

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 186 OF 2008**

1. Vijay @ Raju Chandrakant Mahadik,
Age 45 years, adult, Occupation : Nil,
R/at Room No. 14, Inder Kalu Patel Chawl,
Siddharth Nagar, Bandra (East), Mumbai

2. Dinesh @ Yash Sadanand Chavan,
Age- 28 years, Occupation: Nil,
R/at Room No. 7, Siddharth Colony,
Hutment behind Vijay Nagar,
Building No. 4, Bandra (East), Mumbai
Central Prison Nashik Jail

...Appellants
(Org. Accused Nos. 4 & 7)

Versus

The State of Maharashtra
(DCB CID C.R. No. 58/05)

...Respondent

Ms. Swapnil Ovalekar, appointed Advocate for the Appellants

Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 9th APRIL 2019

ORAL JUDGMENT :

1 By this appeal, the appellants have impugned the judgment and order dated 29th October 2007 passed by the learned Special Judge under the Maharashtra Control of Organised Crime Act

(`MCOC Act') in MCOC Special Case No. 20/2005 convicting them along with other co-accused as under :

- for the offence punishable u/s 120-B r/w Section 387, 452 r/w 34 of the Indian Penal Code (`IPC'), to suffer RI for 3 years and to pay a fine in the sum of Rs. 3,000/-, each, in default, to undergo further RI for 3 months;
- for the offence punishable u/s 387 r/w Section 120-B r/w Section 34 of the IPC, to suffer RI for 3 years and to pay a fine in the sum of Rs. 3,000/-, each, in default of payment of fine, to undergo further RI for 3 months;
- for the offence punishable u/s 452 r/w Section 34 r/w Section 120-B of the IPC, to suffer RI for 3 years and to pay a fine in the sum of Rs. 3,000/-, each, in default of payment of fine, to undergo further RI for 3 month.
- for the offence punishable u/s 506(2) r/w Section 34 r/w Section 120-B of the IPC, to suffer RI for 3 years and to pay a fine in the sum of Rs. 3,000/-, each, in default of payment of fine, to undergo further RI for 3 months;

All the substantive sentences were directed to run concurrently.

2 The appellants along with other co-accused were, however, acquitted of the offences punishable under the MCOC Act as well as under the Arms Act.

3 At the outset, learned counsel for the appellants submits that all the other co-accused in the said case i.e. original accused Nos. 1 to 3 and 6 have been acquitted of all the offences by this Court vide judgment and order dated 27th November 2014 passed in Criminal Appeal No. 1232/2007. He submits that the role of the appellants is identical to that of the acquitted accused i.e. original accused Nos. 1 to 3 and 6.

4 The allegations against the appellants and others who were facing trial were that they had threatened the complainant (PW 1-Ramdas Shirke) and his wife Rekha Ramdas Shirke (PW 3) and were trying to extort money from them by putting them in fear of death or grievous hurt. According to the prosecution, the appellants and other co-accused had committed criminal trespass in the house of the complainant and had extorted money and had also intimidated the

complainant and his wife, by extending threats to them. The said incident is alleged to have taken place on 19th May 2005. Pursuant to the information given by the complainant to the police, a trap was laid and all the accused were apprehended on the spot. After investigation, charge-sheet was filed against the appellants and all the co-accused for the offences under the Indian Penal Code as well as under the MCOC. Charge was framed against the appellants and other co-accused, to which, they pleaded not guilty and claimed to be tried.

5 The prosecution in all examined 20 witnesses. The defence of the appellants and co-accused was that of a denial and false implication.

6 The learned Special Judge, after considering the evidence on record, acquitted the appellants and other accused of the offences under the MCOC Act and the Arms Act. Infact, original accused No. 5 was acquitted of all the offences i.e. offences under the IPC as well as under the MCOC Act.

7 A perusal of the evidence shows that the appellants have been convicted, based on the evidence of PW 1-Ramdas; PW 3-Rekha (wife of the complainant); PW 19- Nitin Alaknure (I.O.). This Court, while considering the appeal of the co-accused i.e. Criminal Appeal No. 1232/2007 filed by the accused Nos. 1 to 3 and 6, after considering the evidence on record, acquitted the said accused of all the offences. Since the appeal of the appellants was not tagged along with the said appeal and since the appellants had undergone the entire sentence, the appellants' appeal was not heard.

8 Learned A.P.P does not dispute the fact that the appellants are identically placed as the other co-accused who have been acquitted of all the offences by this Court vide judgment and order dated 27th November 2014.

9 This Court while acquitting the co-accused has allowed the appeal essentially on the ground that neither PW 1-Ramdas Shirke nor PW 3-Rekha Shirke have identified any of the accused in the Court nor had PW 1-Ramdas Shirke identified the accused in the

identification parade. This Court, while acquitting the co-accused observed, that the conviction was based only on the evidence of PW 19-Nitin Alaknure, who was present when the accused were arrested outside the house of PW 1-Ramdas Shirke.

10 It is the prosecution case that after receiving information from PW 1, a trap was laid and the accused were arrested. As far as PW 1-Ramdas Shirke is concerned, there is nothing on record in his evidence which will prove either the charge of extortion, criminal intimidation or house trespass. All that the prosecution has been able to establish is that PW 19-Nitin Alaknure apprehended the accused outside the house of PW 1. The same is definitely not sufficient to establish any of the charges for which the appellants were charged. It is not in dispute that the role of the appellants is identical to that of the other co-accused who have been acquitted by this Court vide judgment and order dated 27th November 2014. Hence, the benefit of the said judgment would also enure to the benefit of the appellants. Hence, the following order :

ORDER

- (i) The appeal is allowed;
- (ii) The impugned judgment and order dated 29th October 2007 passed by the learned Special Judge in MCOC Special Case No. 20/2005, convicting and sentencing the appellants, is quashed and set-aside;
- (iii) The appellants are acquitted of the offences with which they are charged. They be released forthwith, if not required in any other case. The bail bonds of the appellants shall stand cancelled.
- (iv) Fine amounts, if paid, shall be refunded to the appellants.

11 Appeal stands disposed of in the aforesaid terms.

REVATI MOHITE DERE, J.