

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

CRIMINAL APPEAL NO. 387 OF 2022

Jafar @ Chikna Jafar
Mohammad Khan Deshmukh ..Appellant
Versus
State of Maharashtra & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 237 OF 2022
WITH
INTERIM APPLICATION NO. 559 OF 2024
IN
CRIMINAL APPEAL NO. 387 OF 2022**

**.....
WITH
CRIMINAL APPEAL NO. 437 OF 2022**

Vijay Krishna Kale @ Saddam ..Appellant
Versus
State of Maharashtra & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 153 OF 2022
IN
CRIMINAL APPEAL NO. 437 OF 2022**

Mr. Sachin Pawar a/w. Nikil P. Mallelwar a/w. Rohan D. Kaiche for
Appellant in Appeal No.387/2022.

Ms. Farhana Shah a/w. Amna Khan for Appellant in Appeal
No.437/2022.

Ms. Ranjana D. Humane, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 15 & 16 JULY 2024

ORAL JUDGMENT:

1. Both these Appeals are decided by this common Judgment because they arise out of the same impugned Judgment and order. For the sake of convenience, the Appellant Jafar@ Chikna Jafar Mohammad Khan Deshmukh in Criminal Appeal No.387 of 2022 is referred to as the Accused No.1 as his original status before the Trial Court and the Appellant Vijay Krishna Kale in Criminal Appeal No. 437 of 2022 is referred to as the Accused No.3 as per his original status before the Trial Court. He is named as Vijay Krishna Kale @ Saddam in the trial court proceedings. There was one more accused i.e. the Accused No.2 Dhiraj Kanojia. He has not preferred any Appeal challenging the said impugned Judgment and order. Therefore, the following discussion is restricted to the case of the original Accused Nos.1 and 3.

2. The Appellants have challenged the Judgment and order dated 17.09.2021 passed by the Special Judge under MCOCA, Greater Mumbai, passed in Special Case No.11 of 2017. All the

accused including the present Appellants were convicted for commission of the offences punishable under sections 392 r/w. 34 of the I.P.C. and under sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA'). In addition, the Accused Nos.2 and 3 were convicted for the offences punishable under sections 504 and 506 r/w. 34 of the I.P.C.

All the accused were sentenced to suffer R.I. for five years and to pay a fine of Rs.10,000/- each and in default to suffer R.I. for three months for the offence punishable U/s.392 r/w. 34 of the I.P.C.

The accused Nos.2 and 3 were sentenced to suffer R.I. for two years and to pay a fine of Rs.1000/- each and in default to suffer R.I. for one month for the offence punishable U/s.504 r/w.34 of the I.P.C.

Accused Nos.2 and 3 were sentenced to suffer R.I. for two years and to pay a fine of Rs.1000/- each and in default to suffer S.I. for one month for the offence punishable U/s.506 r/w.

34 of the I.P.C.

Accused Nos.1 to 3 were sentenced to suffer R.I. for seven years and to pay a fine of Rs.5 lakhs each and in default to suffer R.I. for two years for the offence punishable U/s.3(1)(ii) of the MCOCA.

Accused Nos.1 to 3 were sentenced to suffer R.I. for seven years and to pay a fine of Rs.5 lakhs each and in default to suffer R.I. for two years for the offence punishable U/s.3(2) of the MCOCA.

Accused Nos.1 to 3 were sentenced to suffer R.I. for seven years and to pay a fine of Rs.5 lakhs each and in default to suffer R.I. for two years for the offence punishable U/s.3(4) of the MCOCA.

Out of the fine amount, Rs.1 lakh was directed to be paid to PW-1 as a compensation U/s.357 of the Cr.p.c. The office note shows that she is served with the notice, but she has not made any arrangement to represent herself.

All the accused were acquitted from the allegations of commission of the offence punishable U/s.37 r/w. Section 135 of the Maharashtra Police Act. All the sentences were directed to run concurrently. All the accused were given set of U/s.428 of the Cr.p.c. The motorcycles involved in the crime were directed to be returned to the registered owners. The *Mangalsutra* was directed to be returned to PW-1.

3. The prosecution case is that the Accused No.1 was the gang leader. The other two accused were the members of the gang. They were indulging in the offences of chain snatching, for which, more than two charge-sheets were filed against them; of which, cognizance was taken by the competent Courts. The incident in question took place on 05.06.2017 at around 6:30p.m. It is the prosecution case that, around that time, the accused No.1 kept watch on the woman walking on the road. He was riding a Yamaha motorcycle. The other two accused were riding a Pulsar motorcycle. He gave signal to the other two accused. The accused No.3 was riding the other motorcycle and the accused No.2 was a pillion rider. The accused No.3 took the motorcycle near the victim

PW-1. The accused No.2 snatched her *mangalsutra* and they went away. PW-1 raised shouts. One of the persons gathered there, who is examined as PW-10, chased the accused Nos.2 and 3. It is the prosecution case that, they threatened him and then went away. The accused broke the chain into three pieces and shared one piece each. The accused No.3 was apprehended in connection with some other offence. The custody of the accused No.3 was given to the investigating agency in the present case. All the accused were arrested. Two motorcycles involved in the offence were recovered. The accused Nos.1 and 2 independently led panchas and the police to different places from where the two pieces of *mangalsutra* were recovered. A knife was recovered at the instance of the accused No.2. They were subjected to Test Identification Parade (hereinafter referred to as 'T.I.P'). It is the prosecution case that, PW-1 and PW-10 identified the accused No.3 at Arthur Road Central Prison and on the same day they identified the Accused Nos.1 and 2 at Taloja Central Prison. The investigation was carried out. During the investigation, the provisions of the MCOCA were invoked by obtaining the approval U/s.23(1) of the MCOCA. After

completion of the investigation, sanction U/s.23(2) of the MCOCA was granted by the competent authority. Thereafter, the Trial was conducted before the Special Judge under MCOCA.

4. During the trial, the prosecution examined 39 witnesses including the victim as PW-1, the eye witness as PW-10, the panchas and the police officers, including the concerned police officers who had recorded the confession of the accused No.3 and who had accorded sanction for the prosecution. The defence of the accused was of total denial. At the conclusion of the trial, the accused were convicted and sentenced as mentioned earlier.

5. The prosecution witnesses can be categorized as follows:

- i) The victim and the eye witness.
- ii) Panchas for recovery.
- iii) Witnesses regarding the mobile phone numbers and the phone calls.
- iv) The investigating officers.
- v) The sanctioning officer.
- vi) Witness regarding the confession.
- vii) The identification memo.

THE VICTIM

6. PW-1 was the informant whose chain was snatched. She had lodged the F.I.R. She has stated that, she was residing at Sion. On 05.06.2017, she had gone to a dairy and was proceeding on a road at Sion. At that time, suddenly, a motorcycle came from the opposite direction. Two persons were riding the motorcycle. The pillion rider snatched her *mangalsutra* and chain from her person. The *mangalsutra* was having two coins of gold weighing 2gms. each. The *mangalsutra* and the chain were weighing 3.5 *tolas*. She raised shouts. The accused went away on their motorcycle towards Dadar. Some persons gathered there. Out of them, one boy tried to chase the accused. The same boy made a phone call to the police. The police came at the spot. They recorded her statement. It was treated as an F.I.R. It is produced on record at Exhibit-30. She deposed that, she had seen the two persons on the motorcycle at the time of the incident and she had described them before the police. Both were in the age group of 30 to 35 years. The person who was driving the motorcycle was wearing a helmet. The motorcycle was of violet colour. At the time of the incident, she

sustained injury on her neck. She took treatment from a private medical practitioner. On 05.08.2017, she identified one motorcycle at Mahim police station. Then, she went to Andheri police station and identified the helmet and the other motorcycle. The helmet was of black colour. The other motorcycle was of black and blue colour. According to her, the third person was riding that second motorcycle, and was seen around the spot at the time of the incident. He was giving signal to the two other accused. She further deposed that, subsequently, she went to Arthur Road Jail for the T.I.P. She met the Tahsildar. Those persons were standing in a row. She identified the accused No.3. According to her, the accused No.3 had snatched the chain from her person. On the same day, she went to the other jail. At that time, she identified the accused No.1. She could not identify the remaining accused in this case; which means that, she could not identify the accused No.2. She identified two parts of the *Mangalsutra* produced on record as Article-1 and Article-2. She was shown the CCTV footage of the spot. According to her, the person wearing a White shirt was giving signal to the other accused.

In the cross-examination, she deposed that the CCTV connection was installed near a school. At the time of lodging the report, she did not make any reference to the third person or to such third person giving signal to the other two accused. More importantly, she admitted that, she did not see the face of the person who was driving the motorcycle. She did not state before the police that the motorcycle was of violet colour. She was not shown the CCTV footage earlier. She further deposed that, at the time of the incident, she did not see the face of the person who had snatched the *Mangalsutra*. She has also deposed that, she had not seen the face of the accused driving the motorcycle. She further admitted that the *Mangalsutra* like Articles 1 and 2 were used normally by the South Indian women and such articles were easily available in the market.

The F.I.R. lodged by her vide the C.R.No.149 of 2017 at Sion police station is produced on record at Exhibit-30. In that F.I.R., she had stated that the pillion rider had snatched the *Mangalsutra*. She did not make any reference to any other accused except the two accused riding one motorcycle. She described the

Mangalsutra having two pendants weighing 3.5 tolas. Besides that, there was no distinctive feature mentioned.

THE EYE WITNESS

7. PW-10 was another witness who was examined to show that he was present at the spot and had chased the accused Nos.2 and 3. He has stated that, on 05.06.2017, at about 6:30p.m. he was proceeding on that road. He heard the shouts of an old lady. He saw that, there were two persons riding on a Pulsar motorcycle. He tried to chase them. One of them was wearing a helmet. He was driving the motorcycle. PW-10 deposed that the said person removed his helmet and threatened this witness and that he had shown a knife to this witness. Thereafter, those accused proceeded towards the direction of Bandra. This witness went ahead and informed the police. He came to the spot where PW-1 was standing. He brought the police, who recorded PW-10's statement. According to him, he had given the description of the accused to the police. It is his case that, at the same time, he had noticed another accused riding Yamaha motorcycle near a vegetable

vendor. That person was also wearing a helmet on his head. On 25.07.2017, he identified one motorcycle at Andheri police station. It was violet colour pulsar motorcycle. But he could not state the registration number of that motorcycle. He identified the photograph of that motorcycle produced in the Court. He further deposed that, he identified the accused No.3 at Arthur Road Jail in August 2017. On the same day, he identified the accused Nos.1 and 2 at Taloja Jail. He further deposed that the CCTV footage was shown to him and it had captured the incident. According to him, the accused No.1 was seen at the spot. He has categorically deposed that the motorcyclist who wore the helmet was the accused No.3 and the pillion rider was the accused No.2. He has further deposed that the accused No.2 had threatened him by showing the knife. The Accused No.3 had removed his helmet and had abused him.

In the cross-examination, he deposed that, he had stated before the police that two motorcyclist were riding on Pulsar 180 motorcycle and that the driver was wearing the helmet. He removed his helmet and abused PW-10. However, he could not

explain as to why this important fact was not mentioned in his police statement. This omission is proved through the evidence of the Investigating officer Pramod Dhavare-PW-37 who had recorded this witness's statement. He further deposed that the accused riding the Yamaha motorcycle was also wearing helmet; that means, the accused Nos.1 and 3 were wearing the helmets. He was then cross-examined about the T.I.P.

8. The T.I.P. memo was produced on record U/s.291-A of the Cr.P.C. This memorandum is about the two T.I.Ps. held on 22.08.2017 which mentions that PW-1 and PW-10 had identified those accused as deposed by them.

RECOVERY OF ORNAMENTS

9. The next incriminating circumstance against the accused is the recovery of the broken gold chain/*Mangalsutra*. To establish this circumstance, the prosecution has examined PW-18 Parmanand Sahani who was a panch witness at the time of alleged recovery of the broken *Mangalsutra*, at the instance of the accused No.1. He has stated that on 30.07.2017 he was called at Sion

police station. He went there at around 4:15p.m. The accused No.1 gave a statement showing his willingness to point out the place where the *mangalsutra* was kept by him. It was a place behind the Fort. The accused No.1 volunteered to show the said spot. Immediately, the panchanama was prepared. It is produced on record at Exhibit-82. The police party, PW-18 and the other pancha were led by the accused No.1 to the spot. They reached there around 5:15p.m. The accused No.1 showed the spot where the *mangalsutra* was kept. He dug that spot. He had kept a stone on the spot for locating that spot. After digging, he took out the *Mangalsutra*. The police officer Gaikwad called a goldsmith who opined that it was a gold chain. It was weighed. The panchanama was prepared. It is produced on record at Exhibit-84. PW-18 identified the Article-1 as the broken *mangalsutra* recovered at the instance of the accused No.1.

In the cross-examination, he deposed that the Accused No.1 was handcuffed at the time of his statement and recovery. He did not know what conversation had taken place between the accused No.1 and the police officers. He further stated that, when

he reached the police station, by that time, one paper was already typewritten by the police. He had signed 3 to 4 times in the police station. He admitted that the police did not record the statement of the goldsmith in his presence. The goldsmith had not used any weighing scale for weighing the *mangalsutra*.

The Exhibit-83 which is the memorandum statement of the accused No.1 shows that the accused No.1 had stated that, he was willing to show the place where he had concealed the piece of the *mangalsutra*. But in that statement, he had not mentioned the place. The panchanama at Exhibit-84 showing actual recovery mentions that the accused No.1 led all of them towards Sion fort. They went behind a room. There were 4 to 5 stones at one place and the article was buried under that spot. The recovered chain was described as weighing 16.800mgs. It was a *mangalsutra* having a chain and there were two small round shapes having picture of a deity, and one more part having picture of another deity. The panchanama mentions that the accused No.1 refused to sign on the panchanama at Exhibit-84.

10. PW-16 Vijay Jaiswal was a pancha for recovery of the other part of the *mangalsutra* at the instance of the accused No.3. He has deposed that, he was called to Sion police station on 27.06.2017 at about 10:00a.m. The accused No.3 made a statement in his presence that he was ready to show the *mangalsutra* which he had kept in his house. The memorandum statement of the accused No.3 was produced on record at Exhibit-77. Thereafter, the pancha and the police party were led by the accused No.3 to his house. His mother opened the door. The accused took out a metal box kept on the loft. One yellow coloured *mangalsutra* was kept in that box. PW-16 identified the Article-2 as the article recovered at the instance of the accused No.3.

In the cross-examination, he has deposed that, he was looking after his brother's shop at Sion. The police used to frequently visit his shop. His brother did not hold any licence to sell lottery tickets at his shop. The shop was unauthorized. The police officers and the officers from the Municipal Corporation used to take payment from them and used to issue receipts. In the memorandum at Exhibit-77, the accused No.3 had not stated as to

where he had concealed the piece of *mangalsutra*.

11. PW-23 Parasmal Kothari was a goldsmith. The police had gone to his shop on 27.06.2017 for weighing a piece of chain. He identified that piece as Article-2. On 30.07.2017 he was called to Sion fort for inspecting the gold. At that time, he was shown Article-1 produced before the Court. He had given a certificate that, the said particular article was made of gold.

CCTV FOOTAGE

12. The other circumstance brought on record is in respect of the CCTV footage. PW-12 was a pancha witness. He was called by the police on 28.07.2017. They went to the school of Peoples Education Society, Sion Killa Road. This witness and the police went to the office of the Head Mistress. The recording of the CCTV footage was played on the laptop. It was copied on a pen-drive by PW-20 Mr. Palekar. It was put in an envelope. It was sealed by affixing the paper slip containing signatures.

13. PW-20 Vishal Palekar had copied that CCTV footage in a pen-drive. He was concerned with the maintenance of the CCTV

from where the footage was recovered. On 06.06.2017, the Principal of the school had called him for recovery of the CCTV footage recorded on 05.06.2017. On 07.06.2017, he went to the school and examined the CCTV footage recorded in the DVR of said school. On 28.07.2017 the CCTV footage was copied by him in a pen-drive. He deposed that, hash value of the footage and the copy were same. He issued the certificate. It is taken on record at Exhibit-92.

14. PW-22 Nilambal Ayyer was the Head Mistress of the school. The CCTV camera was installed at the entrance of the school. She had assisted the police in recovery of the CCTV footage.

Significantly, in the cross-examination she has admitted that police had come to the school and had complained that the data supplied in the pen-drive was not clearly visible.

MOBILE PHONE NUMBERS AND THE CDR

15. The prosecution also led the evidence of a few witnesses to establish that the accused were using particular phone numbers.

It is the case of the prosecution that the phone number used by the Accused No.1 was 8291057533. The phone number used by the Accused No.3 was 9619963038 and the phone number used by the accused No.2 was 9768920331. The prosecution did not lead any particular evidence to show that the Accused No.3 was using that particular phone number attributed to him. However, the prosecution tried to establish that the accused No.1 was using that particular phone number. For that purpose, the prosecution has examined PW-2, who was a salesman, to show that his friend Sahil had approached him to provide a SIM card and that he had provided a SIM card to him. The said Sahil was nephew of the Accused No.1. He deposed that the police had informed him that the said SIM card was used by the Accused No.1.

16. PW-3 Sudamchandra Sahu was another salesman. He was working with PW-2 Shahbaz Khan. His evidence is on the same lines.

17. PW-4 Nafis Khan was the owner of the shop selling SIM cards. He deposed that the police officers showed him an

application in respect of purchasing the SIM card of the phone number purportedly used by the Accused No.1.

18. PW-5 Santosh Tumma was also examined by the prosecution to establish connection of the Accused No.1 with that particular phone number, but he did not depose anything to show that he was aware as to how the Accused No.1 was using that particular phone number.

19. PW-6 Firoz Mansoori had given a SIM card to Sahil, who was Accused No.1's nephew; to the knowledge of PW-6.

20. This entire evidence is not only vague, but it does not conclusively establish that the Accused No.1 was using that particular phone number i.e. 8291057533.

21. PW-7 Changdev Godse was a Nodal Officer of the service provider. He produced the CDR in respect of the calls exchanged between the above three phone numbers. However, since the prosecution could not establish connection of these phone numbers with those particular accused, this CDR does not lead anywhere except showing that these phone numbers were used to

call each other on number of occasions, including on the date of the offence. However, the prosecution could not establish that those phone numbers were actually used by either of these two appellants i.e. the Accused No.1 and 3.

INVESTIGATION IN GENERAL

22. The other witnesses are either the police witnesses or the pancha witnesses in respect of the investigation carried out. PW-8 Arjun Palave has deposed about the prohibitory order issued by the Deputy Commissioner of Police prohibiting any person carrying weapons during the period 23.05.2017 to 21.06.2017. The prosecution wanted to establish that since the Accused No.2 had used a knife in this case, there was violation of that prohibitory order.

23. PW-9 Bala Joshi was a pancha. He has deposed that the police constable Vilas Sirpe had produced a black coloured mobile handset of Samsung Company before him. It was kept in an envelope and it was sealed. He has not deposed anything further

to connect that particular handset with a particular accused. However, the panchanama proved by him at Exhibit-50 mentions that the said handset was taken from the relatives of the Accused No.3. His evidence and the panchanama are vague and the prosecution has not corroborated this particular evidence with the other evidence.

24. PW-11 PHC Vilas Shitab was attached to Mahim police station. He deposed that on 11.06.2017 he was attached to Mahim police station. On that day, the accused No.3 was arrested in connection with the C.R.No.158 of 2017 registered at Mahim police station, under section 392 r/w. 34 of the I.P.C. At the time of his arrest, the Accused No.3 was found with a motorcycle bearing registration No.MH04-BJ-2028. That motorcycle was seized. After that, a mobile handset of Accused No.3 was asked to be brought from his house. He has deposed that the said phone was produced either by the brother or the sister of the Accused No.3. From that mobile phone, the phone numbers of the Accused Nos.1 and 2 were traced. On 11.09.2017, he produced that cell phone before the ACP, Antop Hill Division. Thus, it can be seen that his evidence

is vague. He is not sure as to who had produced that mobile handset. He has not deposed as to how the relatives of the Accused No.3 were called to the police station to produce the said handset and how it remained with him for at least three months. His evidence, in this connection, does not help the prosecution case at all.

25. PW-13 Ganesh Hule was a pancha in whose presence the Accused No.3 had shown the spot of incident. However, since the spot was already known to the police and the witnesses, this evidence has no meaning.

26. PW-14 Vivek Dandekar was a pancha in whose presence one lady identified the motorcycle parked in Mahim police station, on 05.08.2017. She also identified one helmet shown by the police. On the same day, he was taken to Andheri police station and the same lady identified another motorcycle bearing No.MH-BX-6359. Again this evidence is vague. He has not deposed as to who that lady was. His evidence does not help the prosecution.

27. PW-15 Sagar Kamble was a pancha witness. He was

called at the Sion police station on 07.08.2017. He was then taken to Mahim police station. In his presence, PW-10 identified the Pulsar motorcycle bearing No.2028. Then he was taken to another spot where PW-10 identified Yamaha motorcycle bearing No.6359. PW-10 also identified a helmet at Andheri police station in the presence of this pancha.

28. PW-17 Shrikant Patil was attached to R.A.K. Marg police station. He knew the Accused No.1. According to him, the accused No.1 was having criminal record. He has deposed that the accused No.1 used to give secret information about the incidents of chain snatching and theft. It is his case that the Accused No.1 had called this witness by using phone No.8219057533. This evidence is quite peculiar. On one hand, this police witness is saying that the accused No.1 was a police informant and was giving the secret information of chain snatching. On the other hand, the Accused No.1 himself was arrested in the case of chain snatching. Deposition of this witness that the Accused No.1 was using that particular phone number is not supported by any record. He has not given the details as to when that particular call was made. The

prosecution made an attempt to connect that particular phone number with the Accused No.1. But even assuming that phone number was used by the Accused No.1, the other two numbers were not connected with the Accused Nos.2 and 3. Therefore, this evidence does not help the prosecution case.

29. PW-19 Rajesh Patil was examined in respect of the arrest of the Accused No.2. But he deposed that he knew the Accused No.1 and that he had arrested the Accused No.1 in the past in a case of chain snatching. At that time, the Accused No.1 was using particular phone number i.e. 8219057533. He has not given any details or record in that behalf.

30. PW-21 Aslam Shaikh was the brother-in-law of the Accused No.1. He was owner of the motorcycle bearing No.MH01-BH-6359. He did not support the prosecution case that the Accused No.1 was using that motorcycle. He had turned hostile. According to the prosecution case, he had told the police in his statement that the Accused No.1 was using the motorcycle bearing No.MH01-BH-6359 and was having a helmet. However, PW-29 has

mentioned the registration number as MH-01-BX-6359.

31. PW-24 Rahul Jaiswar is in respect of recovery of knife from the Accused No.2.

32. PW-25 Sunil Tiwari was a Nodal Officer for Aircel Limited. He had provided the CDR for two phone numbers, out of which, one was used by the Accused No.2. However, there is no further connection with the Accused Nos.1 and 3. He had deposed that, the phone number 9768920331 stood in the name of one Urmila Kanojiya.

33. PW-26 Seshnath Jaiswal was a pancha for the spot panchanama which is produced at Exhibit-113.

34. PW-27 Urmiladevi Kanojiya was the mother of the Accused No.2 and her evidence is not relevant for the purposes of case against the Accused Nos.1 and 3. In any case, she had turned hostile.

35. PW-28 API Govind Kakade was attached to Sion police station on 05.06.2017. He had lodged the F.I.R. Then, he

conducted the spot panchanama. His evidence is hardly disputed.

36. PW-29 Balaji Sanap was attached to Andheri police station at the relevant time in the year 2017. He was investigating C.R.No.216 of 2017 registered at that police station U/s.392 r/w. 34 of the I.P.C. On 08.07.2017, while patrolling, he arrested one Naeem Ansari; who informed that the Accused No.1 had run away, but his motorcycle was seized on that day i.e. on 08.07.2017. It was bearing No.MH01-BX-6359.

37. PW-30 Tajuddin Kutti was a pancha for recovery of that motorcycle from the said Naeem Ansari.

38. PW-31 Santosh Nijap was a pancha for seizure of the motorcycle bearing No.MH04-BJ-2028 allegedly connected with the Accused No.3. He has deposed that, on 11.06.2017 at 4:00p.m. he was called by the police opposite to Sea Bridge building, Sunawala Agyari Lane, Mahim. At that time, the police and the Accused No.3 were present. The said motorcycle was seized in his presence under the panchanama which is produced at Exhibit-125.

39. PW-33 API Govardhan Girwale was attached to Mahim

police station. He has deposed that on 11.06.2017 while on patrolling duty, he saw the violet coloured motorcycle opposite to Sea Bridge building, Sunawala Agyari lane, Mahim. He had received the information that the said motorcycle was involved in C.R.No.158 of 2017 of Mahim police station. Therefore, they kept watch on that motorcycle. At 3:30p.m., Accused No.3 came near the motorcycle and was cleaning it. He was immediately apprehended. The motorcycle was seized. That is how the Accused No.3 came to be arrested. During the interrogation, names of the Accused Nos.1 and 2 were revealed.

In the cross-examination, he admitted that he did not seize the key of the motorcycle; though, he had made enquiry with the Accused No.3 about the key.

40. PW-35 Mohan Jagdale, was the police officer who had taken the witnesses for identification of the two motorcycles.

41. PW-36 PI Santosh Gaikar was examined in connection with recovery of the knife from the Accused No.2.

42. PW-37 Pramod Dhavare was the Investigating Officer of

C.R.No.149 of 2017 registered at Sion police station. It is the subject matter of the present trial. During investigation, he received a message from Mahim police station regarding the arrest of the Accused No.3. He obtained custody of the Accused No.3. On 27.06.2017, a part of the *mangalsutra* was recovered at the instance of the Accused No.3. He sent the proposal for invoking MCOCA against the accused. He had collected the CCTV footage. He had recorded the statements of the witnesses. He was asked to prove the omissions from the police statement of PW-10.

In the cross-examination, he admitted that the statements in respect of the omissions brought on record by the defence were not stated by PW-10 and those omissions were not proved.

43. PW-39 Ashok Satpute had investigated the C.R.No.149 of 2017 of Sion police station after the prior approval to invoke the provisions of the MCOCA was granted. He has deposed about the investigation carried out by him. He had caused the T.I.P to be held. He deposed about the mobile phone numbers and the

investigation carried out in that direction. He forwarded the Accused No.3 for recording his confessional statement.

44. PW-34 Dattatray Padsalgikar was the Commissioner of Police from 31.01.2016 to 30.06.2018. On 12.09.2017, he received the proposal for grant of sanction to prosecute the accused in this case under the provisions of the MCOCA. He called the Investigating Officer for discussion. He consulted with the legal officer. After considering the papers and applying his mind, he accorded the sanction to prosecute the accused. The sanction order dated 14.09.2017 was produced on record at Exhibit-137. There is hardly any dispute regarding grant of sanction and the procedure adopted by him in this case. The prior approval U/s.23(1)(a) of the MCOCA was produced on record at Exhibit-136. The sanction order at Exhibit-137 mentions that the organized crime syndicate was headed by the Accused No.1. There were 19 charge-sheets having punishment of more than three years against the Accused No.1. The other two accused were the members of that organized crime syndicate and hence, sanction to prosecute them under the provisions of the MCOCA was granted.

EVIDENCE REGARDING CONFESSION OF THE ACCUSED NO.3

45. The last but an important piece of circumstance is about the confession given by the Accused No.3. For that purpose, the important witnesses are PW-32 and PW-38.

46. PW-32 Rohit Kalubarme, PSI was attached to Bandra police station in 2017. On 29.07.2017, he received a message from the DCP-Zone-IX. Accordingly, he visited that office at 6:00p.m. The Accused No.3 was present in that office. The DCP, Zone-IX Shri. Paramjitsingh Dahiya (PW-38) told this witness-PW-32 that the Accused No.3 was produced before PW-38 for recording his statement. After partially recording his statement, PW-38 handed over the Accused No.3 to this witness for keeping in his custody. This witness was directed to produce the Accused No.3 before PW-38 on 31.07.2017 at 9:00a.m. This witness was directed to take precaution, so that, the police officers did not meet the Accused No.3. This witness then followed those directions and produced the Accused No.3 before PW-38 on 31.07.2017. After the statement of the Accused No.3 was recorded, PW-38 again handed

over the custody of the Accused No.3 to him. This witness was handed over two sealed envelopes containing statements of the Accused No.3. He was directed to produce the Accused No.3 before the Chief Metropolitan Magistrate, Mumbai. Accordingly, on the same day, this witness had produced the Accused No.3 before the C.M.M., Mumbai along with those sealed envelopes. The C.M.M. recorded the statement of the Accused No.3 and again his custody was handed over to this witness. After that, this witness handed over the custody of the Accused No.3 to API Gaikwad.

47. PW-38 D.C.P. Paramjitsingh Dahiya is an important witness. He has deposed about recording of the confession of the Accused No.3. He has deposed that, on 28.07.2017 he received a letter for recording the confession of the Accused No.3. He deposed that on 29.07.2017, the Accused No.3 was produced before him. PW-38 then recorded the first part of the confessional statement of the Accused No.3. He verified whether the Accused No.3 was under any pressure or whether any police officer had made any inducement or whether he had any complaints against any police officers. He informed the Accused No.3 that he was in

custody of this witness and not in the custody of Sion police station, who had arrested him. PW-38 specifically told him that, in case the Accused No.3 made any confessional statement that would be used against him or the co-accused during the Trial. The Accused No.3 replied that he understood that position. PW-38 then gave 24 hours to the Accused No.3 for reflection. The Accused No.3 was again produced before him on 31.07.2017. He was again informed that, if he made confession, it would be used against him or the co-accused during Trial. In spite of that, the Accused No.3 showed willingness to give a confessional statement, which was recorded by this witness. It was typed by the police constable Gaokar. The confessional statement was signed by the Accused No.3. PW-38 then appended his certificate. The confessional statement and the certificate were produced on record at Exhibit-160. The custody of the Accused No.3 was then handed over to PW-32, as mentioned earlier.

In the cross-examination, he deposed that, he did not remember whether the information was given to him as to since when the Accused No.3 was in police custody. He himself had not

examined the Accused No.3 physically. He did not call for the CCTV footage from the lockup. He deposed that, he formed the opinion that the confessional statement was being made voluntarily on the basis of the questions put to the Accused No.3 and on the basis of replies given by him.

48. The confessional statement in this case is important. It is produced on record at Exhibit-160, as mentioned earlier. In that statement, the Accused No.3 has given the history as to how he got acquainted with the Accused No.1 in the year 2010. They used to commit small thefts and they started committing the offences of chain snatching from the year 2010. They were kept in a jail. The Accused No.1 used to tell about the details of chain snatching and as to how it was beneficial. He used to induce others to join him. The Accused No.1 was the gang leader. The Accused No.3 had joined his gang. He got acquainted with the Accused No.2 in the jail. Thereafter he had described the incident which is the subject matter of this case. He stated that the Accused No.1 was keeping watch and was giving signal to the Accused Nos.2 and 3. The Accused No.2 snatched the chain. They broke the chain into three

pieces and kept one piece each. Interestingly, he also stated that one person was chasing him. The Accused No.2 removed a knife and threatened him. He further stated that, he himself removed the helmet and made a show of getting down from the motorcycle. The said witness was scared and then ran away.

This is the prosecution evidence.

49. The learned Special Judge accepted all these pieces of evidence separately and together to reach his findings of commission of offences by all the accused and then convicted and sentenced all of them, as mentioned earlier.

SUBMISSIONS ON BEHALF OF THE DEFENCE

50. Learned counsel for the Accused Nos.1 and 3 made the following submissions:

The identification of the accused is not properly proved by the prosecution. It was not possible to identify the accused as both of them were wearing helmets. There is contradiction between the evidence of PW-1 and PW-10 as to who exactly had snatched

the chain. The prosecution has deliberately tried to introduce the explanation that the Accused No.3 had removed the helmet, so that, the witness could identify him. However, it is an omission and it was not stated by PW-10 in his police statement. There was no distinctive feature, as far as, the helmet is concerned. The identification of the motorcycle is not believable. The offence had taken place in a very short span of time and it was not possible for PW-1 and PW-10 to have noticed the facial features of the chain snatchers, the special features of the helmet and of the two motorcycles. The Accused No.1, allegedly, was at some distance and was keeping watch and, therefore, it was impossible that PW-1 and PW-10 could have noticed him. The F.I.R. does not give detailed description of the *Mangalsutra*. The recovered *Mangalsutra* had distinctive features which were not described by PW-1 either in the F.I.R. or in her deposition. The recovery evidence is weak. The panchas were habitual and, therefore, their evidence is not reliable. The Accused Nos.1 and 3 had not used any weapon. Hence, there is no recovery of weapon at their instance. Both the accused are roped in only on the basis of

suspicion.

51. There is no connecting piece of evidence to show that the Accused No.1 was using that particular phone number. The police witnesses have given vague evidence mentioning that the Accused No.1 was using that particular phone number. There is no evidence as to which phone number was being used by the Accused No.3. The handset was produced either by his brother or sister. But even the police witnesses are not sure as to who had produced that handset. It remained with the police for three months. There is no evidence as to whether it was kept in safe custody and as to how it was produced subsequently. Therefore, the CDR showing the contact between all these three phone numbers is worthless. There is nothing to show that the Accused No.1 was using that particular phone number.

52. The confession was not voluntary. The Accused No.3 was immediately produced before the C.M.M. and at that instance itself, the Accused No.3 had retracted his confession. Therefore, there is no evidentiary value for this confession. It can neither be

used against the Accused No.3 nor can it be used against the Accused No.1. Learned counsel further submitted that, since the offence which is the subject matter of this case i.e. the incident dated 05.06.2017 is not proved against the accused, the charge under the MCOCA must also fail.

SUBMISSIONS OF THE A.P.P

53. Learned APP opposed these submissions. She submitted that the approval and sanction under the MCOCA has remained unchallenged. There are many cases against both these accused. The Accused No.1 was the gang leader. The sanction clearly mentions all these aspects. It was granted after due application of mind. There was no reason for PW-38 to record the confessional statement, if it was not voluntarily given by the Accused No.3. PW-38 was a high ranking police officer and the confession recorded by him U/s.18 of the MCOCA is admissible. It can be used against the maker, as well as, it can be used against the co-accused who is tried at the same trial. She submitted that the evidence of PW-1 and PW-10 is reliable and there is no reason to disbelieve them.

The Accused No.3 was identified at Arthur Road Jail and the other two accused were identified at Taloja Jail. There is no dispute about the T.I.P. The memo of the T.I.P. is produced on record U/s.291-A of the Cr.P.C. There is no serious challenge to the said T.I.P. Apart from that, there is evidence of recovery, separately, at the instance of both these accused Nos.1 and 3. Therefore, all these circumstances together prove the case against the accused beyond reasonable doubt.

REASONS AND CONCLUSION

54. I have considered these submissions. The important feature of this case is the identity of the offenders. The fact, that the incident had taken place and the two persons riding on a motorcycle had come near PW-1 and had snatched her chain, cannot be disputed. The question is, whether the Accused Nos.1 and 3 are involved in this crime. In this connection, it is necessary to compare the evidence of PW-1 and PW-10. According to PW-1, she had identified the Accused Nos.1 and 3. After such identification, according to her, the Accused No.3 was the person

who had snatched the chain and *mangalsutra* from her person. She identified him as the same person in the Court, as well. Her case is that, two persons came riding on a motorcycle and the person who was sitting on the pillion seat had snatched the *mangalsutra* and chain from her person. Thus, according to her, the Accused No.3 was the pillion rider who had snatched the chain. That motorcycle was driven by the Accused No.2. However, PW-10 who had immediately chased the two offenders on the motorcycle, had deposed that two persons were riding the motorcycle. The person who was driving the motorcycle was wearing a helmet. He has deposed in his examination in chief itself that the motorcyclist who was wearing the helmet was the Accused No.3; whereas, the pillion rider was the accused No.2 Kanojia. He has further elaborated that the accused No.2 had threatened him by showing a knife. The Accused No.3 had removed his helmet and had abused him. Thus, this evidence is directly contrary to the evidence of PW-1. Both of them have deposed differently as to who actually was driving that motorcycle. According to PW-10, it was the Accused No.3 and according to PW-1, it was the Accused No.2 who was

driving the motorcycle. This is important because identity of the offender is important. This also shows that the witnesses did not have sufficient opportunity to notice and remember the features of the offenders. This is even more important because the person who was riding the motorcycle was wearing a helmet. PW-10 had tried to establish the identity of the Accused No.3 by deposing that, when this witness came near the Accused No.3, he removed his helmet and abused him. This was a clear improvement from his statement before the police. He had not stated so before the police. This omission is proved through the police officer who had recorded the statement of PW-10. This particular statement of removal of helmet was deposed by PW-10 to get over the infirmity that, it was not possible for him to have identified the driver of the motorcycle, because he was wearing a helmet. PW-1 has specifically admitted in paragraph-10 that, she did not see the face of the person who was driving the motorcycle. PW-10 has also admitted that the person who was keeping watch i.e. the Accused No.1 was also wearing a helmet on his head. In this situation, it was difficult to notice the features of those persons who were

driving two separate motorcycles. Therefore, their identity in the T.I.P, as well as, before the Court is extremely doubtful and, therefore, it has to be discarded. The prosecution has tried to establish their identity through the CCTV footage, however, the Head Mistress-PW-22 admitted in her cross-examination that the police had complained that the data supplied to them in the pen-drive which was in respect of the CCTV footage was not clearly visible. Thus, the prosecution has not established that the identification of the Accused Nos.1 and 3 was proved beyond reasonable doubt. Therefore, this evidence regarding the identity of the offenders will have to be discarded.

55. As far as, recovery of the two parts of the *mangalsutra* is concerned, that evidence is also not reliable. The Accused No.1 had refused to sign the recovery panchanama at Exhibit-83. There is an endorsement on that panchanama that the Accused No.1 had refused to sign on that panchanama; which shows that he had not given any statement for showing the particular spot behind Sion Fort, voluntarily. Even otherwise, the part of the *mangalsutra* recovered from that spot was having distinctive pictures of two

different deities. It was not mentioned in the F.I.R. lodged by PW-1 or even during her deposition. Therefore, the identification of the Article-1 by PW-1 in the Court is doubtful.

56. The prosecution case is that the same chain was broken into three pieces. No connection was shown between the Article-1 and 2 if they were the parts of the same chain. Besides this infirmity, the pancha-PW-18 for recovery at the instance of the Accused No.1 has stated that, when he had gone to the police station, by that time, one paper was already typewritten by the police. This pancha had signed 3 to 4 times in the police station. This again raises doubt about the fact, whether the Accused No.1 had made any statement in the police station leading to the discovery of the spot from which the Article-1, produced in the Court, was recovered.

57. As far as, the recovery of part of chain from the Accused No.3 is concerned, PW-16 Vijay who was a pancha witness had admitted in his cross-examination that, his brother was having a lottery shop. It was an unauthorized business. This pancha was

looking after that shop and they used to regularly pay the police and the Municipal Corporation's officers; though, they were issuing receipts for them. This clearly shows that, this pancha witness was under the thumb of police. A part of that chain was recovered from the house of the Accused No.3. As mentioned earlier, it was not matched with the Article-1 produced in the Court; though, allegedly it was part of the same ornament. Again there was no distinct feature, as far as, that part of the gold chain was concerned.

Hence, the evidence of recovery of the parts of the gold chain at the instance of the Accused Nos.1 and 2 will have to be discarded.

58. Similar is the case with the identification of the two motorcycles and the helmet. Again there was no distinguishing feature about the motorcycles and the helmet. One of the motorcycles was recovered from a third person Naeem and one motorcycle was found parked at one place where the Accused No.3 had gone to clean that motorcycle. Key was not recovered from

him. Besides that, there was no connection established of these two motorcycles with the crime. Even otherwise, the identification of those two motorcycles and the helmet by PW-1 and PW-10 is doubtful. Both these motorcycles were identified in the police stations. The motorcycles were taken to the police stations from the spot from where they were recovered.

59. As already discussed, the prosecution has failed to conclusively establish that these three accused were using the aforementioned three phone numbers. The prosecution has examined a few witnesses to establish that the Accused No.1's nephew had helped him in procuring that particular SIM card. But there is no cogent linking evidence to show that the said SIM card was actually procured by the nephew of the Accused No.1 and the Accused No.1 was actually using that SIM card. The police witnesses tried to connect that particular phone number with the Accused No.1, but that evidence is vague and weak. Even otherwise, the prosecution has not established that the Accused Nos.2 and 3 were using those particular phone numbers and, therefore, the CDRs produced in this regard showing the contact

details of the calls between these three phone numbers are meaningless and have no value at all. In any case, the prosecution case is that the Accused No.1 was keeping watch and the other two accused committed that offence. Therefore, there was no occasion to call each other at the time of commission of that particular offence. The CDRs, at the most, would show that these three people were in touch with each other. Beyond that, the prosecution could not prove anything else from the CDR.

60. The next important circumstance is about the recording of the confession, allegedly, given by the Accused No.3. The significant feature in this case is that the Accused No.3, after recording of his confession by PW-38, was produced before the C.M.M., Mumbai, within a short period and he immediately retracted the confession given by him. In fact, the prosecution has led evidence of PW-38 which shows that the Accused No.3 was in his custody when he was taken from the office of PW-38 to the Court of C.M.M., Mumbai. Therefore, there was no possibility of anyone else advising the Accused No.3 to retract that confession. Therefore, retraction of the confession is more important and the

retraction is clearly voluntary. It is also important to note that, in the confessional statement, it is recorded that the Accused No.3 removed his helmet and tried to instill fear in PW-10. Again, this is a clear attempt on the part of the prosecuting agency to explain that the driver of the motorcycle could be identified only because he had removed his helmet. This has to be read with the evidence of PW-10 where the said witness had made an improvement and had introduced the same explanation that the motorcycle rider had removed his helmet when he abused PW-10; thereby had tried to explain that the witness had an opportunity to see the features of the motorcycle rider. Therefore, this particular aspect raises doubt about the genuineness of the confession given by the Accused No.3. There is scope to believe that, he was telling the story as the police wanted him to tell while giving his confessional statement. In this background, it appears that the confession was not made voluntarily. In any case, it was immediately retracted by him. There is a special safeguard provided U/s.18(4), 18(5) and 18(6) of the MCOCA; which read thus:

“18. Certain confessions made to police officer to be taken into consideration – (1).....

(2).....

(3).....

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special court which may take cognizance of the offence.

(5) The person from whom a confession had been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank of an Assistant Civil Surgeon.”

61. The very purpose of this safeguard is to verify whether there was any pressure on the maker of the confessional statement. The said retraction recorded by the C.M.M. is produced on record at Exhibit-166. It was dated 31.07.2017. It is recorded that, according to the Accused No.3, he was taken to the office of

PW-38 on 31.07.2017, but he was not asked to give voluntary statement, he was asked to sign on some papers where something was already written. It was not read over to him. He denied the contents. He specifically denied the confessional statement in the part 2 of his confession. Thus, there is immediate retraction of the confession.

62. In this connection, the observations of the Five Judge Bench of the Hon'ble Supreme Court in the case of *Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar*¹ is important. It was observed thus:

“There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted.”

This observation was made while discussing the effect of Section 30 of the Evidence Act in respect of the effect of confession made by a co-accused. However, this particular observation is in respect of the effect of confession made by the maker himself

1 1964 (6) S.C.R. 623

when the confession was retracted. The said Judgment and the said observation are referred to by a Three Judge Bench of the Hon'ble Supreme Court in a recent case of Mohd. Naushad Vs. State (Govt. of NCT of Delhi)². The passage from Hari Charan Kurmi's case (supra) is referred to in paragraph-62 of this judgment. Thus, the observations in Hari Charan Kurmi's case (supra) in respect of retracted confession vis-a-vis maker of the confession are reproduced in the recent judgment. In the present case, as discussed earlier, the retraction of the confession is immediate. There are infirmities in the confessional statement, as discussed herein above. The other circumstances are not proved and hence, there is no corroboration to the confession. Therefore, I do not feel it safe to solely rely on this confessional statement to reach the conclusion of guilt against the Accused No.3. This confession cannot be used against the Accused No.1 also to base the finding of guilt solely on this confessional statement. In the said judgments of Hari Charan Kurmi's case (supra) and Mohd. Naushad's case (supra), the effect of confessional statement made by the co-accused with reference to Section 30 of the Evidence Act

is discussed. It was observed that, in dealing with a case against an accused, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. Therefore, in the present case, the confession of the Accused No.3 cannot be used solely to base the finding of guilt against the Accused No.1. As discussed earlier, the other circumstances are not sufficiently established by the prosecution and, therefore, there is no corroboration to the confessional statement, as far as, the Accused No.3 is concerned. With the result, it can also not be used against the Accused No.1. In this view of the matter, it has to be held that the prosecution has failed to prove that on 05.06.2017, the Accused No.3 was involved in the offence of chain snatching, wherein the gold *mangalsutra* was snatched from the person of PW-1. Similarly, the prosecution has failed to establish that the Accused No.1 was in any manner

involved in the said offence. Therefore, the offences under the I.P.C. must fail.

63. Both the accused are also convicted for the offences under the MCOCA. The effect of prosecution failing to prove the main offence of chain snatching on 05.06.2017, would mean that the prosecution has failed to prove that it was a 'continuing unlawful activity' as defined under the MCOCA. The relevant definitions of 'continuing unlawful activity', 'organised crime' and 'organized crime syndicate' as defined are as follows:

2. Definitions: (1)

(a).....

(b).....

(c).....

(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, undertaken 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;

(f) “organised crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

64. Since the prosecution has failed to prove that the Accused Nos.1 and 3 had indulged in an unlawful activity on 05.06.2017 which was prohibited by law, and which is a cognizable offence, it will not be a continuing unlawful activity within the meaning of MCOCA. Resultantly, the prosecution has failed to prove that it was a organised crime committed by the members of the organised crime syndicate. With the result, it must be held that the prosecution has failed to prove that the accused Nos.1 and 3 have committed any offence under sections 3(1)(ii), 3(2) and 3(4) of the MCOCA. As a result of this discussion, the Accused Nos.1 and 3 i.e. the present Appellants in both these Appeals deserve to be acquitted from the charges for which they were convicted and sentenced.

65. Hence, the following order:

O R D E R

- i) The Judgment and order of conviction and sentence dated 17.09.2021 passed by the Special Judge under MCOCA, Greater Mumbai, passed in Special Case No.11 of 2017 against the Accused Nos.1 and 3, is set aside.
- ii) The Appellant Jafar@ Chikna Jafar Mohammad Khan Deshmukh in Criminal Appeal No.387 of 2022 and the Appellant Vijay Krishna Kale @ Saddam in Criminal Appeal No. 437 of 2022 are acquitted from all the charges.
- iii) The Appellants shall execute the bonds for their appearance in an Appeal, if preferred against the acquittal; ensuring their availability.
- iv) After the said bonds are executed, both the Appellants shall be released forthwith, if not required in any other case.
- v) Both the Appeals are disposed of.
- vi) With disposal of both the Appeals, all the interim applications are also disposed of.

(SARANG V. KOTWAL, J.)