

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.545 OF 2022

WITH

INTERIM APPLICATION NO.1610 OF 2022  
IN  
CRIMINAL APPEAL NO.545 OF 2022

Jafar Shahjman Irani  
Age : 40 years, Occ.:NA  
Residing at – Shindemala,  
Kanjari Vasti, Wakhari To. Daund,  
Dist. Pune  
(presently lodged in  
Yerawada Central Jail, Pune)

.... Appellant/  
Applicant

versus

State of Maharashtra  
(Through Wakad Police Station)

.... Respondent

.....

- Ms. Roohita Shaikh a/w Mr. Javed Shaikh a/w Mr. Vilas Bambarde a/w Mr. Anil Nile, Advocate for Appellant/Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.  
DATE : 12<sup>th</sup> DECEMBER, 2022

**JUDGMENT :**

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1. The Appellant has challenged the Judgment and Order

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dated 27/04/2022 passed by the Special Judge under MCOC Act, Pune, in Special Case (MCOCA) No.11/2018. There were two accused before the trial Court. The Appellant was the accused No.1. Though both the accused were similarly convicted and sentenced, there was nothing to show that the accused No.2 preferred any Appeal. The only Appeal before the Court is that of the present Appellant. He was the original accused No.1.

2. The Appellant and his co-accused were convicted and sentenced as follows :

- (i) They were convicted for commission of offence punishable u/s 392 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for six years each and to pay fine of Rs.25,000/- each and in default of payment of fine to suffer simple imprisonment for six months each.
- (ii) Both of them were convicted for commission of offence punishable u/s 3(1)(ii) of The Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA') and and were sentenced

to suffer rigorous imprisonment for five years each and to pay fine of Rs.5,00,000/- each and in default of payment of fine to suffer simple imprisonment for one year each.

(iii) Both of them were convicted for commission of offence punishable u/s 3(2) of the MCOC Act and and were sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.5,00,000/- each and in default of payment of fine to suffer simple imprisonment for one year each.

(iv) Both of them were convicted for commission of offence punishable u/s 3(4) of the MCOC Act and and were sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.5,00,000/- each and in default of payment of fine to suffer simple imprisonment for one year each.

(v) All the substantive sentences were directed to run concurrently.

(vi) Both of them were given set off u/s 428 of Cr.P.C.

3. Heard Ms. Roohita Shaikh, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.
4. The prosecution case is that, on 28/05/2017 P.W.1 Suajata Shivaji Jagtap was travelling on the motorcycle driven by her husband. Their speed reduced because of a speed breaker. Both the accused came from behind on their motorcycle and snatched her gold ornaments consisting of Ranihar, Ganthan and Mangalsutra. Both the accused went away on their motorcycle.
5. P.W.1 lodged her FIR with Wakad police station, which was registered vide C.R.No.322/2017. The Appellant was arrested on 01/06/2017 in connection with some other offence. During the course of investigation it was revealed that he was involved in the present offence. In the meantime on 04/06/2017 recovery of huge number of ornaments and cash was recovered at his instance from his house concealed in false ceiling. During investigation it was revealed that the accused were involved in many similar offences. In some of those, charge-sheets were

filed and cognizance was taken by the competent Courts. Therefore approval u/s 23(1) of MCOCA was granted and the investigation was carried out by the authorized officer. At the conclusion of the investigation, sanction u/s 23(2) of MCOCA was obtained and the charge-sheet was filed. The case was tried in Sessions Court as mentioned earlier.

6. During trial, the prosecution examined six witnesses including the first informant, Panchas, valuer of the ornaments and the Investigating Officer. The defence of the Appellant was of total denial. At the conclusion of the trial learned Judge believed the identification of the Appellant and also the recovery and identification of the ornaments. He took into consideration the earlier charge-sheet of which the cognizance was taken and at the conclusion of the trial, convicted and sentenced the Appellant as mentioned earlier.

7. The prosecution case is deposed by the PW.1 Sujata Jagtap. She has stated that on 28/05/2017 she and her husband had gone to attend a wedding at Ravet. In the evening, at about

05.00 p.m., they were returning back. They had reached near Tathvade Chowk. There was a speed breaker. Their speed was reduced. At that time, from the left side two persons came on a motorcycle. The pillion rider pulled three ornaments from her neck and they went away. She identified the Appellant before the Court. Immediately after the incident she and her husband went to Wakad police station and lodged her FIR. She showed the spot of incident. She deposed that the Court had returned her ornaments which were made after melting of the metal. After about 6-7 months from the incident she was called to Yerwada prison for identification parade. There she identified the Appellant.

In the cross-examination she admitted that the spot of incident was surrounded by the residential buildings. There was a traffic signal. There were vehicles all around. She denied the suggestion that the face of the Appellant could not be seen as the accused were wearing helmets. About one hour after searching for the offenders, they went to the police station. She has

deposed that on 24/11/2017 she was called by the police at Wakad police station. That time she was told that test identification parade was to be held. Importantly she has deposed that when the accused were arrested, she was called to the police station. She specifically admitted that, at that time the police had shown the Appellant to her. In respect of test identification parade she has deposed that both the accused were put in the parade at the same time. She denied the suggestion that since the Appellant was shown in the police station, she could identify him in the test identification parade. The memorandum of test identification parade was brought on record at Ex.26.

8. The FIR lodged by her was produced on record at Ex.25. She had given description of both the offenders. She has also given description of three ornaments. The first one was the gold Ganthan weighing 6.5 Tolas, the second one was Ranihar weighing 3 Tolas and the third one was mini Ganthan weighing 1 Tola. The FIR substantially corroborates the deposition.

9. P.W.2 Amit Mahendra Kamble was a Pancha. He was called at police station on 04/06/2017. There was another Pancha. The Appellant gave memorandum statement showing his willingness to show the place where he had concealed the stolen property. Thereafter the police, the Panchas and the valuer along with the Appellant went to a house. The Appellant told that it was his house. The key of the house was with the police. The house was opened. The Appellant stood on the kitchen platform and removed the false ceiling. He removed two bags. One of them was containing gold ornaments and the other one was having cash. After verification it was found that the cash amount was of Rs.62,00,000/-. There was some foreign exchange also. The memorandum statement is produced on record at Ex.31 and Panchanama of the seizure is produced at Ex.32. The Panchanama shows that there were 109 ornaments. According to learned APP Mr. Agarkar, the ornaments at Sr. No.48, 49 and 50 matched with the description in the FIR. Those were the ornaments of the first informant.

In his cross-examination PW.2 admitted that he was working as an Instructor in a gym. He deposed the Crime Branch Office was near his work place. He admitted that some of the police staff and even accused used to come to his gym. He could not name the vehicle in which he had accompanied the police.

10. PW.3 Amol Dadarao Veer has deposed that he was called to the police station on 28/09/2017. In his presence the Appellant showed willingness to show the spot where the Appellant had committed the offence. This witness's evidence is hardly of any value, because the spot of incident was already known. The police had conducted the Spot Panchanama.

11. PW.4 Ghanshyam Satyanarayan Zanvar was the valuer. He was called to Crime Branch Office on 04/06/2022. He had accompanied the police party to the house of the Appellant. From there ornaments and the cash were recovered. He valued the gold ornaments, which is reflected in the Panchanama Ex.32.

12. P.W.5 API Mahadev Narayan Waghmode was the Investigating Officer at the relevant time. He was attached to Crime Branch Unit – 5. On 01/06/2017 they received a secret information pursuant to which the Appellant was arrested. He was a gold snatcher and he had many antecedents. His motorcycle was seized. He was initially arrested in connection with C.R. No.160/2017 of Kondhwa Police Station. On 02/06/2017 his house was searched. At that time, ornaments worth Rs.5 lakhs, cash amount of more than 4 lakhs, camera, mobile handset, laptop etc. were recovered. Other documents were also recovered. His vehicles were seized. On 04/06/2017 as mentioned earlier, ornaments and cash amount were recovered from his house at his instance, which is recorded under Ex.31 and 32. At that time police had the key which they had seized at the time of his house search under Panchanama. On 06/06/2017, the Appellant showed willingness to show the place where he had committed the offences of chain snatching. They were 26 such places.

13. P.W.5 has further deposed that on 12/06/2017 P.W.1 was called at his office and she identified her ornaments, which were recovered by this witness. Those ornaments were returned to P.W.1 under the order of the Court. He was asked about the arrest and recovery Panchanama in the cross-examination. However, there was no specific cross-examination and in particular there was no suggestion that P.W.1 had not identified the ornaments recovered from the Appellant.

14. P.W.6 Assistant Commissioner of Police Vikram Bhimrao Patil, was investigating this offence. He took over the investigation on 06/10/2017. He verified the complaint of P.W.1 and recorded her statement. He collected the charge-sheets filed against the Appellant. Those, charge-sheets were produced on record at Ex.54/1 to 54/15. He collected the details of bank account of the accused. He also took steps to find out the property which was purchased by the Appellant using the amount collected illegally by committing offences.

15. He made arrangements for conducting test identification parade in November 2017. It was conducted on 24/11/2017. Sanction u/s 23(2) of MCOCA was given by the Additional Director General of Police on 21/03/2018. After that, the charge-sheet was filed. He denied that he had shown photographs of the Appellant to the informant before the test identification parade.

16. The charge-sheets were produced at Ex.54/1 to 54/15. Cognizance was taken by the competent Courts in more than one cases. Those were the charge-sheets in respect of C.R.No.399/2014 of Kondhwa police station, C.R.No.83/2014 of Hadapsar police station, C.R.No.220/2016 of Hadapsar police station, C.R.No.841/2016 of Hadapsar police station, C.R.No.127/2017 of Hadapsar police station, C.R.No.249/2017 of Hadapsar police station. Cognizance was taken of all these charge-sheets.

This in short is the evidence of the prosecution.

17. Learned counsel for the Appellant submitted that the identification of the Appellant in this case is not proper and therefore that circumstance cannot be held against the Appellant. She submitted that the P.W.1 had admitted that the Appellant was shown to her in the police station after his arrest and therefore her identification of the Appellant in test identification parade loses its importance and this circumstance cannot be used against him.

18. She further submitted that the gold ornaments were returned to P.W.1 after they were melted and remoulded and therefore there cannot be proper identification of those ornaments. There was no other incriminating circumstance as far as the incident dated 28/05/2017 is concerned and therefore she submitted that the prosecution has not proved its case. According to her, since the offence is dated 28/05/2017, is not proved, there was no question of applying the provisions of MCOCA to this offence. Therefore conviction and sentence under those provisions needs to be set aside.

19. Learned APP opposed these submissions. According to him, the Investigating Officer has denied that any photograph of the Appellant was shown to the first informant. In any case she has identified the Appellant also in the Court, which is a substantive piece of evidence and therefore even if the identification in the test identification parade is ignored, the identification before the Court is sufficient to find him guilty. He further submitted that the golden ornaments snatched from the P.W.1 were mentioned by her in the FIR and they are incorporated in Ex.32. They exactly match Sr.No.48, 49 and 50. The Investigating Officer also deposed that the ornaments were identified by the P.W.1. Therefore that circumstance is incriminating. All the requirements of MCOCA are fulfilled. Charge-sheets of the offences of which cognizance is taken and in which the Appellant was an accused along with his companion, are produced on record. In respect of those charge-sheets, the cognizance was taken by the competent Courts. Therefore all the requirements under the MCOCA are fulfilled and therefore offence under MCOCA is properly proved.

20. I have considered these submissions. So far as identification of the Appellant is concerned, I find force in the submission of learned counsel for the Appellant that his identification in the test identification parade as well as in the Court is seriously affected by her admission that the Appellant was shown to her in the police station after his arrest. Once the police had shown the Appellant to the PW.1, her identification in test identification parade and in the Court was a formality and therefore it was not proper identification. Hence that circumstance against the Appellant will have to be ignored.

21. However, the recovery of ornaments is equally serious incriminating circumstance. In this case, the recovery was huge. There were large number of ornaments recovered at his instance. There was huge cash recovered at his instance. It was concealed in a false ceiling in the house of the Appellant. During house search some ornaments and some cash amount was recovered. The key of the house was in possession of the police.

It was seized during house search. But the major part of the stolen property was concealed by the Appellant in the false ceiling which was only to his exclusive knowledge. It was recovered pursuant to the statement given by him admissible u/s 27 of the Evidence Act. Therefore that particular evidence is admissible, which is properly proved by the prosecution. The ornaments mentioned at serial No.48, 49 and 50 in Ex.32 were the ornaments of the first informant which she has mentioned in the FIR. There was no scope for manipulation. There was absolutely no cross-examination of the Investigating officer on this aspect. Therefore it can safely be held that there was recovery of stolen ornaments involved in this particular offence at the instance of the Appellant and that itself is sufficient to base conviction so far as commission of offence of robbery dated 28/05/2017 is concerned.

22. The other question is regarding the conviction under MCOCA. As rightly submitted by learned APP Mr. Agarkar that requirements of MCOCA are fully proved by the prosecution.

The previous charge-sheets were filed on record. The orders of taking cognizance by competent Court are produced on record. This shows that incident dated 28/05/2017 was a continuing unlawful activity undertaken by the members of an organized crime syndicate. Therefore the conviction is properly recorded by the trial Court under MCOCA.

23. The next question would be about the sentence imposed on the Appellant. Learned counsel for the Appellant submitted that there are certain mitigating circumstances. She submitted that the Appellant is continuously in custody since 01/06/2017. Thus more than 5 years and 6 months have passed. The Appellant has three young children. The eldest daughter is 14 years of age and there are two younger children. His father is bedridden. There is nobody to look after his family. His family is in a bad financial condition. She submitted that the Appellant is facing trials in other cases and therefore all this will cause immense hardship to his family.

24. Learned APP submitted that the offence is serious and there are many antecedents against the Appellant.

25. I have considered these submissions. Undoubtedly the offence is serious. The maximum substantive sentence awarded in this case is for 6 years. The State has not made any application for enhancement of sentence. The Applicant has almost completed the substantive sentence. The only reason why he is not released so far in connection with the present case, is because he has not been able to pay the fine. The sentence imposed in default of payment of fine, is yet to get over.

26. Considering these aspects only to a very limited extent the sentence imposed in default of payment of fine can be reduced by a small extent. In my opinion, thus balance can be maintained between the submissions made by learned counsel for the Appellant and those made by learned APP as mentioned hereinabove.

27. To that extent, I am inclined to reduce the in default sentence. The conviction and substantive sentence under the heads of different offences are maintained. Only 'in default sentences' are reduced as follows. Hence, the following order :

### **ORDER**

(1) The Appeal is partly allowed.

- (i) The Appellant's conviction for the offence punishable u/s 392 of the Indian Penal Code and substantive sentence of rigorous imprisonment for six years and imposition of fine of Rs.25,000/- are maintained. However, in default of payment of fine amount, the Appellant is now directed to suffer simple imprisonment for three months instead of original 'in default sentence' of simple imprisonment of six months.
- (ii) His conviction for the offence punishable u/s 3(1)(ii) of the MCOC Act and substantive sentence to suffer rigorous imprisonment for five years and fine of Rs.5,00,000/- are

maintained. However, in default of payment of fine, he is now directed to suffer simple imprisonment for a period of nine months instead of original 'in default sentence' of simple imprisonment of one year.

- (iii) His conviction for the offence punishable u/s 3(2) of the MCOC Act and substantive sentence to suffer rigorous imprisonment for five years each and fine of Rs.5,00,000/- are maintained. However, in default of payment of fine, he is directed now to suffer simple imprisonment for a period of nine months instead of original 'in default sentence' of simple imprisonment of one year.
- (iv) His conviction for commission of offence punishable u/s 3(4) of the MCOC Act and substantive sentence to suffer rigorous imprisonment for five years and fine of Rs.5,00,000/- are maintained. However, in default of payment of fine, he is directed now to suffer simple imprisonment for a period of nine months instead of original 'in default sentence' of simple imprisonment of one year.

- (v) All the substantive sentences are directed to run concurrently.
  - (vi) He is granted set off as originally granted by the trial Court u/s 428 of Cr.P.C.
  - (vii) All the other clauses of the operative part of the trial Court's order are retained as they are.
- (2) With these directions, the Appeal is disposed of.
- (3) With disposal of the Appeal, all the connected applications are also disposed of.

**(SARANG V. KOTWAL, J.)**