

to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- in default to undergo simple imprisonment for two years. For the offence punishable under Section 387 read with Section 34 of the IPC, appellant/accused was sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year. For the offence punishable under Section 506(II) read with Section 34 of the IPC, appellant/accused was sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for one year. For the offence punishable under Section 323 read with Section 34 of the IPC, appellant/accused was sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for two months. Apart from this, the appellant/accused is also convicted of the offence punishable under Section 3(1)(ii) of the Maharashtra Control of Organized Crime Act, 1991 (hereinafter referred to as “the M.C.O.C.Act” for the sake of brevity) and under Section 3(4) of the said Act. On both counts, he has directed to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,00,000/- separately and to suffer simple imprisonment for two years in default.

3 Heard the learned counsel appearing for the appellant/accused. By taking me through the Judgment and Order of the learned Special Judge and particularly to para 61(1) and 64 of the said Judgment, learned counsel argued that as there was only one accused charge-sheeted by the police, there is no question of applicability of the provisions of the M.C.O.C. Act and no case for

organized crime was made out. Learned counsel further argued that paragraphs 67 and 68 of the impugned Judgment would show that sanction was vitiated. By taking me to the evidence of almost all the witnesses of the prosecution, learned counsel for the appellant/accused argued that the incident alleged by the prosecution was preceded by the incident of firing bullets at the appellant/accused by the brother of alleged victim and, therefore, case of the prosecution is suffering from improbability. The person, who suffered gun shot injury would not be in a position to assault the alleged victim. The learned counsel further argued that the injury certificate shows some different name than the name of the alleged victim. The name of the victim is Mohd. Naeem Ashiq Ali Shah, whereas the injury certificate shows name Naeem Khan. Learned counsel further argued that P.W.No.6 Naznin is not the eye-witness to the incident, as she has visited the spot after the incident. Similarly, is the case of P.W.No.1 Irfan Ali Shaikh. It is argued that P.W.No.4-Tarif was not in a position to say in whose hand, he had seen the tile and his evidence suffers from improbability as he has not intervened in the incident, though he is close relatives of the allegedly injured witnesses. By pointing out the medical evidence, it is argued that the injured suffer normal injuries and not internal damage, and, therefore, offence punishable under Section 307 of the IPC is not made out. It is further argued that as no offence under M.C.O.C. Act is made out, the applicant/accused needs to be enlarged on bail.

4 The learned Additional Public Prosecutor opposed the application.

5 I have carefully perused the depositions of witnesses as well as impugned Judgment and Order. According to the prosecution case, the applicant/accused along with absconding accused named Rajput had attempted to commit murder of the injured namely Mohd. Naeem Ashiq Ali Shah. Therefore, it cannot be said that as the case is of single accused, provisions of M.C.O.C. Act are not applicable, when in case in hand the co-accused is absconding. At this juncture, paragraph 66 of the impugned Judgment becomes relevant. After considering the charge-sheet filed against members of the organized crime, the learned Special Judge has observed that the offence has committed by the organized crime syndicate. In paragraph 68, the learned Special Judge has observed that the sanction order (Exh.41) clearly shows that the Sanctioning Authority has gone through the case papers and thereafter granted sanction, which is in order.

6 P.W.No.6 is wife of the injured. She has categorically stated in her evidence that she had seen the incident of assault on her husband. She has stated that I saw Kalya Pappu and Rajput beating her husband. P.W.No.12-Mohd. Naeem Ashiq Ali Shah the injured witness in paragraph 4 of his deposition has deposed thus :

“4. Pappu Kalya said to me that I and my brother have earned lot of money in the business of *chappal* and light and that he want Rs.10,000/- as Hafta. I asked him as to why is he forcing me by saying “*ye kya dadagiri bata raha hai*”. He assaulted me by hand. He slapped me on my right chick. I also slapped him. Then he pushed me. I fell down. Then

Pappu Kalya asked Rajput to beat me. Rajput took a tile and inflicted blow on my head thrice. Then Pappu also hit me by ladi (tile) on my head. It was sharp aged tile. He hit me on backside of my head but the sharp edge of the ladi (tile) slipped and struck my right ear which resulted into deep cut and therefore part of my ear was hanging. At that time people gathered. Pappu Kalya threatened them, by showing tile (ladi), not to intervene. I was lying on floor, when Pappu Kalya came forward to beat me. I held his hands. At that time, Pappu Kalya pulled and detached the hanging part of ear by this teeth and kept it in his pocket. I shouted for help.”

7 *Prima facie*, perusal of evidence of this injured witness goes to show that weapons of assault were sharp aged tiles and the part of body chosen for inflicting injury was head. For making out offence under Section 307 of the IPC, inflicting of injury is not essential. What is essential is an intention coupled with an overt act. In the case in hand, this aspect is reflected from the weapon used and part of body chosen as well as effect of the assault on the injured.

8 P.W.No.8 Dr.Sakshi Patankar has stated in her evidence that she had found that the victim was suffering from six contusion lacerated wound over the scalp and cut of lateral side of left pinna. This aspect become relevant in determining the nature of offence.

9 *Prima facie*, perusal of the evidence as well as the impugned Judgment shows that the crime in question was committed

as a member a organized crime because of the refusal by the victim to pay the amount sought to be extorted. Therefore, at this stage, it cannot be said that there are reasonable grounds for believing that the applicant/accused is not guilty of the offence punishable under M.C.O.C.Act.

10 In this view of the matter, no case for bail is made out. However, considering the fact that the applicant/accused is under-trial prisoner, hearing of the appeal is expedited. On preparation of paper book expeditiously the appeal be put up for final hearing in the category of 'appeals by under-trial prisoners'

(A. M. BADAR J.)