filed pertaining to the crimes at Sr.Nos.2 and 4 in the above chart could not be said to have been filed against organised crime syndicate of appellants Imran Mehandi and Najer Ali.

77. Since the provisions of MCOCA are stringent, it warrants strict interpretation thereof. In paragraph No.33 of the judgment of the Apex Court in case of State (NCT of Delhi) Vs. Brijesh Singh Alias Arun Kumar & Another (2017) 10 SCC 719, it has been observed thus :

> "33. FIR No.122 of 2010 is registered under Sections 341, 506 read with Section 34 IPC. Section 341 IPC is punishable with a maximum sentence of one month, though it is a cognizable offence. Section 506 IPC is a non-cognizable offence which was made a cognizable offence by a notification issued by the Delhi Government. This notification was quashed by the High Court of Delhi

> on 13/1/2004 (Narendra Kumar V. State, 2004 SCC OnLine Del 17 : (2004) 72 DRJ 620). A second Notification for the same purpose was issued by the Delhi Government on 31/3/2004 which was challenged in WP (C) No.2596 of 2007. The High Court of Delhi initially stayed (Rajeev Mehra v. State, 2007 SCC OnLine Del 1200 : (2007) 143 DLT 432) and ultimately struck down the second notification on 18/1/2016. (Rajeev Mehra v. State, 2016 SCC OnLine Del 6575). As such, Section 506 IPC was a non-cognizable offence at the date of registration of the FIR and filing of the charge-sheet. Only an unlawful activity which is a cognizable offence punishable <u>with minimum sentence of three years or more would be a continuous unlawful activity</u> under Section 2(1)(d) of the Act. Hence, FIR no.122 of 2010 cannot be taken into account."
>
> (emphasis supplied)

78. In offences at Sr.No.1 and 3 in the above chart, charge sheets were filed against appellant Imran Mehandi and Najer Ali, none of the offences therein was punishable with a minimum term of imprisonment for a period of three years.

79. For the aforesaid reasons, the present crime could not be termed to be an organised crime committed by an organised crime syndicate headed by appellant Imran Mehandi, of which the appellant Najer Ali is alleged to be a member. In our view, therefore, the offences under MCOCA ought not to have been invoked.

80. Section 11 of the MCOC Act reads thus :

> "11. Power to transfer cases to regular Courts :
>
> Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

81. In the case in hand, none of the accused before the Trial Court resorted to Section 11 of the MCOCA. The Charge (Exh.81) was framed. The appellants faced the charge for offences under Sections 3(1)(ii), 3(2) and 3(4) of the MCOCA. This provision (Section 11) has some relevance in this case and, therefore, mention thereof has been made.

82. The relevancy is as regards admissibility of confessional statements. In this case, appellants Juber Khan, Najer Ali and Jahir have made confessional statements. Before adverting to evidence in that regard, it would be apposite to reproduce relevant provisions and rules thereunder in that regard. Section 18 of the MCOCA reads :

> **"18. Certain confessions made to police officer to be taken into consideration :-**

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this Section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such Police Officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator :

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon."

Rule 3 of the MCOC Rules, 1999 reads :-

"3. Procedure for recording of confession under Section 18 of the Act.

(1) The Police Officer recording a confession under Section 18 of the Act shall record it as provided in sub-rules (2) to (7) of this rule.

(2) When the person whose confession is to be recorded is produced before such Police Officer, no Police Officer who has taken part in the investigation of the offence in connection with which the confession is being recorded, shall be allowed to remain present at the time of recording of the confession.

(3) The Police Officer recording the confession shall explain to the person making the confession

that he is not bound to make such confession and that if he does so, such confession may be used as evidence against him.

(4) After having been so explained and warned, if such person adheres to his intention and insists on making a confession, the concerned Police Officer, who is to record the confession shall give, not less than 24 hours time to the person making the confession for reconsideration of his decision to make confession.

(5) After elapsing of the time given under sub-rule (4), when such person is again brought before such Police Officer, he shall once again ascertain from the person intending to make the confession whether he is still willing to make a confession. Upon such person reiterating his desire to make a confession, the concerned Police Officer shall record in writing the confession of such person in the same language and as narrated by the confessor.

(6) The confession recorded under sub-rule (5) shall, if it is in writing, be signed by the person who has made such confession and by Police Officer, who has recorded the said confession. Such Police Officer shall, under his own hand, also make a memorandum at the end of the confession to the following effect :--

> "I have explained to (name of the confessor) that he is not bound to make a confession and that, if he does so, any confession that he makes, may be used as evidence against him and I am satisfied that this confession has been made voluntarily. It has been made before me and in my hearing and has been recorded by me in the language in which it is made and as narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full

and true account of the confession/ statement made by him."

(7) Where the confession has been recorded on any mechanical device, the memorandum referred to in sub-rule (6) above, in so far as it is applicable, shall be incorporated in the form of a declaration made by the Police Officer recording the confession, by recording such declaration on the mechanical device at the end of the confession to the effect that the confession recorded on the mechanical device has been correctly recorded in his presence and hearing and that the recorded statement/ confession has been played back to the confessor and after hearing it, it has been admitted by him to be full, correct and without any technical faults in recording.

(8) The Police Officer recording the confession shall, after forwarding the certified copy of the confession made or retraction, if any, thereof, to the Chief Magistrate or the Chief Judicial Magistrate as provided in sub-section (4) of Section 18 of the Act and after ascertaining that the Chief Magistrate or the Chief Judicial Magistrate has, as provided in sub-section (6) of the said Section 18, forwarded the confession to the Special Court for taking cognizance of the offence, supply a copy of the confession recorded by him to the Investigating Officer, who is conducting investigation into the offence in connection with which, or relating to which, such confession has been made, for the purpose of investigation."

83. With a view to avoid the judgment to become further bulky, we do not propose to refer to in extenso the oral evidence of P.W.48 Katke, P.W.49 Gharge, P.W.61 Bahure, P.W.50 Palve and P.W.52 Keru Khod, Police Officers, who were examined in

relation to proof of confessional statements. There is one more reason for us not to refer to their evidence in extenso since no submissions were advanced as regards breach of mandatory provisions of Section 18 and Rule 3 referred to hereinabove. It was only submitted that, although the confessional statements are admissible, their probative value and corroboration thereto are independent matters.

84. Still, a brief reference to evidence of these witnesses is a must. P.W.49 Somnath Gharge was Deputy Commissioner of Police, Headquarters, Aurangabad. He was competent officer to record confessional statement under Section 18. His evidence indicates that, the Commissioner of Police had directed him to record confessional statements of Juber Khan Shabbir Khan and others. He placed on record communications in that regard vide Exh.380, Exh.389 and Exh.393. Close reading of his evidence would indicate that, first he recorded confessional statement of appellant Juber Khan. He directed the investigating officer to produce Juber Khan before him at 11.00 a.m. on 24/4/2012. A communication made by him in that regard is at Exh.381. Juber Khan was accordingly produced before P.W.49. P.W.49 interacted with Juber Khan and informed him that he was no way concerned with the investigation of the crime. It is further in his evidence that, Juber Khan disclosed his desire to make a

confessional statement. He informed Juber Khan that he was not bound to make a confessional statement and if he made any such statement, the same would be used against him and co-accused as well. He also ascertained whether he was induced or compelled to make a confessional statement. Number of questions were put to Juber Khan to ascertain his voluntariness to make a confessional statement. It is at Exh.382 (Part I). We have perused all those questions and replies given by Juber Khan thereto. It also bears his (Juber Khan's) signature besides the signature of P.W.49 with date and time. Juber Khan was given 24 hours time for reflection. He was given into custody of P.S.I. Shri Palve (P.W.50), attached to Cidco Police Station with a specific direction to keep Juber Khan in a lock up of Cidco Police Station and ensure that no officer connected with the investigation shall have an occasion to contact him during such custody. Mr. Palve was asked to produce Juber Khan again before him (P.W.49) by 5.00 p.m. on 25/4/2012. He was accordingly produced. Again similar questions were put to him. The replies given by Juber Khan have been recorded. The officer concerned was satisfied that Juber Khan wanted to make a confessional statement voluntarily. He, therefore, recorded the same.

85. Part II of the confessional statement (Exh.383) of

Juber Khan reads thus :

मै जुबेर खॉन पिता शब्बीर खॉन पठाण, उम्र २८ साल, धंदा खाजगी नौकरी पता— मिनारा मस्जीद के पास, कैसर कॉलनी, औरंगाबाद.

मै उपर दिऐ हुऐ पते पर रहने वाला हु । सन २००३ से औरंगाबाद मे रहने के लिए आया हु । मेरी शादी सन २००९ मे सानिया तब्बसुम के साथ लोटा कारंजा मस्जीद औरंगाबाद मे हुई है । मेरी शादी होणे के बाद सन २००९ मे मै काम करणे के लिए सौदी अरेबिया गया था । सौदी अरेबिया मे रियाद शहर मे मै डिजिटल नेटवर्क कम्युनिकेशन कंपनीमे ॲटो कॅड ऑपरेटर पदपर ११ मार्च २०११ तक नौकरी की है । उस के बाद विजा खतम होने की वजह से मै औरंगाबाद को वापस आ गाया । अभी मै डी.पी.ॲटो पार्टस प्रा.लि. एम. वाळुज मे नौकरी करता था ।

मै औरंगाबाद को रहने के लिए आया तब कुछ दिन चेलीपुरा मोहल्ले मे घर किरायेसे लेकर रहा । ऊस वक्त मेरी पहचान सैय्यद जहीर उर्फ शेरा से हुई । पहचान दोस्ती मे बदल गई । शेरा उस वक्त पोल्ट्री फार्म चलाया करता था । ऊसका खुलताबाद मे पोल्ट्री फार्म था ।

सौदी अरेबियासे से वापस आने के बाद मुझे फिरसे नया व्हिजा लेना था इस लिए मैने शेरा से कोई पहचान का है क्या ऐसा पुछनेपर ऊसने इम्रान का नाम बताया । और ऊसका दोस्त असद (असील टुर्स ॲण्ड ट्रव्हल्स मुंबई) यह मुंबई मे रहता है और वह व्हीजा निकाल कर देता है ऐसा बतानेसे मै शेराके साथ पाच से छ महिने पहिले इम्रान मेंहदीसे ऊसके रॉयल सर्व्हीसिंग सेन्टर, कटकट गेट, औरंगाबाद पर दोपहरमे वक्त मिला था । तब से मेरी और इम्रान मेहंदी की पहचान है ।

तारीख ०३.०३.२०१२ के रात ग्यारह बजे के समय इम्रान मेहंदी का मेरे मोबाईलपर फोन आया ऊसने बताया की, शेरा का फोन लग नही रहा है । इम्रान मेहंदी के बताने से मैने शेरा को दो तिन बार फोन लगाया तब ऊसका फोन नॉट रिचेबल बता रहा था । लेकीन ट्राय करने पर शेरा का फोन लग गया तब मैने इम्रान भाईने बुलाया है ऐसा ऊसे बताया । तब शेरा ने मुझे कहा की तु भी तैयार रहे, अपन दोन्हो जाकर आऐंगे ऐसा कहने पर मै तयार हो गया । ऊसके थोडी देर बाद शेरा ऊसकी करिझ्मा गाडीपर आया तब मै ऊसके गाडीपर बैठ कर इम्रान मेहंदीके आसेफिया कॉलनी के घर पर गया । वहा पर हमसे पहले इम्रान मेहंदी और नुमान हाजीर थे । वहा पर थोडी देर बातचित करणे के बाद इम्रान मेहंदी हमको उनके साथ ऊसके घर के बाजु के गली मे लेकर गया । वहापर एक सफेद रंग की मारुती व्हॅन खडी थी । ऊसमे नाजेर

अली, फरीदखॉन, सुलतान, खालेद पहलेसे ही बैठे हुए थे । गाडी मे बैठने के लिए इम्रान ने हमे कहा । शेरा, मै और नुमान व्हॅन मे बैठ गये । ऊस वक्त इम्रान ने हमे बताया की सलीम कुरैशी को धडा सिकाना है वह मस्जीद के मौलाना को गाली गलोच करता, मस्जीद का पैसे खाता, गरीबो को सताता है । मुझे कहा की तू गाडी मे सामने बैठ शेरा गाडी चलायेंगा और सलीम कुरैशी के गाडी के सामने गाडी लगायेंगा तु निचे उतरने का क्यु रे दिखता नही क्या? अंधा है क्या? ऐसा कह कर गाली गलोच करना । थोडे देर के बाद रात एक से देड बजे के दरम्यान इम्रान मेहंदी को शोएब का फोन आया । ऊसके बाद इम्रान ने शेरा को बताया की, सलीम कुरैशी निकला है । ऊसके बाद शेरा ने गाडी चालु की, सलीम कुरैशी की गाडी नजदीक आते ही शेराने स्पीडमे व्हॅन आडी लगाई । मै गाडी के नीचे उतरा और सलीम को गाली गलोच की, इस लिए वह ऊसके गाडी के नीचे उतरा और बोला क्या हुआ मेरी गलती नही । तब इम्रान मेहंदी, नुमान, सुलतान और फरीद इन्होने सलीम कुरैशी को उठाकर ऊसके ही गाडी मे दाला । नाजेर अलीने गाडी चालु की और सिधे पडेगाव के तरफ कासंबरी नगर मे सलीम कुरैशी को लेकर आऐ । हम ऊनके पिछे पिछे व्हॅन मे आऐ शेरा व्हॅन चला रहाथा । वहा पर पोहचने के बाद इम्रान मेहंदी ने सलीम कुरैशी को गाडीके निचे उतारा और ऊसके हात चिकट पटटी से बांध दिए । ऊसके बाद मेहंदी के कहने पर शेरा और नाजेरअलीने सलीम की गाडी औरंगाबाद को छोड दी । और वापस मेहंदी के बजाज सि टी १०० मोटार सायकल पर कासंबरी नगर के पहाडके पडीत जगेपर आऐ । हम सबने सलीम कुरैशी को इम्रान मेहंदी के कहने से मुह और सिरपर थप्पड से मारा । इम्रान मेहंदी ने सलीम कुरैशी को सवाल किया की तूने बहोत गरीबो को लुटा है बेवा औरतो के घर लिये है । और रोड पे से बच्ची लोगोको उठाके उनके साथ गलत काम किया और मस्जीद के चंदेके पैसे भी लिए हे । ऐसा सलीम कुरैशी को पुछते वक्त मैने कुछ भी नही किया कुछ ले देके मुझे छोड दो । ऐसा सलीम कुरैशी ने कहा । तब इम्रान मेहंदी ने भी सलीम कुरैशी को मारा । ऊसके बाद ऊस जगहा पर हम सब ने गडडा खोदा । ऊसके बाद इम्रान मेहंदी और सुलतान दोन्होंने सलीम कुरेशी को गडडे के पास लेकर आऐ. तब सलीम कुरेशीने इम्रान मेहंदी को बिनती की और बोला मैने आज तक जितने भी गुन्हे किए वह मुझे मंजुर है । मेरी प्रॉपर्टी गरीबोमे बाटने के लिए तैयार हे । लेकीन इम्रान मेहंदीने ऊसका कुछ भी सुना नही तब इम्रान मेंहदी और सुलतान छोडकर हम सब थोडा बाजुमे हो गऐ । ऊसके बाद इम्रान मेहंदी और सुलतान दोनोंही सलीम कुरेशी के साथ गडडेके पास मौजुद थे । थोडी देर बाद सलीम कुरैशी का आ s s s s ऐसा आवाज आया । इम्रान मेहंदीने जोर से गाली देकर हमे उसके पास बुलाया । हम सब वहा गये तब सलीम कुरैशी के उपर इम्रान और सुलतान ने मिट्टी डालकर आधा गडडा भर दिया था । एसके बाद इम्रान मेहंदीने हम सबको मिटटी ढकेलने के लिए काह तब हमने ऊस गडडे मे मिटटी दालकर उसे गाड

दिया । उस के बाद इम्रान मेहंदी और नुमान ऊसकी मोटार सायकलपर और हम सब व्हॅन मे बैठकर औरंगाबाद को आऐ । ऊस वक्त अंदाजन छ बज रहे होंगे । नाजेर अलीने व्हॅन रविराज हॉटेल के पिछे छोड दी ऊस जगा इम्रान मेहंदी पहोचा । ऊसने हमे यह बात किसी को बताये तो सलीम कुरैशी जैसा हाल करुंगा ऐसा कहा और घर जाने के लिए बोला । ऊसके बाद मै रिक्षासे मेरे घर को गया ।

कुछ दिन पहले इम्रान मेहंदी ने मुझे एक कागजपर डिजाईन निकाल कर दिया ऊसपर से मैने एक लोहे की पिन तयार करके वह इम्रान मेहंदी के पास दिया । उसपर से इम्रान मेहंदी ने मेरे और शेरा के सामने इस यंत्रमे राउंड दालकर ऊसे उडाकर बताया । बादमे वहा लोहे की पिन मेरे पास दिया तो मैने वह लोहे की पिन मेरे पास रखा था । तपास मे पोलीस को दिया है ।

यह इकबालीया जबाब आज तारीख २५.०४.२०१२ के १७.०० बजे शुरु करके २१.०० बजे पुरा किया ।

86. Immediately below the confessional statement, P.W.49 appended his certificate indicating compliance of Section 18(3) of the MCOCA. Juber Khan was then given to the custody of Shri Palve with a direction to produce him before the learned Chief Judicial Magistrate along with a confessional statement kept in a closed/ sealed envelope.

87. P.W.50 Shri Palve testified, indicating compliance of the directions given by P.W.49 Somnath. He placed on record station diary and lock-up register entries in that regard. (Exhs.408 to 418). His evidence further indicates that, he produced Juber Khan before the learned Chief Judicial Magistrate on 26/4/2012. The learned Chief Judicial Magistrate

recorded his statement (Exh.401), wherein Juber Khan stated that, his confessional statement was already recorded by police on 9 March 2012 and he was simply made to sign the same on 25 April 2012. For better appreciation, his statement before the learned Chief Judicial Magistrate is reproduced below :

आरोपीचा जबाब
माझे नाव जुबेरखान शब्बीर खान
वय — २८ वर्ष धंदा — नौकरी
रा. चालीसगांव

माझे नाव जुबेरखान शब्बीरखान आहे. दिनांक २४.०४.२०१२ व २५.०४.२०१२ रोजी सोमनाथ गर्गे पोलीस उपायुक्त यांनी माझा जबाब नोंदवला हे म्हणणे बरोबर आहे. पोलिसांच्या विरुध्द माझी काही तक्रार नाही. दिनांक ०७.०४.२०१२ रोजी मला हर्सुल कारागृहामध्ये पाठविण्यात आले. दिनांक १२ किंवा १३ तारखेला मला जेल मधुन बाहेर काढले. तेव्हा न्यायालयासमोर हजर केले. तेव्हा पासून मी पोलिस हिरासत मध्ये आहे. दिनांक २७.०४.२०१२ रोजी पर्यंत माझी पोलीस हिरासत मध्ये आहे. सदर जबाब पहिल्यापासुनच लिहुन तयार होतं. त्यातील मजकुर मी वाचुन घेतलं. त्यावर मी सही केली. दिनांक २४.०४.२०१२ रोजी मी जबाब दिला नाही. फक्त गर्गे साहेबांना भेटून आलो व दिनांक २५.०४.२०१२ रोजी माझी सही घेतली. दिनांक २५.०४.२०१२ रोजी सही करण्यापुर्वी तो जबाब मी वाचलं तसा जबाब मी दिलेला नव्हतं. दिनांक ०९.०३.२०१२ रोजी पोलिसांनी जबाब लिहून मला सही करण्यास सांगितले, वाचुन घेण्यास सांगितले. मी वाचुन घेतले. त्याने तो जबाब पाठ करुन तसाच जबाब देण्यास सांगितले. दिनांक २५.०४.२०१२ रोजी या जबाबावर मी सही केली. तो जबाब तसाच होता. त्यामुळे मी त्यावर सही केली. त्याशिवाय मला आणखी काही सांगायाचे नाही. दिनांक २४.०४.२०१२ च्या जबाबावर आज मागच्या तारखेत मला सही करायला लावले. वाचुन पाहिले व लिहले बरोबर आहे. म्हणुन सही केली.

स्वाक्षरी
जुबेरखान शब्बीरखान

समक्ष
स्वाक्षरी
मुख्य न्यायदंडाधिकारी
औरंगाबाद

The learned Chief Judicial Magistrate passed order below Exh.1 in Cri.M.A. No.630/2012 which reads :

> 1. Today, the Accused namely Juberkhan Shabbirkhan is produced by Police Sub Inspector Mukund Palve. He has produced the Accused Juberkhan and one sealed envelope from Somnath Garge, D.C.P., Head Quarter, Aurangabad, addressed to this Court along with this application. I have perused the application and relevant section 18 of the Maharashtra Control of Organised Crime Act, 1999. I have opened the envelope and perused the two parts of the statements purportingly given by the Accused. I have brought them to the notice of the Accused. I have heard him and recorded his statement under Section 18(6) of the said Act. It is incorporated in this proceeding. The Accused has no complaint of illtreatment or torture.
>
> 2. The statement be again kept in packet and it be sealed with my signature. The statement of the Accused along with this proceeding and Roznama be forwarded under Section 18(4) of the said Act to the Special Court. The Accused be sent back to the custody."

88. Then, following the similar procedure and mandate of Section 18 and Rule 3, P.W.49 Somnath recorded confessional statement of appellant Najer Ali. It is in his evidence that he asked Shri Bahure (P.W.61) to produce appellant Najer Ali before him on 11/5/2012. Najer Ali was accordingly produced before him. The investigating officer was asked to leave. Then P.W.49 interacted with Najer Ali, put him certain questions and from

replies thereto, was satisfied that Najer Ali wanted to make a confessional statement, voluntarily. Part I of confessional statement of Najer Ali is at Exh.391. We have perused the same to find it to be in compliance with Section 18 and Rule 3 of the MCOCA. Najer Ali was given to the custody of P.W.48 Katke with a specific direction to keep Najer Ali in a lock-up of Cidco Police Station and ensure that no officer connected with the investigation shall have an occasion to contact him during such custody. Mr. Katke was asked to produce Najer Ali again before him (P.W.49) by 5.00 p.m. on the following day. Accordingly, P.W.48 Katke kept Najer Ali in lock-up of Cidco Police Station and accordingly he was produced. Again similar questions were put to him. The replies given by Najer Ali have been recorded. The officer concerned was satisfied that Najer Ali wanted to make a confessional statement, voluntarily. He, therefore, recorded the same as below :

> मै सैय्यद नाजेर अली सैय्यद नासेर अली, उम्र २४ साल, पता – कासंबरीनगर, पडेगाव, ता.जि. औरंगाबाद
>
> मै उपर दिऐ पते पे मेरी मां, पिताजी, बहेन, भाई, बिबी और बच्चो के साथ रहेता हु । मै मजदुरी कर के पेट भरता हु । मै आठ साल पहले आसेफिया कॉलनी, टाऊन हॉल यहा पर रहता था । मेरा वहा पे खुदका घर था । वह घर बेचकर मैने कासंबरी नगर मे घर लिया है । मै आसेफिया कॉलनी मे रहता था । इस लिए मेरी वहा रहने वाले इम्रान उर्फ मेहंदी और सलीम कुरैशी इनके साथ अच्छी जान पहचान थी ।
>
> ढाई महिने पहले इम्रान मेहंदी के कटकट गेट के वाशिंग सेंटर पर मै, शेरा, जुबेर, नुमान, खालेद, शोयेब और फरीद बैठे थे तब इम्रान मेहंदी

ने हम सब को कहा की, “आसिफिया कॉलनी मे रहनेवाला सलीम कुरैशी को उठाना है । ऊसका अगवा करने के बाद वह अपने को ५० लाख रुपये देगा । वो पैसे सब आपस मे बाट लेंगे । इस लिए हम सब ने प्लॅन बनाकर ऊसके साथ रहेने का फैसला किया ।

तारीख ०२/०३/२०१२ को हम सब जब इम्रान मेहंदी के वाशिंग सेटर पर थे । तब वहा मुंबई मे रहनेवाला सुलतान नाम का लडका वहा आया था । उस वक्त इम्रान मेहंदी ने हमसे बोला की, “आज सलीम कुरैशी को उठाना है” उसके बाद सब आसेफिया मस्जीद के पास आये । वहा पर इम्रान बोला की, सलीम कुरैशी की कार आते ही कार को मोटार सायकल से टक्कर देकर उसे उसी के गाडीमे लेकर जाना है । उस रात सलीम कुरैशी रात एक बजे कार मे आया लेकीन ऊसके आजूबाजू लोग होने की वजह से उसे उठा नही सके । इसलिए हम वापस आऐ ।

तारीख ०३/०३/२०१२ को रात इम्रान मेंहदी ने शोऐब को मोटार सायकलपर रॉक्सी टॉकीज के पास भेजा । और सलीम कुरैशी निकलने के बाद बताने के लिए कहा । फिर से हम सब आसेफिया मस्जीद के पास आकर खडे रहे । ऊस दिन सलीम कुरैशी रात मे बारा बजे आऐ लेकीन सबने कहा की बाद मे उठाऐंगे ।

तारीख ०४/०३/२०१२ को मै घर को था तब छ बजे के वक्त भोईवाडा का जाकेर मेरे पास आया और हम दोनो बाबा पेट्रोल पंप के पास वाईन शॉप से बिअर लेकर भडकल गेट के पानी के टाकी के पास बिअर पिते बैठे थे । वहा मेरे मोबाईल पर इम्रान मेंहदी का फोन आया और ऊसने बताया की, तु जल्दी आ, अपने को जाने का है । लेकीन मैने मेरा फोन बंद कर दिया । मै रात मे १० बजे तक बिअर पिते बैठा । वहा गुडडु और उसका दोस्त भी आया था । हमने आठ नऊ बिअर पिये ऊसके बाद दस बजे मैने मेरा मोबाईल चालु किया । तब फिर से इम्रान मेहंदी का फौन आया और ऊसने मुझे अर्जंट ऊसके कटकट गेट के वाशिंग सेंटर पर बुलाया । मुझे जाकेर ने कटकट गेट पर छोडा और वह चला गया । मै इम्रान मेहंदी के वाशिंग सेंटर पर गया वहा पर सुलतान, इम्रान, शोएब, खालेद और नुमान हाजीर थे ।

रातमे ग्यारा साडे ग्यारा बजे शोएब ऊसकी मोटार सायकल नंबर एम.एच२०.बीपी–५०१३ पर बैठकर रॉक्सी टॉकीज के तरफ गया । सलीम कुरैशी रॉक्सी टॉकीज से निकलने के बाद शेएब इम्रान मेहंदी को फोन करने वाला था मै, सुलतान, खालेद, फरीद ऐसे ओमनी मे बैठे थे । ओमनी कार शेरा चला रहा था । नुमान और इम्रान मेहंदी मोटार सायकल नंबर एम.एच.२०एक्यु ४३११ पर थे । हम सब आसेफिया कॉलनी के पास बु–हाण कॉलनी मे पास आकर रुक गये ।

वहा शेरा और जुबेर आऐ । अंदाजा एक से सव्वा बजे के वक्त शोएब का इम्रान मेहंदी को फोन आया ऊसने बताया सलीम निकला । इम्रान ने बताया सलीम आ रहा है तयार रहो । तब शेरा गाडीके ड्रायव्हर सीटपर बैठा । ऊसके बाजू के सीटपर जुबैर बैठा । इम्रान मेहंदी ने नुमान को मोटार सायकल दी । और उसे थोडा आगे जाकर खडे रहने के लिए कहा इस लिए वह थोडा आगे जाकर खडा रहा । शोएब को फिर फोन आया की, सलीम टाऊन हॉल पर रुका है । और फिर फोन आया की वह आ रहा है । सलीम कुरैशी की गाडी हमारी गाडी के तरफ आते हुई दिखाई दी । तुरंत ही शेरा ने ओमनी सलीम के गाडी के सामने लगाई । तब सलीम कुरैशीने गाडी रुकाई । तब जुबैर गाडी के निचे उतरकर बोला "मादरचोद ऐसे कैसी गाडी चला रहा है ।" ऐसी गाली देने के वजह से सलीम कुरैशी गाडी के नीचे उतरा और हमारी गाडी के तरफ आते वक्त जुबेर के तरफ देखकर गालीया दे रहा था । तब मै, इम्रान मेहंदी, सुलतान, फरीद ऐसे गाडीमे से उतरे । तुरंत इम्रान मेहंदीने सलीम कुरेशी का गला हात से दबा कर पकडा । और सुलतान ने ऊसके पैर पकडकर ऊसे उसकी ही कार मे डाला । मै सलीम कुरैशी की गाडी चलाने बैठा । पीछे इम्रान मेहंदी, सुलतान, नुमान, फरीद बैठकर निकले । मारोती ओमनी मे शेरा, खालेद, जुबेर यह हमारे पीछे थे । हम छावणी इदगाह के रास्ते से भावसिंगपुरा बाद मे मिटमिटा शिवार मे लेकर गये । रास्ते से पीछे बैठे लोगो ने सलीम कुरैशी को पक्का पकडकर रखा था । गाडी मैने कांसबरी नगर के बाजुके खेत मे रुकाने के बाद सलीम कुरैशी को नीचे उतार लिया ।

ऊसके बाद इम्रान मेहंदीने मुझे और शेरा को सलीम कुरैशी की वॅगनआर कार जल्दी जाकर रॉक्सी के पास छोडकर आने को कहा । इसलिए मै और शेरा वॅगनआर कार लेकर गए । तब शेराने गाडी चलाई ।

हम रास्ते से आते वक्त शेराने शेएब को फान किया और बाबा पेट्रोल पंप के पास बुलाया । हमको वह बाबा पेट्रोल पंप के पास मोटार सायकलपर मिला । रॉक्सी टॉकीज के पास जाने के बाद कोई अपने को पहचानेगा इस लिए हमने गाडी रॉक्सी के पास खडे न करते हुए पगारीया के पास गाडी लगाई । और गाडी की चाबी शेराने ऊसके पास रखी । ऊस वक्त रात के ढाई बज रहे थे । मै और शेरा दोन्हो शोएब के गाडीपर बेठे । हम तीनो ने बायजीपुरा मे जाकर चार सिगरेट लिये । उसके बाद मै और शेरा मोटार सायकलपर पडेगाव के तरफ गये और शोऐब घर चला गया । हम वहा गए तब मैने देखा की सलीम कुरैशी के दोनो हात बांधे हुए थे । और इम्रान मेहंदी ऊससे बात कर रहा था ।

ऊसके बाद मुझे और फरीद को इम्रान मेहंदी ने टिकस और फावडा लाने के लिए भेजा । हम वह लेकर आए । ऊसके बाद मै, जुबेर,

नुमान, सुलतान, खालेद, शेरा सबने मिलकर इम्रान मेहंदी के कहने पर गडडा खोदा । अंदाजा पाच फुट लंबा और चार फुट नीचे गडडा तयार किया । ऊस वक्त सोडे चार बज रहे थे । ऊसके बाद इम्रान मेहंदीने सलीम कुरैशी के आंगपर के पुरे कपडे चाकू से फाड डाले । और ऊसके आंगपर एक भी कपडा नही रखा । ऊसको पुरा नंगा किया और ऊसको गडडे के पास लाए । ऊस वक्त मे करीब था । इम्रान मेहंदी और सुलतान ने सलीम कुरैशी को उठाकर गडडे में डाला । लेकीन वह तुरंत उठ कर खडे हुआ । तब इम्रान ने सलीम कुरैशी के सरके बाल पकडकर ऊसके गले पर चाकू से वार किया और ऊसका गला काट दाला । और तुरंत चाकू सुलतान के पास दिया । सुलतान ने भी चाकु से सलीम कुरैशी को मारा । वह गडडे मे तडफड कर रहा था तब इम्रान मेहंदी के कहने पर हम सब ने मिलकर ऊसपर मिटटी डाली । और ऊसे गाड दिया । ऊसे गाडने के बाद पुरा सामान लेकर हम सब गाडी मे बैठे । मैने मारोती व्हॅन चलाई । ऊस वक्त व्हॅन मे मै, जुबैर, खालेद, सुलतान, फरीद, शेरा ऐसे बैठे । नुमान और इम्रान मेहंदी ये दोनो मोटर सायकलपर बैठे । ऊस वक्त सलीम कुरैशी के कपडे, कमर का बेल्ट, जुता इम्रान मेहंदी के पास था । हम मिटमिटा के तरफ से बाबा पेट्रोल पंप पर आऐ. मैने बाबा पेट्रोल पंप के पास एक गल्ली मे मारोती ओमनी व्हॅन खडी करके हम सब नीचे उतरे और घर को चले गये । मैने गाडी की चाबी इम्रान मेहंदी को दी थी । मैने जहा गाडी लगाई थी वह जगा मुझे पता है । वह मैने बताया है इस तरह सलीम कुरैशी का खून किया है ।

यह इकबालीया जबाब आज तारीख १२/०५/२०१२ सुबह १७.०० बजे शुरु करके २०.०० बजे पुरा किया ।

89. We have perused the same. P.W.49 has appended his certificate below the confessional statement about his satisfaction that Najer Ali made confessional statement voluntarily. Then he gave Najer Ali to the custody of Katke along with a confessional statement in a closed/ sealed cover with a direction to produce him before the learned Chief Judicial Magistrate. The record indicates that, Najer Ali was produced before the learned Chief Judicial Magistrate on 14/5/2012. The

record indicates that, on 13/5/2012 it was a holiday and, therefore, Najer Ali was not produced before the learned Chief Judicial Magistrate forthwith. The word 'forthwith' has been interpreted to mean, without unreasonable delay. Since 13/5/2012 was a holiday. Mr. Katke was justified in producing Najer Ali before the Chief Judicial Magistrate on 14/5/2012. Mr. Katke has also placed on record station diary and lock-up entry and other communication vide Exhs.356 to 376 to indicate to have scrupulously followed all the directions given by P.W.49. Page 89 in the Paper Book is a letter given by learned Chief Judicial Magistrate to the Special Court (Trial Court), forwarding the confessional statement to the said Court. Part II of the confessional statement of Najer Ali is at Exh.392. Najer Ali was produced before the learned Chief Judicial Magistrate on 14/5/2012. On his production, the learned Chief Judicial Magistrate made following observations :

> "Accused produced. No complaint. He stated that under pressure, his statement is recorded. Forwarded to Spl. Court."

90. Then comes confessional statement of Syed Jahir @ Shera Syed Baqar Qureshi. P.W.49 got him produced before him on 13/5/2012.

P.W.52 Keru Khod produced Syed Jahir @ Shera before P.W.49 Somnath Gharge on 13/5/2012. Evidence of P.W.52 Keru Khod indicates to have scrupulously complied with all the directions of P.W.49 and he placed on record the lock-up and station diary entries vide Exhs.430 to 436.

91. Again following the similar procedure and mandate of Section 18 and Rule 3, P.W.49 Somnath recorded confessional statement of appellant Syed Jahir @ Shera. It is in his evidence that he asked P.W.52 Keru Khod to produce Syed Jahir before him on 12/5/2012. Syed Jahir was accordingly produced before him. The investigating officer was asked to leave. Then P.W.49 interacted with Syed Jahir, put him certain questions and from replies thereto, was satisfied that Syed Jahir wanted to make a confessional statement, voluntarily. Part I of confessional statement of Syed Jahir is at Exh.395. We have perused the same to find it to be in compliance with Section 18 and Rule 3 of the MCOCA. Syed Jahir was given to the custody of P.W.52 Khod with a specific direction to keep Syed Jahir in a lock-up of Cidco Police Station and ensure that no officer connected with the investigation shall have an occasion to contact him during such custody and then produce him before P.W.49 on 13/5/2012. Accordingly, P.W.52 Khod produced Syed Jahir before P.W.49 on

13/5/2012. P.W.49 again interacted with Syed Jahir and from the replies thereto, was satisfied that he (Syed Jahir) wanted to make a confessional statement, voluntarily.

Part II of confessional statement of Syed Jahir is at Exh.397. We have perused it. He was again produced before P.W.49 Gharge on 13/5/2017. It reads :

> मै सय्यद जहीर उर्फ शेरा पिता बाखर कुरेशी, उम्र २६ साल, धंदा—व्यापार, पत्ता — चेलीपूरा, तोटी की मस्जीद के बाजू घर नंबर १—१८१०, औरंगाबाद.
>
> मै उपर दिऐ हुऐ पते पर मेरा भाई जमीर बाखर कुरेशी, भाभी यास्मीन, पत्नी सला और लडकी खतीजा उर्फ बला २५ साल से रहते है । मेरी पढाई दसवी तक हुई है । कटकट गेट पर इम्रान मेहंदी का सर्व्हीसींग सेंटर और कुत्तों का पालना घर है । मुझे कुत्तो का शौक होने की वजह से मै इम्रान मेहंदी के पाले हुए कुत्ते देखने पिछले सालभर से जाता था । उसकी वजह से मेरी और उनकी दोस्ती हो गयी । इम्रान मेहंदी के सर्व्हीस सेंटर पर मेरे दोस्त शोएब, खालेद, जुबेर बैठा करते थे । अंदाजन तीन महीने पहले इम्रान मेहंदी के सर्व्हीसिंग सेंटर पर मै, जुबेर, खालेद, फरीद, नुमान, नाजेर अली बैठे हुए थे । इम्रान मेहंदी ने कहा की आसेफिया कॉलनी के सलीम कुरेशी को उठाना है । उसको उठाने के बाद वह अपने को पचास लाख रुपये देगा । फिर आपुन सब लोग पैसा बाट लेंगे ।
>
> तारीख ०२/०३/२०१२ को मुंबई से सुलतान नाम का लडका आया । तब इम्रान ने कहा की आज सलीम कुरेशी को उठाना है और मोटार सायकल पर सब आसेफिया मस्जिद के पास आये और वहा ठहराया की सलीम कुरेशी की कार आने के बाद उसको मोटार सायकल से धडक देकर उसके बाद उसको उसकी गाडी मे लेकर जाने का लेकिन उस दिन आजू बाजू लोग होने के वजह से हमको उसे उठाना नही आया । इसलिए हम वापस आये ।
>
> तारीख ०३/०३/२०१२ को रात मे शोएब को मोटार सायकल पर रॉक्सी टॉकीज के पास भेजा और सलीम कुरेशी निकलने के बाद

बताने को कहा फिर हम सब चोरी की मारोती व्हॅन मे आसेफिया कॉलनी मस्जिद के पास आकर खडे हुए उसी दिन सलीम कुरेशी बारा बजे के समय कार मे आये । लेकिन उस दिन सबने कहा की बाद मे उठाएंगे ।

तारीख ०४.०३.२०१२ को मै, इम्रान मेहंदी, शोएब, जुबेर, सुलतान, नुमान, नाजेर अली सब मिलकर आसेफिया कॉलनी से सलीम कुरेशी को उठाने के लिए आये । मुझे इम्रान मेहंदी ने मारुती ओमनी चलाने को कहकर सलीम कुरेशी की गाडी आने के बाद उसके गाडी के सामने ओमनी लगाने को कहा । सलीम कुरेशी रॉक्सी टॉकीज से निकलने के बाद शोएब, इम्रान मेहंदी को मालूमात देनेवाला था । गाडी सलीम कुरेशी के गाडी के सामने लगाने के बाद जुबेर, सलीम कुरेशी को गाली देनेवाला था । उसी वजह से सलीम कुरेशी गाडी के निचे उतरते ही उसको उठाने का काम इम्रान मेहंदी और सुलतान करनेवाले थे । उस तरह इम्रान मेहंदी ने हम सबको काम बाटकर दिए थे ।

अंदाजे रात को पावने एक बजे के वक्त शोएब का फोन आने के बाद इम्रान ने हमको बतया की वो आ रहा है तुरंत मै गाडी मे ड्रायव्हर के सीटपर बैठा । मेरे बाजू मे जुबेर बैठा और नुमान के पास इम्रान मेहंदी ने मोटारसायकल दी और उसको रोडपर थोडा आगे जाकर खडा रहने को कहा । इसलिए वह थोडा दूर रोडपर जाकर खडा हो गाया । उसके बाद शोएब का फिरसे फोन आया । सलीम कुरेशी टाउन हॉल के पास रुका है । उसके बाद फिर फोन आया की वह आ रहा है । सलीम कुरेशी की गाडी हमारी तरफ आती हुई दिखाई दी तुरंत मैंने ओमनी उसके गाडी के सामने लगाई तब सलीम कुरेशी ने उसकी गाडी रुकाई । तब जुबेर नीचे उतरकर बोला "मादरचोद ऐसे कैसी गाडी चला रहा है" ऐसी गाली देने के बाद सलीम कुरेशी नीचे उतरकर हमारी तरफ आ रहा था एस वक्त वह जुबेर की तरफ देखकर गाली दे रहा था । उस वक्त इम्रान, नाजेर अली, सुलतान और फरीद उतरे । तुरंत इम्रान ने सलीम कुरेशी को दबाया और सुलतान ने एसके पैर पकडकर उसे गाडी मे डाला । नाजेर अली सलीम कुरेशी की गाडी चलाने को बैठा । गाडी मे पिछे इम्रान मेहंदी, सुलतान, नुमान, फरीद बैठकर निकले और ओमनी मे मै, खालेद, जुबेर उनके पीछे निकले । हम छावणी, इदगाह, भावसिंगपुरा से होते हुए उसे मिटमिटा शिवार लेकर गए । पडेगांव कासमबरीनगर के बाजू मे खेत मे रुक ने के बाद सलीम कुरेशी को नीचे उतार लिया । तब मैने ओमनी के लाईट चालू रखे थे । तब नाजेर अली गाडी खडी करके गाडी के नीचे उतरा और उसने सलीम कुरेशी के गले मे की चैन, हाथ की अंगूठी और उसके पॅट के पीछे के जेब मे से पॉकेट निकाला यह मैने देखा था ।

हम रस्ते से आते वक्त नाजेर अली ने शोएब को फोन किया और बाबा पेट्रोलपंप के पास बुलाया । हम को वह बाबा पेट्रोलपंप के पास मोटारसायकल पर मिला । हमको रॉक्सी टॉकीज के पास गाडी लेकर जाने की नही । इसलिए पगारीया के पास गाडी लगा दी और गाडी की चाबी मैंने रोडपर फेंक दी । मै नाजेर अली, शोएब के मोटारसायकल पर हम तीनों बैठकर आसेफिया कॉलनी मे गये । वहा से इम्रान मेहंदी की मोटारसायकल ली हम तीनों मोटारसायकल पर बैठकर पडेगांव के तरफ गये और शोएब घर चला गया । हम वहा गये तब मैंने देखा सलीम कुरेशी के दोने हाथ बांधे हुए थे और इम्रान मेहंदी उसके साथ बात कर रहा था ।

उसके बाद नाजेर अली और फरीद को इम्रान मेहंदी ने टिकास और फावडा लाने के लिये भेजा उन्होंने वो लाया उसके बाद हम सबको इम्रान ने गडडा खोदने को कहा । हम सबने गडडा खोदा तब साडेचार बजे थे । उसके बाद इम्रान मेहंदी ने सलीम कुरेशी के कपडे चाकू से फाडे । उसके शरीरपर एक भी कपडा नही रखा । उसे पुरा नंगा करकें गडडे के पास लाया । इम्रान मेहंदी और सुलतान ने सलीम कुरेशी को उठाकर गडडे मे डाला । मुझे वह हरकत देखने को मन नही किया इसलिए मै वहा से थोडा दूर चला गया । तब इम्रान मेहंदी और सुलतान ने सलीम कुरेशी को चाकु से मारा । वह गडडे मे तडफ रहा था । तब इम्रान मेहंदी ने हम सबको नजदीक बुलाया और उसपर मिटटी डालने को बोला इसलिए हमने उसे मिटटी डालकर गाड दिया ।

उसके बाद हम सब सामान लेकर गाडी मे बैठे । तब नाजेर अली ने मारोती व्हॅन चलायी । उस वक्त व्हॅन मे मै, जुबेर, खालेद, सुलतान, फरीद बैठे थे । नुमान और इम्रान मेहंदी दोनों मोटारसायकल पर बैठे । उस वक्त सलीम कुरेशी के कपडे, जुते, कमर का बेल्ट इम्रान मेहंदी के पास था । हम मिटमिटा की तरफ से बाबा पेट्रोलपंप पर आये और नाजेर अली ने बाबा पेट्रोलपंप के पास एक गली मे मारोती ओमनी व्हॅन खडी की और हम सब उतर के घर चले गये । इस तरह हमने सलीम कुरेशी का खून किया ।

यह इकबालीया जबाब आज तारीख १३.०५.२०१२ को १७.०० बजे शुरु करके २०.०० बजे पुरा किया ।

92. The certificate as is required under Section 18(3) of MCOCA is on separate page, at page 391. We found some

space on Page 930 i.e. below the confessional statement of Jahir, whereon P.W.49 could have given his certificate. It is, however, not a case of non-compliance of Section 18(1) of the MCOCA. The reliance placed on the judgment in case of Mohd. Iqbal Farook Shaikh, relied on by learned Advocate Mr. Jaiswal would, therefore, be of little consequence as it was a case of non-compliance of Section 18(3) at all. The certificate bears signature of the appellant Jahir. There is also certificate given by the Stenographer of P.W.49. It is at Exh.482 in the following words :

प्रमाणपत्र

मी, जी.डी. कदम, लघुलेखक, पोलीस उप आयुक्त (मुख्यालय) यांचे कार्यालय, औरंगाबाद शहर असे प्रमाणीत करतो की, वर नमुद टंकलेखन मी स्वतः पोलीस उप आयुक्त, मुख्यालय, औरंगाबाद यांनी आरोपी सय्यद जहीर उर्फ शेरा पिता बाखर कुरेशी याला विचारलेले प्रश्न व त्यांनी सांगितलेली उत्तरे संगणकावर पोलीस उप आयुक्त मुख्यालय यांचे कार्यालय, औरंगाबाद येथे टंकलिखीत केलेली आहेत.

सही
(जी.डी. कदम)
लघुलेखक
पोलीस उप आयुक्त (मुख्यालय) यांचे
कार्यालय, औरंगाबाद

93. Evidence of P.W.52 Keru Khod indicates that, he complied with all the directions given by P.W.49. He placed on record communication between both of them and the station diary and lock-up register entries vide Exhs.430 to 434.

94. Appellant Syed Jahir was produced before the learned Chief Judicial Magistrate on 14/5/2012. The learned Chief Judicial Magistrate passed the following remarks :-

> "Closed envelope opened and ascertained with accused. Whatever he had stated is mentioned below his statement. It be forwarded to Special Court (MCOCA)."
>
> Sd/- 14/5/2012

95. The prosecution has also examined P.W.51 Gangadhar, a Stenographer of P.W.49. His evidence indicates that, all the confessional statements of 3 appellants were typed by him as narrated by the respective appellants. The evidence of the Stenographer reinforces the prosecution evidence as regards recording of confessional statements.

96. During cross-examination of P.W.49 Somnath Gharge, it has been brought on record that, his office was not equipped with electronic record facility to record the confessional statement. The confessional statements were, therefore, typewritten. It has been brought on record that, his office was adjacent to the Chamber of Commissioner of Police. It has also been brought on record that, all the officers who were involved in

the investigation of the present crime were his subordinate officers. It is also on record that, he was Deputy Commissioner of Police, Headquarters, the Police Station, Begumpura did not fall within his jurisdiction. There is nothing to indicate P.W.49 Somnath Gharge to have played any role in the investigation of the crime before he recorded the confessional statements of the aforesaid three appellants. It has been brought on record during cross-examination of P.W.49 Gharge that, appellant Numan was produced before him on 13/5/2012 at 8.30 a.m. Since Numan refused to make a confessional statement, he (P.W.49) did not record his statement. The same suggests that, those who volunteered to make confessional statements, their statements have been recorded.

97. A communication was placed on record to indicate that P.W.49 made a request to Cellular Companies for providing CDRs of certain phone numbers connected with the present crime. It is a matter of common knowledge that, investigating officer or concerned Police Station Incharge is not permitted to directly make communication with the Nodal Officers of the Cellular Companies. It is only through Superintendent of Police or concerned officer authorized by Commissioner of Police, who makes such communications. Furthermore, the said

communication was not confronted to P.W.49 in his cross-examination. After going through the entire evidence on record, we find him to have not played any role in the investigation.

98. Section 15 of the TADA reads thus :

> "15. Certain confessions made to police officers to be taken into consideration : -
>
> (1) Notwithstanding anything contained in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this Section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:
>
> Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

99. Section 18 of the MCOCA is para materia with Section 15 of the TADA. In case of Nalini & ors. (1999) 5 SCC 253, it has been held :-

> "B. Terrorist and Disruptive Activities (Prevention) Act, 1987 – Ss. 15 & 21 – Evidentiary value of confession recorded by Police Officer under S.15

> against its maker and against a co-accused, abettor or conspirator – Effect of non obstante clause in S.15(1)– S. 30 of Evidence Act whether excluded thereby – Effect of addition of words "or co-accused, abettor or conspirator" in sub-section (1) of S.15 and deletion of cls. (c) and (d) of S.21 by Amending Act 43 of 1993 – Words 'substantive evidence' – Meaning of – Words "shall presume" in S.21(1) – Connotation of – Held, (per majority, Thomas, J. contra) confession of an accused is admissible as a substantive evidence against himself as well as against a co-accused, abettor or conspirator – But as a matter of prudence Court should require some corroboration of confession when used against a co-accused– Decision in *Kalpnath Rai v. State* overruled – Words and phrases – Evidence Act, 1872, S.30 – Confession under S.15 TADA Act."

In paragraph No.81 of the judgment in case of Nalini (supra), it has been observed:-

> **"81. Section 15 of TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences."**

100. Moreover, in case of Mohd. Farooq, (2010) 14 SCC 641, it has been held :-

> "C. Maharashtra Control of Organised Crime Act,

> 1999 (30 of 1999) – Ss. 18 & 29 and R.3(6), MCOC Rules, 1999 – Confession of co-accused – Conviction of A-1 on basis of confession of A-5 and A-6 – Permissibility – Held, confessional statement of co-accused can form basis of conviction under MCOCA– Maharashtra Control of Organised Crime Rules, 1999– R. 3(6) – Criminal Trial – Confession – Confession under special statutes.
>
> D. Maharashtra Control of Organised Crime Act, 1999 (30 of 1999) – Ss. 18 & 29 and R.3(6), MCOC Rules, 1999 – Confession of accused and co-accused-Conviction on sole basis of – Sustainability – Held, Conviction can be based solely on basis of confessional statement of accused and also the co-accused – Further held, evidence of co-accused is admissible as a piece of substantive evidence and in view of non obstante clause in S. 18 of MCOCA, Cr.P.C. would not apply – Maharashtra Control of Organised Crime Rules, 1999 – R. 3(6)."

101. Two of the three appellants who made confessional statements have retracted therefrom. One did not. The evidence of P.W.49 Somnath Gharge and the concerned police officers, in whose custody they were kept during the period of reflection and then until their production again before P.W.49 and thereafter their production before the learned Chief Judicial Magistrate inspires confidence that the confessional statements of those have been recorded strictly in compliance with Section 18 of the MCOCA and Rule 3 of the MCOC Rules. As has been observed in case of Nalini (supra), confessional statement is a substantive

piece of evidence. We have perused all the three confessional statements. They are consistent with each other. Only a distinction was sought to be made out between two confessional statements namely Juber and Najer Ali, wherein it has been mentioned that, demand of Rs.50 Lakhs was made to deceased Salim Qureshi. A statement relating to this demand was made by Imran Mehandi to him about two and half months before the incident. While in the confession of another one (Juber Khan), the reason for abduction was stated to be to teach a lesson to Salim Qureshi. (Page 879 and Page 907 of Paper Book were adverted to in this regard).

102. It is reiterated that, the confessional statement recorded by competent officer under the Special Statute is held to be a substantive piece of evidence against the maker thereof and even a co-accused charged and tried along with the maker. Confessional statement can be acted upon if it is found to be made voluntarily and is true. In case of **Bharat Vs. State of U.P. (1971) 3 SCC 950**, it has been observed :

> "7. . . . Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into

> the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true."

103. P.W.49 Somnath recorded the confessional statements of all the three appellants after giving them 24 hours' time of reflection. His interaction with all the three indicates that they made their confessional statements voluntarily. All the three confessional statements have been appended with the certificate

required under Section 18(3) of the MCOCA. These are the confessions recorded under Special Statute and not under Section 164 of the Cr.P.C. Reliance on the judgment in case of **(Sarwan Singh Rattan Singh Vs. State of Punjab (AIR 1957 SC 637)**) would, therefore, be of little relevance in the facts and circumstances of the present case.

104. In case of State of T.N. Vs. Kutty Alias Laxmi @ Narsimhan (supra), it has been observed :-

> "13. It is not the law that once a confession is retracted the Court should presume that the confession is tainted. As a matter of practical knowledge, we can say that a non-retracted confession is a rarity in criminal cases. To retract from a confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once those tests are found to be positive the next endeavor is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not a ground to throw the confession overboard."

105. All the three confessional statements are consistent

with each other. It is true that, one confessional statement cannot corroborate the another one. It is reiterated that, these confessional statements have been recorded under Special Statute and not under Section 164 of the Cr.P.C. A Wagon-R that was owned and regularly used by deceased Salim was seized on 6 March under the panchanama (Exh.120). Adhesive tapes were seized from the said car. The car was soiled from outside. Soil particles were obtained under panchanama (Exh.120). On exhumation of the dead body of the deceased, his hands and legs were found to have been tied with adhesive tapes. Those tapes were seized. Sample of soil from the place whereat the deceased was buried, were obtained. All these articles were sent to the office of the Chemical Analyst for analysis. The C.A. report (Exh.554) indicate that the adhesive tapes seized from the car and found on the dead body of Salim Qureshi, soil samples seized from the pit wherein the dead body of Salim Qureshi was buried and soil particles found on the Wagon-R car tallied among themselves in respect of physio Chemical characteristics and hue.

The confessional statements are, therefore, acted upon against the three confessors themselves. They are also relied upon as against the co-appellants as piece of substantive

evidence.

106. However, as observed above, the MCOCA was wrongly invoked. The appellants, therefore, deserve to be acquitted of the offences under MCOCA, they were convicted for.

107. The appeals, therefore, partly succeed. Hence the order :-

O R D E R

(i) The Criminal Appeals are partly allowed.

(ii) The order dated 27/8/2018, passed by learned Special Judge (MCOC), Aurangabad in Special Case No.17/2012 (MCOC), convicting and sentencing the appellants herein for the offences punishable under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 is hereby set aside. The appellants are acquitted thereof. Fine amount on those counts, if paid, be refunded to them.

(iii) The order dated 27/8/2018, passed by learned Special Judge (MCOC), Aurangabad in Special Case No.17/2012 (MCOC) convicting and sentencing the appellants herein for the

offence punishable under Section 302 read with Section 34 of the Indian Penal Code is maintained.

(iv) The order dated 27/8/2018, passed by learned Special Judge (MCOC), Aurangabad in Special Case No.17/2012 (MCOC) convicting the appellants herein for the offence punishable under Section 364 read with Section 34 of the Indian Penal Code is maintained. However, the sentence is reduced to rigorous imprisonment for seven (7) years and to pay fine of Rs.1000/- (Rupees one thousand) each, in default to suffer rigorous imprisonment for one year.

(v) The order dated 27/8/2018, passed by learned Special Judge (MCOC), Aurangabad in Special Case No.17/2012 (MCOC) convicting and sentencing the appellants herein for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code is maintained.

(vi) All the substantive sentences to run concurrently.

(vii) Clause 13 of the impugned order to stand unaltered.

(viii) The appellants are entitled for set-off as provided under Section 428 of the Code of Criminal Procedure for the period

already undergone by them in jail.

(ix) Fees of learned Advocate Mr. Chaitanya C. Deshpande, who was appointed to represent the appellant in Criminal Appeal No.588/2023, is quantified at Rs.10,000/- (Rupees Ten Thousand).

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

fmp/-