

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 583 OF 2014

Dumya alias Lakhan alias Inamdar
s/o Shrimant Bhosale,
Age : 22 years, R/o Tambewadi,
Tq. Barshi, District Solapur

APPELLANT

VERSUS

The State of Maharashtra
through Bhada Police Station,
Tq. Ausa, District Latur

RESPONDENT

AND

CRIMINAL APPEAL NO. 584 OF 2014

Appa s/o Shrimant Bhosale,
Age : Major, R/o Tambewadi,
Tq. Barshi, District Solapur

APPELLANT

VERSUS

The State of Maharashtra
through Bhada Police Station,
Tq. Ausa, District Latur

RESPONDENT

AND

CRIMINAL APPEAL NO. 592 OF 2014

Kiran Shrimant Bhosale,
Age : 21 years, Occu. Nil,
R/o Tambewadi, Tal. Barshi,
District Solapur

APPELLANT

VERSUS

The State of Maharashtra
through Police Station Officer,
Bhada Police Station, Dist. Latur

RESPONDENT

AND**CRIMINAL APPEAL NO. 745 OF 2014**

1. Kishor s/o Devidas @
Degha Bhosale,
Age : 25 years,
R/o Tirth, Tq. Tuljapur,
District Osmanabad
2. Suresh s/o Sanjay alias
Degha Bhosale,
Age : 26 years,
R/o Gaudgaon, Tq. Barshi,
District Solapur

APPELLANTS

VERSUS

The State of Maharashtra
through Bhada Police Station,
District Latur

RESPONDENT

AND**CRIMINAL APPEAL NO. 24 OF 2015**

Santosh s/o Sanjay Bhosale,
Age : 35 years, Occu. Agril.
And Labour, R/o Gaudgaon,
Tq. Barshi, District Solapur

APPELLANTS

VERSUS

The State of Maharashtra

RESPONDENT

Mr. R.J. Nirmal, Advocate holding for Mr. B.R. Surwase,
Advocate for the appellants in Criminal Appeals
No. 583/2014 and 584/2014
Mr. Pratik Kothari, Advocate holding for Mr. S.S. Bora,
Advocate for the appellant in Criminal Appeal
No. 592/2014

Mr. N.B. Suryawanshi, Advocate holding for Mr. A.V. Patil, Advocate for the appellants in Criminal Appeal No. 745/2014

Mr. P.B. Kadam, Advocate holding for Mr. S.J. Salunke, Advocate for the appellant in Criminal Appeal 24/2015

Mr. A.R. Kale, A.P.P. for the respondent/State in all the appeals

CORAM : M.T. JOSHI, J.

JUDGEMENT RESERVED ON : 4TH FEBRUARY, 2016

JUDGEMENT PRONOUNCED ON : 23RD FEBRUARY, 2016

JUDGEMENT :

1. All the appellants in present five appeals were convicted by the learned Special Judge under the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOC Act"), Aurangabad in Special Cae No. 10 of 2009, by judgement and order dated 31st July, 2014, for the offences punishable under section 395 r/w. Section 120-B of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for a period of 10 years.

2. Original accused no.1 – Kiran, who is appellant in Criminal Appeal No. 592 of 2014, original accused no.2 – Suresh, who is appellant no.2 in Criminal Appeal No.745 of 2014, original accused no.4 – Dumya alias Lakhan alias Inamdar Bhosale, who is appellant in

Criminal Appeal No. 583 of 2014 and original accused no.5 – Santosh, who is appellant in Criminal Appeal No.24 of 2015, were convicted for the offence punishable under section 3(1)(ii) of the MCOC Act r/w section 120-B of the Indian Penal Code. Each of them were sentenced to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs.5,00,000/- each, in default to suffer rigorous imprisonment for 3 years, each.

3. Original accused no.6 – Kishor, who is appellant no.1 in Criminal Appeal no.745 of 2014 and original accused no.7 – Appa, who is appellant in Criminal Appeal No.584 of 2014, were convicted for the offence punishable under section 3(1)(ii) of the MCOC Act r/w section 120-B of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years each and to pay fine of Rs.5,00,000/- each, in default, they were directed to suffer further rigorous imprisonment for a period of 3 years each.

4. Original accused no.1, 2, 4 and 5, as detailed above, were also convicted for the offence punishable under section 3(2) of the MCOC Act r/w. Section 120-B of the Indian Penal Code. They were sentenced to suffer

rigorous imprisonment for a period of 10 years each and to pay fine of Rs.5,00,000/- each, in default, they were directed to suffer further rigorous imprisonment for a period of 3 years each.

. Original accused no.6 and 7, as detailed above, were also convicted for the offence punishable under section 3(2) of the MCOC Act r/w. Section 120-B of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for a period of 7 years each and to pay fine of Rs.5,00,000/- each, in default, they were directed to suffer further rigorous imprisonment for a period of 3 years each.

. Original accused no.1,2, 4 and 5, as detailed above, were convicted for the offence punishable under section 3(4) of the MCOC Act r/w. 120-B of the Indian Penal Code. They were sentenced to suffer rigorous imprisonment for a period of 10 years each and to pay fine of Rs.5,00,000/- each, in default, they were directed to suffer further rigorous imprisonment for a period of 3 years each.

. Original accused no.6 and 7, as detailed above,

were also convicted for the offence punishable under section 3(4) of the MCOC Act r/w. Section 120-B of the Indian Penal Code. They were sentenced to suffer rigorous imprisonment for a period of 7 years each and to pay fine of Rs.5,00,000/- each, in default, they were directed to suffer further rigorous imprisonment for a period of 3 years each.

. All the sentences were directed to run concurrently. Since the appellants were under-trial prisoners, set-off as per the provisions of section 428 of the Code of Criminal Procedure was granted.

. Original accused no.3 was absconding and, therefore, the trial as regards him was separated.

5. Aggrieved by the various convictions and sentences, as detailed above, the appellants have preferred the present appeals. For the sake of convenience, all the appellants would be termed as the accused in the serial as they stood in the chargesheet framed by the trial Court.

6. The prosecution case would reveal that on 18th April, 2009, at village Bhada, District - Latur

post-midnight, dacoity has occurred. The dacoits had barged into the house of the complainant — PW1 — Sojrabai Gaikwad. The house-breaking and theft were also noted in the house of one Lochanbai Sarvade and one Mallikarjun Swami. Further one motorcycle, each of Yogesh Shivankar and Padmakar Chincholkar were also taken away by the dacoits.

7. As per the FIR of PW1 — Sojrabai, there was Satyanarayan puja and jagran gondhal function in her house in the said night. The same was over by 10.00 pm. In the night at about 2.00 am, as her she-goats started bleating, she awoke and found that 4 unknown persons were in her house. One of them was carrying tin box of valuables. She therefore shouted as "thief thief" ("चोर चोर"). One of the dacoits pushed her away and all the 4 started running away towards the field in front of her house.

. Upon hearing her shouts, her husband PW8 — Vishnu Gaikwad, her son — PW2 — Revnath, Nagnath and other neighbours started chasing those dacoits. After some time, however, PW2 — Revnath, Nagnath and Shivdas as well as her husband PW8 — Vishnu were brought by the

neighbours in injured condition as the dacoits had hit them while they were making an attempt to catch hold them.

. Accused no.5 – Santosh Bhosale was, however, caught by the villagers in the nearby field red-handed. In the incident, three gold rings weighing 5 gm each, two mobile handsets of nokia company, one lady's wrist watch of titan make, totally valued at Rs.21,750/- were looted.

. From the house of PW4 – Lochanbai Sarvade, cash of Rs.10,000/-, three sarees, one pair of silver chain, gold marriage string and ear studs, totally valued Rs.15,000/- were looted.

. From the house of PW5 – Mallikarjun Swami, cash of Rs.5,000/- and gold ring weighing 5 gm, totally valued at Rs.10,000/- were looted. The two motorcycles, as detailed above were taken away.

8. The FIR was filed by PW1 – Sojarabai. Accused no.5 – Santosh, apprehended by the villagers, was also handed over to the Police. PW13 – API – Nanasaheb Ubale of Bhada Police Station registered the crime and

conducted the investigation in the case. The injured as well as accused no.5 – Santosh were sent for medical treatment at Government Hospital, Latur. The Investigating Officer carried further investigation like preparation of panchanama of spot of occurrence at three places. The necessary investigation of the seizure of the blood stained clothes was carried. From the person of accused no.5 – Santosh, two wrist watches, one bracelet, cash amount and mobile phones etc. were seized.

. During further investigation and interrogation, the other accused came to be arrested. Either from the their persons certain valuables involved in the offence were recovered or on the basis of the statements made by them, the recovery has taken place. It appears that thereafter, the test identification parade was held (however, the prosecution has not examined the witnesses regarding the test identification parade).

. Since it was transpired that all the present appellants had earlier committed similar offences regarding the property in the past in organised manner, the Investigating Officer sent the proposal to the

Special Inspector General of Police to seek his permission for registering the offence punishable under various sections of MCOC Act, as detailed above. Upon grant of permission, he added those sections of MCOC Act. The Investigating Officer thereafter handed over further investigation to Dy.S.P. Mr. Survase.

9. Upon registration of the crime for the offences under the provisions of MCOC Act, PW14 – Mr. Sanjay Latkar, the then Superintendent of Police, Latur, upon seeking necessary permission from his superior, gave direction to the then Sub Divisional Police Officer to carry further investigation.

. During his investigation, accused no.2 – Dumya Bhosale and accused no.6 – Kishor Bhosale voluntarily made confessional statements and after giving due time, the statements were recorded. Lateron, accused no.2 – Suresh Bhosale's confessional statement after taking due care was recorded. All these statements were forwarded for verification to the Chief Judicial Magistrate, Latur. PW15 – Mr. Krishnakumar Itollikar, the then Chief Judicial Magistrate, Latur has separately recorded their statements and thereafter the chargesheet came to be

filed.

10. Before the learned Special Judge, in all 15 witnesses were examined which included the inmates of the house, the injured witnesses, as detailed above, respective panch witnesses, Medical Officer – PW 12 – Chandrashekhar Ramshette, Investigating Officers and the Chief Judicial Magistrate, as detailed above.

11. The learned Special Judge found that the prosecution case has been fully proved and, therefore, the impugned order of conviction and sentence, as detailed supra came to be passed.

12. The learned counsel for the respective appellants in each of the cases took me through the record of each of the case. They submitted that as per the complainant, only 4 persons had committed the offence. However, the prosecution has arrayed 7 accused persons. It was admitted by the complainant as well as other witnesses that there was darkness in the field and even the dacoits were masked. There are vague statements from some of the witnesses that there were 5-6 thieves. The property is not identified and no

record regarding test identification parade was proved before the Court. There was no earlier crime committed by the accused persons in organised manner. Even in some of the crimes, the respective appellants were already acquitted at the time of invoking the provisions of MCOC Act or during pendency of the present appeals.

13. As regards accused no.4 – Dumnya, learned counsel submitted that as per the prosecution case, one goldsmith has produced the golden ornaments on the statement that this accused had handed over the said ornaments to him. The said goldsmith, however, could not be examined as he has died during pendency of the trial. They further submitted that the confessional statements were obtained by compulsion and in the circumstances, it was submitted that the appellants be acquitted.

14. In the alternative, it was submitted on behalf of the appellants that the sentences imposed by the learned Special Judge are harsh. The appellants are behind the bars for a period of more than 5-6 years and, therefore, it was submitted that the appellants be released upon sentencing them for the period of

imprisonment already undergone by them.

15. On the other hand, the learned A.P.P. submitted that though the witnesses have admitted that there was darkness in the field and initially the dacoits were masked, it is to be noted that the injured inmates of the house as well as the villagers went in search for the dacoits. Even one of the dacoits was caught red-handedly. There was physical fight between the dacoits and the injured witnesses. In the circumstances, there could not have been any mask later-on and because of the physical contact between the witnesses and the accused, there was no difficulty in identifying them in the Court.

. It was further submitted by the learned A.P.P. that though the fact of holding test identification parade is not proved from the mouth of the Executive Magistrate, who has conducted the same or the panch witnesses, identification has been amply established as the witnesses have identified all the appellants in the witness box. They had no axe to grind against the appellants as they were not knowing the appellants earlier. Further there was a recovery of the valuables

looted in the incident, either from the persons of some of the appellants or recovery of those articles on the basis of the statements made by the respective appellants. In the circumstances, it was submitted that all the appeals be dismissed.

. As regards the sentences, it was submitted that the evidence on record would show that as three persons were injured, not only the dacoity was committed at three places and two motorcycles were taken away but also three persons were also injured by the appellants in the incident and hence it was submitted that no leniency is required to be shown to the appellants by interfering in the sentences awarded by the learned Special Judge.

16. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

I. Whether the prosecution has proved that the present appellants along with the absconding accused had entered into criminal conspiracy to commit dacoity at

villager Bhada and accordingly, committed dacoity at 3 places in the village in the night of 18th April, 2009 ?

II. Whether the prosecution has further proved that the appellants have committed the dacoity by using deadly weapons like Jambiya and caused grievous hurt to injured Revannath and his family members ?

III. Whether the prosecution has further proved that the present appellants have committed offence as a part of the organized crime by making preparation for commission of organized crime being the members of organized crime syndicate ?

. My findings to the above points are in the affirmative. The appeals are therefore, dismissed for the reasons to follow.

R E A S O N S

17. PW 1 – Sojarabai, PW 2 – Revannath and PW 8 – Vishnu are the members of Gaikwad family in whose house, the dacoity was committed in the night on 18th April, 2009.

. PW 1 – Sojarabai is the complainant. She gave the details of the occurrence. During her cross-examination, she admitted that there was darkness in the field and the dacoits had masked their faces. It is, however, to be noted that the said witness has not identified any of the accused and has identified gold rings which were seized from the goldsmith, who has unfortunately died before the trial could begin.

18. PW 2 – Revannath who was injured while catching the dacoits, has identified accused no.1 – Kiran and accused No. 2 – Suresh. It was argued that there was delay in holding the test identification parade. However, since we have no evidence regarding holding of the test identification parade, but only this witness stating that test identification parade was held, there is no reason to disbelieve the version of this witness since he was injured in the incident.

. This witness PW 1 – Revannath has also admitted that there was darkness at the time of the incident. However, as the manhandling had occurred and even the witness in the said incident is injured, it cannot be held that he was not able to see the assailants.

19. PW 8 – Vishnu, another injured witness has deposed that there were 5-6 thieves. He was, however, unable to identify any of the accused. PW 4 – Lochanbai and PW 5 – Mallikarjun Swami did not depose anything regarding identity of the present appellants.

20. What thus can be gathered from this piece of evidence is that accused no.5 – Santosh was caught red-handed on the spot and accused no.1 – Kiran and accused no.2 – Suresh were identified by PW 2 – Ramannath.

21. PW 12 – Chandrashekhar Ramshette, the Medical Officer of Primary Health Centre, Bhada, has deposed about the injuries to PW 8 – Vishnu and PW 2 – Revannath as well as his brothers – Nagnath and Shivdas. All the injury certificates were proved by him at Exhibit 117 to 119. There was no serious challenge to his testimony

before the trial Court.

22. PW 7 – Jalindar Rathane was the panch witness to the memorandum-cum-seizure panchnama of the articles, as regards accused no.6 Kishor. According to him, on 10th May, 2009, while the said accused was in custody made a statement before him that he was ready to point out the place where the mobile involved in the offence was hidden by him. He thereafter led the police and the panch witness to his house at village Tirth. There, from one tin box, he recovered a mobile of NOKIA make and two pieces of broken SIM card. The said articles were identified by this witness in the Court. The property was identified by PW 1 – Sojarabai as belonging to her.

23. PW 9 – Nandu Agalave was the panch witness to the fact of seizure of recovery of Hero Honda motorcycle from accused no.4 – Dumya. The panchnama in this regard is at Exhibit 95.

. PW 10 – Kishore Joshi deposed that he along with another panch – Kaka Bansode were called at the police station. Accused no.4 – Dumya, in his presence,

made a statement that he would produce the dagger (Jambiya) used in the offence and accordingly, led the police party to his house and therefrom, recovered the said Jambiya. The panchnama in this regard is at Exhibit 109. The said Jambiya was identified by the witness in the Court.

24. PW 11 – Suresh Kunjir has deposed that from the shop of one Tapase goldsmith, in their presence three gold rings, two gold marriage strings and one small earring of child were seized. The panchnama in this regard was proved by him at Exhibit 111. The said goldsmith Tapase, however, died during the pendency of trial.

25. PW 13 – API Nanasaheb Ubale has deposed about the investigation carried by him and the seizure of the property etc. According to him, during interrogation with accused no.4 – Dumya, he got the information that he had sold the ornaments looted during the dacoity to goldsmith Tapase and therefore, he seized the ornaments from goldsmith and recorded his statement. He further deposed that on 7th September, 2009 the test identification parade of accused Kishor Bhosale and accused Dumya Bhosale was conducted by Tahsildar-cum-

Executive Magistrate.

26. PW 14 – Sanjay Lathkar, the then Superintendent of Police, Latur has deposed about recording of confessional statements of the relevant accused, as detailed above, after taking all necessary precautions as provided by law, at Exhibit 196 and Exhibit 201, respectively.

27. PW 15 – Krishna Kumar Itollikar, the then Chief Judicial Magistrate, Latur, has deposed that he recorded the confessional statement of accused Kishor at Exhibit 205, of accused Suresh at Exhibit 207 and of accused Dumya at Exhibit 209.

28. There is nothing on record to disbelieve the version of this Chief Judicial Magistrate and the Superintendent of Police that the respective appellants have voluntarily made the confessional statements.

29. It is true that the learned APP in the trial Court failed to place the evidence regarding holding of the test identification parade, however, besides the said test identification parade there was voluminous evidence, though goldsmith Tapase has died before his

deposition could be recorded. We have the additional substantive evidence as detailed supra against said Dumya.

30. As regards the conviction of the respective appellants for the offences punishable under the provisions of MCOC Act, the learned counsel for accused No.1 Kiran, accused No. 4 Dumya and accused No. 7 Appa placed before me charts showing the status of pending cases against the respective appellants. These charts would show that while in some of the criminal cases, the respective appellants were acquitted, in remaining crimes, the appellants are prosecuted for the offences punishable under section 395, 307, 326, 392, 394 of the I.P. Code.

. It is not the case of any of the appellants that they are not still facing trial in any such cases and merely because in some of the cases, the acquittal is recorded, it cannot be said that the provisions of the MCOC Act would not be applicable.

31. The learned counsel for the appellants relied on the ratio laid down in the cases of "**Altaf Ismail**

Sheikh Vs. The State of Maharashtra and others", reported in 2005 ***CRI.L.J. 3584*** and "***Sherbahadur Akram Khan and others Vs. State of Maharashtra***" reported in ***2007 ALL MR (Cri) 1***.

32. In the case of "***Altaf Ismail Sheikh Vs. The State of Maharashtra and others***" (cited supra), the prosecution has alleged that the petitioner Altaf Ismail was involved in the organized crimes. The approval for recording of FIR was in relation to malpractices comprised of replacement of answer-sheets and forgery of signatures of invigilators and no other activities. However, the original complaint was not in relation to malpractices in selection process. Therefore, considering the facts of the case, the Division Bench of this Court has held that no application of the of the offences punishable under the MCOC Act is made out.

. On the face of it, the ratio in the "***Altaf Ismail Sheikh Vs. The State of Maharashtra and others***" (cited supra) has no application in the facts of the present case.

33. In the case of "***Sherbahadur Akram Khan and***

others Vs. State of Maharashtra" (cited supra), relied on by the learned counsel for the appellants, a salient principle of law that merely because one of the family members has indulged in crime, the same cannot be a ground for invoking the penal law against the members of the family without any activity attributed to him, is reiterated. The ratio laid down in this case also has no application in the facts of the present case.

. In the circumstances, the following order.

35. All the present five criminal appeals are hereby dismissed.

[M.T. JOSHI]
JUDGE

npj/criapl583-2014-group