

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 868 OF 2018**

Laxman s/o Baburao Gadhe
Age: 30 years, Occu: Nil,
R/o: Bhiwandi Bodkha, Taluka : Ambad,
District: Jalna

... **Appellant**
(Orig. Accused No.01)

Versus

The State of Maharashtra
through the Police Station Officer,
Paithan Police Station,
Tq. Paithan and Dist: Aurangabad

... **Respondent**

....
Mr. S. E. Siddiqui, Advocate for appellant
Mr. S. P. Sonpawale, APP for respondent - State
....

CORAM : R. G. AVACHAT, J.

DATED : 07th JANUARY, 2022

ORDER :-

1. This is an appeal from conviction. The appellant herein has been convicted for the offences punishable under Sections 341, 395 of the Indian Penal Code (for short 'IPC') and under Sections 3(1)(ii), (2) and (4) of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act') and therefore sentenced to suffer simple imprisonment for one month and to pay fine of Rs.500/- (Rupees Five Hundred), in default, to suffer simple imprisonment for ten days for the offence punishable under Section 341 of IPC, to suffer rigorous imprisonment for seven years and to pay fine of

Rs.10,000/- (Rupees Ten Thousand), in default, to suffer rigorous imprisonment for one year for the offence punishable under Section 395 of IPC and further sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,00,000/- (Rupees Five Lakh), in default, to suffer rigorous imprisonment for three years each for offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act respectively by the Special Judge, Aurangabad vide judgment and order dated 12.11.2018 in Special Case (MCOC Act) No.2/2014.

2. The facts giving rise to the present appeal are as under:

The appellant and seven others were charged and prosecuted for the offences punishable under Sections 341, 395 of the IPC and under Sections 3(1)(ii), (2) and (4) of the MCOC Act. The appellant herein was accused No.1 in Special Case (MCOC) Act No.2 of 2014. The learned Special Judge, Aurangabad appointed for trial of offences under MCOC, acquitted the original accused Nos.2 to 6. The appellant came to be convicted for the offences as stated herein above. Accused No.8 was convicted of the offences punishable under Section 395 of the IPC. Whether he has preferred any appeal or not is not known.

3. The First Information Report (FIR) was lodged by Laxman (PW1). It was his case that he was serving as Driver on a truck belonging to one Shaikh Rafiq Shaikh Mahemood. On 07.02.2013, he started with the truck, laden with steel rods (building material) from Jalna to Manchar, district Pune. One Rushikesh was with him as a Cleaner. Both of them took meals at one roadside Dhaba. After some time they took tea at village Pachod. It was about 10.30 p.m., they passed the village Dawarwadi, by that time, one white jeep overtook the truck and went ahead. Thereafter, six persons on two motorbikes, came from behind. They too overtook the truck and intercepted its way. Two of the six climbed the cabin of the truck from either side i.e. from cleaner and driver side. They made both PW1 Laxman and Rushikesh to get down of the truck. Those two took both of them to the roadside agricultural field. Others decamped with the truck. Those two detained both PW1 Laxman and Rushikesh for long. They robbed them of a sum of Rs.800/- cash and a cell phone. The truck was laden with building material, namely steel worth Rs.6,40,000/-. Both the culprits went away at the daybreak. PW1 Laxman and Rushikesh, thereafter, went to a nearby locality with a view to contact their Master/employer on cell phone. On the instructions of their employer, Laxman went to

the police station Paithan and lodged the report/FIR (Exh.68). Crime for the offence punishable under Section 395 came to be registered vide C.R. No.32 of 2013. During the investigation, the involvement of the appellant and seven others found in the alleged offence. They came to be arrested. The cell phone came to be seized from one of them. The truck was found abandoned in an open place of village Adgaon, Tq. Yeola. During the investigation, it was found that the appellant was operating organised crime syndicate. The offence was committed by him and the others as members of organised crimes syndicate. Over 15 charge-sheets were found to have been filed against him during the period of ten years next before registration of the FIR (Exh.68).

4. A proposal was moved for invoking provisions of MCOC Act. The Inspector General of Police, granted approval for invoking MCOC Act. On completion of the investigation, a sanction for prosecution of the appellant and the others for the offence punishable under MCOC Act was granted by the Additional Director General of Police.

5. The learned Judge of the Special Court, framed the charge (Exh.46). Fourteen witnesses were examined to establish the

charge. Number of documents are came to be produced in evidence. On appreciation of the evidence in the case, the learned Judge of the Special Court, convicted the appellant and accused No.8 as stated above and acquitted the others.

6. Heard.

The learned Advocate for the appellant took this Court through the relevant evidence in the case to ultimately submit for acquittal of the appellant herein.

7. The learned APP would, on the other hand, submit that the appellant has criminal antecedents. He is the head of the organised crime syndicate. Number of offences have been committed by the appellant and his associates. PW1 Laxman identified the appellant before the Court. He was also identified in the Test Identification (T.I.) parade by Rushikesh. The report of the T.I. parade (Exh.136) goes in evidence as it is. The appellant did not take efforts to call the Executive Magistrate who held the T.I. parade for his cross examination. A cell phone came to be seized from one of the co-accused. The truck owner was examined as a witness. According to the learned APP, involvement of the appellant in the offence in question was duly proved and has thus rightly been

convicted. According to him, no interference is warranted with the order of conviction and quantum of sentence as well.

8. Considered the submissions made by the learned Advocates. Perused the entire evidence in the case. In view of this Court, the only evidence relevant for deciding the present appeal is that of the informant, PW1 Laxman. I do not propose to reproduce his evidence in verbatim. Suffice it to say, he testified very much consistent with the averments in the FIR which have been narrated herein above. On arrest of the appellant herein, nothing came to be seized from him.

9. It is true that the appellant has criminal antecedents. Over 20 crimes had been registered against him before the one in question. In almost all, the relevant charge-sheets have been filed against him and his associates. The competent Courts have also taken cognizance of the offences registered against the appellant herein and his associates. On going through those charge-sheets, the investigating agency was justified in invoking the provisions of the MCOC Act. For better appreciation, the terms “organized crime” and “continuing unlawful activity” defined in Section 2 of the MCOC Act, are reproduced below:

“Sec. 2(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, under-taken 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;”

10. For conviction of the appellant for the offence of organised crime, the prosecution is under obligation to prove his involvement in continuing unlawful activity, which is the subject matter of the present matter. It is, therefore, necessary to advert to relevant evidence in the case.

11. It is reiterated that PW1 Laxman (informant) gave his evidence very much consistent with the averments in the FIR (Exh.68). He also identified the appellant and the other accused before the Court. The question is whether based on his evidence, the offence in question gets proved. Even we accept the case as it is that

while he along with Rushikesh (Cleaner) was proceeding in the truck from Jalna to Manchat, near village Dawarwadi, Six persons came on two motorbikes. They intercepted the truck. Two of them entered the cabin from either side, forced the informant and the Cleaner Rushikesh to get down of the truck. Both of them were taken to the road side field and robbed up the cell phone and cash of Rs.800/-. Other six fled with the truck.

12. During the investigation, the appellant was subjected to test identification parade. Both Laxman (PW1) and Rushikesh (Cleaner) participated in the T.I. parade. The T.I. parade was conducted shortly after the arrest of the appellant herein, which was not long after the registration of the crime. PW1 Laxman did not identify the appellant in the T.I. parade. Although Rushikesh identified the appellant in the T.I. parade, he (Cleaner) has not been examined as prosecution witness in the case. Although the report of the T.I. parade is admissible in evidence as it is, the cleaner did not step into the witness box to lead substantive evidence in proof of commission of the alleged offence by the appellant herein. The appellant's identification in the T.I. parade is therefore of no consequence to bring home the charge against him.

13. Admittedly, PW1 Laxman (informant) could not identify the appellant in the T.I. parade. He did not give description of any of the culprits including the appellant herein in the FIR (Exh.68). After four years of the registration of Crime, the appellant came to be identified before the Court for the first time. It is surprising as to how PW1 Laxman, who could not identify the appellant in the T.I. parade within a couple of months of the offence in question, could identify him before the Court. PW1's evidence identifying the appellant before the Court therefore does not inspire confidence. PW1 also did not give details as to what role the appellant had played in the alleged offence. He, even did not state that the appellant was one of those two who had detained them in the nereby field. There is no other evidence against the appellant to connect him with the offence in question. The trial Court ought not to have convicted the appellant on the basis of such kind of evidence.

14. In view of this Court, the prosecution thus miserably failed to prove the involvement of the appellant in the offences in question. Interference is therefore called for with the impugned judgment of conviction and resultant sentence.

15. In the result, the appeal succeeds. The same is allowed.
16. The judgment and order dated 12.11.2018 passed by the Special Judge, Aurangabad in Special Case (MCOC) No.2 of 2014, convicting and sentencing the appellant for the offences punishable under Sections 341, 395 of the Indian Penal Code and under Sections 3(1)(ii), (2) and (4) of the Maharashtra Control of Organized Crime Act, 1999 are set aside.
17. The appellant is hereby acquitted of the offences punishable under Sections 341, 395 of the Indian Penal Code and under Sections 3(1)(ii), (2) and (4) of the Maharashtra Control of Organized Crime Act, 1999.
18. The appellant be set at liberty forthwith, if not required in any other case.
19. Fine, if paid, shall be refunded to him.

[R. G. AVACHAT, J.]

SMS