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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.730 OF 2007

Dilip Mahendra Thapa
Aged 40 years, Residing at
Goraikhadi Housing Society,
Borivali (W), Mumbai.
(Presently in custody at the
Yerwada Central Prison,
Yerwada, Pune.

...Appellant/Orig. Accused No.4

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO.962 OF 2007**

1. Sameer @Babulal Badshah Mujawar
Aged 20 years, Occ. - Nil
Residing at Moratgi, Taluka Sindgi,
District – Vijapur (Karnataka State)
At present residing at Tulsidham
Vanvihar Nagar, Ist Lane,
In front of Grocery Shop,
Thane (W).
2. Rocky @ Stephen Simon Dabare,
Aged 28 years, Occ- Nil,
Resident of Nalasopara,
Nirmal Gaon, Nirmal-Vasai Road,
Near Animal Hospital,
Taluka – Vasai,

District – Pune

(At present both are in Yaroda Jail)

... Appellants
(Orig. Accused No.2 and 5)

v/s

The State of Maharashtra,
(at the instance of Shirol,
MIDC Police Station)

... Respondents
(Orig. Complainant)

**WITH
CRIMINAL APPEAL NO.870 OF 2007**

1. Dayanand Krishna Moyali
Alias Sadashiv Krishna Shetty
Age 27 years, Occ.Hotel
Resident of Mulki, Tal. Udapi,
District Mangalore,
Karnataka State
At present Akash Beer Bar, Section 3
Ulhasnagar.
 2. Anil Shankar Vetel,
Age. 28 years, Occu. Driver
Residing at Uralgaon, Tal. Shirur
District – Pune.
(At present residing at Manorama
Nagar, Between Shivmandir and
Maruti Mandir, Behind Maharashtra
Tadi-Madi Shop, Dhokali Naka,
Kolshet Road, Thane.
(Both at present lodged in Yerawada
Central Prison, Pune).
- ...Appellants
(Orig. Accused No.1 and 3)

v/s

The State of Maharashtra,
(At the instance of Shirolu,
MIDC Police Station, Kolhapur) ... Respondent

Mr.Chetan Alai, for the Appellants.

Mr.A.S.Shitole, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 11th JULY, 2016

ORAL JUDGMENT :

1. By the aforesaid appeals, the appellants – Dilip Mahendra Thapa (Criminal Appeal No.730 of 2007), Dayanand Krishna Moyali and Anil Shankar Vetel, (Criminal Appeal No.870 of 2007) and Sameer @Babulal Badshah Mujawar and Rocky @ Stephen Simon Dabare, (Criminal Appeal No.962 of 2007) have impugned the Judgment and Order dated 29th May, 2007, passed by learned Special Judge (Under MCOC Act), Pune, convicting and sentencing them in Special MCOC Case No.5 of 2002, for the offences stated hereinunder:-

- for the offence punishable under Section 397 of the Indian Penal Code to suffer R.I for 7 years and to pay a fine of Rs.3,000/- each, in default to suffer further R.I for 6 months;

- for the offence punishable under Section 341 r/w 34 of the Indian Penal Code to suffer S.I for 1 month and to pay a fine of Rs.500/- each, in default to suffer S.I for 7 days;
- for the offence punishable under Section 450 r/w 34 of the Indian Penal Code to suffer R.I for 2 years and to pay a fine of Rs.1,000/- each, in default to suffer R.I for 2 months.

All the aforesaid substantive sentences of imprisonment were directed to run concurrently.

2. The appellants vide the aforesaid Judgment and Order have however, been acquitted of the offences punishable under Section 3 r/w 25 of the Arms Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999. The appellants were entitled to a set-off under Section 428 of the Code of Criminal Procedure, for the period already undergone by them, as under trial prisoners.

3. At the outset, it may be noted that all the appellants have undergone the entire sentence and have been released from the jail. None of

the Advocate for the appellants have received instructions whether or not the appellants wish to pursue the appeals filed by them in this Court and hence the aforesaid appeals were taken up for hearing.

4. Mr.A.A.Mirza, appearing for the appellants in Appeal No.962 of 2007 and Mr.Abhaykumar Apte appearing for the appellants in Appeal No.870 of 2007 were absent and hence Mr.Chetan Alai appearing for the appellant in Appeal No.730 of 2007 was requested to also argue the aforesaid appeals, on behalf of all the appellants.

5. All the accused were initially charged for the offences punishable under Sections 395, 397, 341, 450 r/w 34 of the Indian Penal Code and under Section 25 r/w Section 3 of the Arms Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 and hence the case was sent before the Special Court and was heard by the Special Judge (under MCOC Act), at Pune and was numbered as Special MCOC Case No.5 of 2002.

6. The prosecution case in brief is as under:-

On 26th November, 2001 between 1.00 to 1.30 p.m, i.e during working hours of the Bank of Baroda, Nagaon Branch, 5 to 6 persons are stated to have come to the said Bank, in a yellow colour Maruti Esteem Car, bearing no.MH12/5937. The said persons are stated to have been armed with pistols and knives. It is alleged that the said persons entered the aforesaid bank, threatened the bank officers and the employees, and confined them in a room and escaped with a sum of Rs.4,59,445/-. The said persons are stated to have escaped in the said Maruti Esteem Car, after taking the loot. Soon thereafter, the bank officer is stated to have called the MIDC Police Station, Shirol and informed them about the said incident which had taken place. Pursuant thereto, the police arrived at the spot and on enquiry, learnt that the said persons had gone towards Belgaum, in a yellow coloured Maruti Esteem Car, pursuant to which wireless messages were set across by the police. On 27th November, 2001, a yellow coloured Maruti Esteem Car was spotted lying by the side of a road, near village Omnali. On enquiry, the police learnt that the said car had met with an accident and also learnt that some persons were hiding in the field in village Kunnur. On receipt of the said information, the police went to Kunnur and

on 27th November, 2001, the police surrounded the field, pursuant to which, appellant – Anil Vetel and Dayanand Moyali were apprehended. During the personal search of the said appellants, cash and pistols with live cartridges were seized. The appellants - Anil and Dayanand came to be arrested on 27th November, 2001. In the meantime, a complaint was lodged by Mr.Nalawade, who was working as an Accountant in the Bank of Baroda, Nagaon Branch, and who at the relevant time, was the In-charge Branch Manager. Pursuant to his complaint, the Shrioli MIDC police station registered an FIR which was registered vide C.R.No.110 of 2001.

After investigation, charge-sheet was filed. Some of the accused were arrested by the Karnataka Police and thereafter taken into custody by the PSI – Waikar. During investigation, it was revealed that the appellants were members of an organized crime syndicate and that several offences were registered against them in different police stations, which were punishable with imprisonment for more than 3 years, and hence charge-sheet in respect of the said offences were obtained. Thereafter, a proposal was sent for getting approval for registering an offence under the MCOC Act and on receipt of the approval under Section 23(1) of MCOC Act, provisions of MCOC Act were applied. After completion of

investigation and after obtaining sanction, charge-sheet was filed against the appellants under the MCOC Act. Thereafter, the appellant– Rocky @ Stephen Simon Dabare, (Appellant in Criminal Appeal No.962 of 2007) was arrested, pursuant to which supplementary charge-sheet was filed against him.

The learned Special Judge framed charge as against the appellants for the alleged offences punishable under the Indian Penal Code and MCOC Act.

The defence of the appellants was that of denial and false implication.

The prosecution in support of its case examined as many as 38 witnesses i.e. eye witnesses, panchas, police officers, employees of the lodges where the appellants resided etc. After considering the evidence on record, the learned Special Judge (under MCOC Act), vide Judgment and Order dated 29th May, 2007, was pleased to convict the appellants for the offences punishable under Sections 397, 341, 450 of the Indian Penal Code. As far as offences alleged under the MCOC Act were concerned, the appellants were acquitted from the said offences, vide the same Judgment and Order. It may be noted, that the State has not filed any appeal against

the acquittal of the appellants, under the provisions of MCOC Act.

7. Learned Counsel Mr.Chetan Alai, appearing on behalf of the appellant in Criminal Appeal No.730 of 2007 and on the request made by this Court on behalf of all the appellants in other Appeals, vehemently contended that the appellants have been falsely implicated in the said case. He submitted that the identification of the appellants was doubtful, considering that the incident happened in a span of 5 to 7 minutes. He submitted that the recovery of knife, at the instance of appellant – Dilip Mahendra Thapa, was from an open space i.e. from the highway and as such the recovery has no evidentiary value. According to him, there is recovery of cash at the instance of appellants - Dayanand Moyali and Anil Vetel, which was allegedly looted, however, the same is not identifiable. He submitted that even the clothes which were recovered at the instance of some of the appellants have not been identified by the witnesses. He submitted that in the light of the evidence that had come on record, the appellants ought to have been acquitted by the learned Special Judge.

8. Per contra, Mr.Shitole, learned APP appearing for the respondent – State, supported the impugned Judgment and Order of conviction of the appellants as aforesaid. He submitted that there was no infirmity in the Judgment and Order convicting the appellants and that there was nothing on record to discredit the testimony of the eye witnesses. He submitted that some of the witnesses had identified the appellants in the identification parade and in the Court. He submitted that there is recovery of cash from appellants - Dayanand Moyali and Anil Vetali, i.e. original accused nos.1 and 3, which was identified by the witnesses, as being the cash bearing stamp of M/s.Korgaonkar and Sons, which was deposited by on the very same day when the dacoity was committed. He submitted that the appellants were apprehended only because the car in which they fled i.e. the Maruti Esteem Car met with an accident on the Kolhapur Highway on the next day. He submitted that the seizure panchanama of the car shows, that two number plates were found in the said car, one number which was disclosed by the PW.6 – Dagdu Pandurang Kumbhar, where the petrol was filled and the other number was disclosed by the witnesses who were outside the bank.

9. Perused the evidence of all the witnesses and all relevant documents with the assistance of the Counsel for the Appellants and the learned APP. The incident of dacoity took place on 26th November, 2001. PW.2- Sudhir Rajaram Nalawade, the In-charge Branch Manager at the time of the incident has deposed that he reached the Bank at about 10.30 a.m. on 26th November, 2001. He has stated that he was the In-Charge Branch Manager on that day, as the Bank Manager, Mr.Morewas, was on leave, and that cashier – Kamble, Clerk – Bharati Kothawale, Mr.Pawar, Mr.Pradip Joshi and Mr.Bhagwan Bawdekar were also present in the Bank on the said day. He has stated that for daily transactions, initially an amount of Rs.1,59,000/- was taken out from the strong room and thereafter an additional amount of Rs.1,00,000/- was removed from the strong room. He has further stated that an amount of Rs.3,07,465/- was deposited by M/s.Korgaonkar and Sons and on that day and there were 15 persons who had also deposited cash in the bank on the very same day. He has further stated that when he was sitting at his table as usual and working, he saw one person holding the collar of Mr.Pawar and asking him to stand. Pursuant to the same, he, asked Mr.Joshi to find out what was happening. He has further stated that when he stood up, somebody came from behind

and gave him a blow on his back, asked him to sit down and abused him; that when he turned back he saw the said person and that the said person was having a pistol with him and had put the said pistol on his back and asked him to sit. He has further deposed that he had also seen another person standing in front of the counter having a pistol with him and asking the customers to sit down. He has further stated that at that time, two persons entered the bank and went to the cashier's cabin; that when peon – Bawadekar held one of the said persons, the said person put a pistol on his forehead; that thereafter, some of the accused went to the cashier's cabin and took cash from the cashier's cabin and put it in a carry bag; that he and other staff members were asked to go in a room where stationery articles were stored; and that all the accused ran away with the cash. PW.2- Sudhir Nalawade informed the police on telephone of the said incident. On enquiry with others, the said witness has stated that the said persons had come in a Maruti Esteem Car and had fled in the said car. It was revealed that a total sum of Rs.4,59,445/- was stolen by the said persons. PW.2 – Sudhir Nalawade's evidence is corroborated by the evidence of PW.3 – Bharati Bapu Kothawale, a bank clerk, who was also present at the relevant time in the Bank. PW.2 – Sudhir Nalawade and PW.3 – Bharati, bank

employees identified some of the appellants. Their evidence has also been corroborated by PW.5 – Rajendra Lahu Parit and PW.11 – Nandkumar Ambroschi Mane. PW.5 – Rajendra and PW.11 – Nandkumar are independent witnesses, who had seen the appellants getting down from the Maruti Esteem Car and entering the Bank. The said two witnesses had thereafter, entered the bank and had an opportunity to see the appellants even in the Bank. According to PW.5 – Rajendra, he had been to his friend, Pandit Khavare's office, when PW.11 – Nandkumar came to the spot which was near the Bank of Baroda. He has stated that it was around 12.30 noon at that time. According to PW.5 – Rajendra after about 5 to 10 minutes, one Maruti Esteem Car came their and parked the car, facing towards Kolhapur. He has stated that the 5 persons came out of the Maruti Esteem Car and entered the bank and that one person remained in the car on the driver's seat. He had stated that after some time he and PW.11 – Nandkumar heard some noise from the bank and hence went towards the bank to see what had happened. He has stated that they saw one person standing at the door of the bank and that 4 persons had entered the bank and hence they too entered the bank. He had deposed that the person standing near the door of the bank had a knife with him and that when they entered the bank they

saw 2 persons having revolver with them. He has stated that he saw some persons collecting cash from the bank and that the said persons were armed with revolvers and that they forced and threatened all the persons present in the bank, to sit down and that thereafter they all were later on taken to a Stationery Room, after which the accused persons ran away with the cash from the bank. He has stated that when he came out of the bank, he saw that the Maruti Esteem Car was missing. PW.11 – Nandkumar has corroborated the aforesaid evidence of PW.5 - Rajendra.

10. It is not in dispute, that the incident of dacoity had taken place. The only question is, whether the appellants were responsible for the same? The evidence in this regard, is an identification parade which was held in which the appellants have been identified by the witnesses. It appears that in all, 5 identification parades were held. The first identification parade was held on 30th December, 2001 ; the 2nd identification parade was held on 21st April, 2002, the 3rd identification parade was held on 13th April, 2002, the 4th identification parade was held on 3rd August, 2003 and the 5th identification parade was held on 10th August, 2003. It is pertinent to note that each of the aforesaid witnesses i.e. PW.2 - Sudhir Nalawade

(complainant), PW.3 – Bharati, PW.5 - Rajendra and PW.11 – Nandkumar have identified some of the appellants. PW.2 - Sudhir Nalawade has identified Anil Vetel (original accused No.3), Dayanand Moyali (original accused No.1), Dilip Mahendra Thapa (original accused No.4) and Sameer @Babulal Badshah Mujawar (original accused No.2). PW.3 – Bharati has identified Dayanand Moyali (original accused No.1), Sameer @Babulal Badshah Mujawar (original accused No.2) and Anil Vetel (original accused No.3). PW.5 – Rajendra has identified Dayanand Moyali (original accused No.1), Anil Vetel (original accused No.3), Sameer @Babulal Badshah Mujawar, and Rocky @ Stephen Simon Dabare, (original accused nos.2 and 5) and PW.11 – Nandkumar has identified Anil Vetel (original accused No.3), Sameer @Babulal Badshah Mujawar (original accused No.2) and Dilip Mahendra Thapa (original accused No.4). The first identification parade dated 30th December, 2001 was held by PW.20 – Sunil Sadanand Adisare, Special Judicial Magistrate in which the appellants - Dayanand Moyali, Sameer @Babulal Badshah Mujawar and Anil Vetel were identified by PW.2 – Sudhir Nalawade; the second identification parade was held on 21st April, 2002, by PW.16 – Prakash Bapusaheb Bodake; and the third, fourth and fifth identification parade were held by PW.27 – Shivmurti

Babu Kumbhar on 13th April, 2002 ; 3rd August, 2003 and 10th August, 2003. The identification parade and identification of the appellants has been assailed on the ground, that PW.2 - Sudhir, PW.3 – Bharati, PW.5 - Rajendra and PW.11 – Nandkumar have not given the description of the accused, in their statements. Learned counsel for the appellants also assailed the identification on the ground, that the incident took place for 5 to 7 minutes and therefore the probability of the witnesses seeing the appellants and later on identifying them is doubtful.

11. The evidence of the Special Judicial Magistrates, PW.16 – Prakash Bapusaheb Bodake, PW.20 – Sunil Sadanand Adisare and PW.27 – Shivmurti Kumbhar, show that they had conducted the identification parade of all the accused after complying with all the requisite conditions and after complying with the procedure under the Criminal Manual. Infact, in the cross examination of the said witnesses, nothing was brought on record to discredit their testimony.

12. The ocular testimony of PW.2 – Sudhir Nalawade (complainant) shows that he was present in the bank, at the time of the

incident and had witnessed the incident. He has not only identified the four accused in the identification parade but had also identified the accused in the Court. He has specifically stated which accused gave blow to him and placed a revolver on his back and so on ; which accused held the collar of Mr.Pawar and which accused had gone to the cabin of the cashier. There is nothing in the cross examination of the said witnesses to doubt his credibility and his evidence. He is a natural witness, who was present at the spot and who had seen the appellants. It may be noted that it is not the case of the appellants, that they had come with their faces covered and hence it was not possible to identify them.

13. PW.3 – Bharati has also identified three appellants. She has clearly deposed which accused entered the cashier's cabin and took away the cash. Merely, because the said witness has stated in her cross, that she was frightened, would not be a ground to discredit her testimony. The said witness is also a natural witness and her presence cannot be doubted. The evidence of PW.5 – Rajendra and PW.11 – Nandkumar gives credence and corroboration to the aforesaid evidence of the Bank Employees. As far as PW.5 – Rajendra is concerned, he is not an employee of the bank and can

be said to be a chance-witness. He has clearly stated that he had seen 5 persons getting down from a Maruti Esteem Car on 26th November, 2001 and that one person was sitting in the driver's seat. He has stated that when he heard some commotion in the Bank, he along with PW.11 – Nandkumar entered the bank and witnessed that the appellants were armed with weapons, and that the said persons threatened them and compelled the employees and them to sit, after which they took them to a Stationery Room and thereafter, pelted with the cash in the Maruti Esteem Car. Both, PW.5 – Rajendra and PW.11 – Nandkumar, although chance witnesses, their evidence has remained unshaken in the cross examination. In the cross examination of the said witnesses, nothing material has come on record to discredit their testimony.

14. What transpires from the aforesaid evidence is that there were 5 to 6 persons who had come to the spot; that they were armed with pistols and choppers; that they threatened the employees and that they took cash from the bank and fled. The incident of dacoity is not disputed. According to the appellants, they are not the persons who had committed the alleged offence of dacoity. The complainant – PW.2 –Sudhir Nalawade, the In-

charge Branch Manager promptly lodged the FIR on the very day. The said witness along with other eye-witnesses, PW.3 – Bharati, PW.5 – Rajendra and PW.11 – Nandkumar have identified the appellants in the identification parade as well as in the Court. The evidence of Special Judicial Magistrates PW.16 – Prakash Bapusaheb Bodake, PW.20 – Sunil Sadanand Adisare and PW.27 – Shivmurti Kumbhar, who conducted the identification parade also shows that the witnesses had identified the appellants in the identification parade held by them.

15. As far as PW.2 – Sudhir is concerned, he has specifically deposed that the appellant - Dayanand Krishna Moyali (Appellant in Criminal Appeal No.870 of 2007) had given a blow to him and put a revolver on his back. The said witness has also stated that appellant – Dilip Mahendra Thapa (Appellant in Criminal Appeal No.730 of 2007) was present and that he had held the collar of Mr.Pawar (Cashier). PW.3 – Bharati had identified the appellant – Dayanand Krishna Moyali, as the person who was standing behind PW.2 – Sudhir Nalawade. She has also identified Sameer @Babulal Badshah Mujawar, as the person who entered the cash cabin and as the person who removed the cash. Thus, the evidence

of both these witnesses, PW.2 -Sudhir and PW.3 – Bharati shows the presence of the appellants – Dilip Mahendra Thapa, Dayanand Krishna Moyali and Sameer @Babulal Badshah Mujawar.

16. PW.5 – Rajendra has identified the appellants -Anil Vetral, Dayanand Krishna Moyali, Sameer @Babulal Badshah Mujawar and Rocky @ Stephen Simon Dabare, whereas, PW.11 – Nandkumar has identified Anil Vetral, Sameer @Babulal Badshah Mujawar and Dilip Mahendra Thapa.

17. From the aforesaid, it is evident that the appellants have been identified as being the persons who had committed dacoity on 26th November, 2001, and that they were armed with deadly weapons.

18. As far as cash which was found from the possession of accused no.1 -Dayanand and accused no.3 – Anil is concerned, it cannot be said that the said cash could not be identified. It appears from the seizure panchanama that the cash/bills which were seized had labels of M/s.Korgaonkar and Sons on the said bundles. It is also not in dispute that

PW.10 – Arun Vasant Chougule, the Manager of M/s.Korgaonkar and Sons had deposited a sum of Rs.3,07,465/- on 26th November, 2001 in their account with the said Bank, where the dacoity took place. He has stated that when the cash was deposited, it had labels on the bundles, M/s.Korgaonkar and Sons and that the very same labels were found when cash was seized under a panchanama on 29th November, 2001, when accused no.1 - Dayanand Moyali and accused no.3 - Anil Vetral were arrested.

19. It is not the case of the prosecution or of the accused that the appellants had come with their faces covered and therefore could not be identified. The act of dacoity was committed in broad daylight in the bank and the witnesses had ample opportunity to see and observe the appellants at the time of dacoity. Not only have the appellants been identified by the employees of the Bank, but the said identification is also corroborated by identification by independent witnesses and also by recovery of the looted currency notes from the possession of some of the appellants. It also appears that in addition to the seized currency notes which were identified by PW.10 – Arun Chougule, there is recovery of revolvers with live

cartridges from accused no.3 – Anil Vetal and accused no.1 – Dayanand Moyali. It is also pertinent to note, that the number of the Esteem Car given by the bank employees was the same when the car was found lying by the side of the road, in which the appellants fled. It also appears that when the panchanama of the car was done, another number plate was found in the dicky of the said car, i.e number plate with no.MH21/B500. It is pertinent to note, that the number plate which was found in the dicky i.e. MH21/B500 was the car number which was given by PW.14 – Suraj Sharad Mahadik of a Maruti Esteem Car. PW.14- Suraj had stated that he had seen the accused no.5 – Rocky @ Stephen Simon Dabare, in the said car alongwith his friends. The said witness identified accused no.5 – Rocky @ Stephen Simon Dabare travelling in the said car along with his friends. It appears that the original car number was MH21/B500 and that the original number was changed to MH12/5937 later, at the time of dacoity. It may also be noted that the original car papers, R.C. Book and insurance papers of MH21/B500 were found in the dicky of the Maruti Esteem Car, which showed that the car was stolen by the appellants.

20. Considering the evidence on record in the form of identification of the appellants, both in the identification parade as well as in the Court as well as recoveries from the appellants and other corroboration that has come on record, no interference whatsoever is warranted in the Judgment and Order dated 29th May, 2007, passed by learned Special Judge (Under MCOC Act), Pune.

21. The appeals, are accordingly, dismissed.

22 The Court expresses a word of gratitude for the able assistance rendered by Advocate for the appellants, Mr.Chetan Alai.

REVATI MOHITE DERE, J.