

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

CRIMINAL APPEAL NO.694 OF 2024

Rohan Nandikishor Nage Appellant

versus

The State of Maharashtra Respondent

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- Mr. Pawan Mali, Advocate for Appellant.
- Ms. Ranjana D. Humane, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd JULY, 2025

JUDGMENT :

1. The Appellant was the original accused No.2 in MCOC Case No.6/2017 before the Additional Special Judge under MCOC Act, Pune. There was one more accused in the said case i.e. the accused No.1 Salim @ D. Badshaha Babu Tamboli.

The result of the trial was as follows -

- (i) The learned Judge vide his Judgment and Order dated 05/07/2023 convicted both the accused for commission of the offence punishable u/s 397 r/w

34 of the Indian Penal Code and both of them were sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- each and in default of payment of fine to suffer simple imprisonment for six months.

- (ii) They were also convicted for commission of the offence punishable u/s 341 r/w 34 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs.1,000/- each and in default of payment of fine to suffer simple imprisonment for 15 days.
- (iii) The substantive sentences were directed to run concurrently.
- (iv) Both the accused were in jail since 28/11/2016. They were granted set off for the period already undergone in jail.
- (v) Both of them were acquitted from the charges of offence punishable u/s 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

2. Heard Mr. Pawan Mali, learned counsel for the Appellant and Ms. Ranjana D. Humane, learned APP for the State.

3. The prosecution case is that one Ganesh Bhandalkar and Sikandar Sattar Shaikh were travelling in a goods carrier. Ganesh was the driver and Sikandar was the cleaner in that vehicle. In the night between 10th and 11th September 2016, at about 02.50 a.m. at Dive Ghat District Pune, both the accused intercepted their vehicle and climbed the vehicle. The Appellant was having a Koyta. He opened the window on the cleaner's side. They entered the vehicle and robbed both Ganesh and Sikandar of their articles and money. They then went away on their two wheeler. They had also committed similar robbery in respect of another vehicle. The police were informed. Some of the police officers chased that two wheeler. While going away, both the accused fell from their motorcycle and they were arrested. The stolen articles were found in their possession. The FIR was lodged and the investigation was carried out. The Spot Panchanama was conducted. The injured victims were sent for medical examination. During the course of investigation it was revealed that there were other antecedents against the accused. This offence was committed as a part of the organized crime.

Therefore, proposal was sent for applying provisions for MCOC Act. The approval u/s 23(1) of the MCOC Act was granted. The investigation was carried out by the specially appointed Police Officer under that approval order. At the conclusion of the trial, the charge-sheet was filed with the sanction of the competent authority u/s 23(2) of MCOC Act. The trial was conducted before the Special Court for MCOCA, at Pune.

4. During the trial, the prosecution examined 13 witnesses including the aforementioned Ganesh Bhandalkar and Sikandar Shaikh, the Panchas, the Medical Officer and the Police Officers. The defence of the accused was of total denial.
5. The learned Judge considered the evidence on record and the defence raised by the accused. He heard the arguments. The learned Judge convicted and sentenced the accused as mentioned earlier. The learned Judge however acquitted both the accused from the charges of the offences punishable under the provisions of MCOC Act. This Appeal as mentioned earlier is preferred only by the original accused No.2.

6. P.W.2 Ganesh Bhandalkar and P.W.9 Sikandar Shaikh are the two most important witnesses in this case. P.W.2 Ganesh stated that at the relevant period he was working as a driver with M/s Protrans Supplier Company at Baramati. He was driving Eicher 1059 bearing No.MH-42-M-3725. P.W.9 Sikandar Shaikh was the cleaner on his vehicle. On 11/09/2016, as usual he loaded curd in his vehicle at MIDC. He started from Baramati at about 12.15 a.m. Sikandar was travelling with him. When they reached a bridge near Pawar Wadi, which was after Saswad, two unknown persons overtook and intercepted their vehicle. P.W.2 questioned them. Both of them started abusing them. P.W.2 also shouted at them. They removed a Koyta from their sack and gave a blow on his vehicle's door. One of them entered the vehicle and gave a blow on P.W.2's right thigh. The other person went to the cleaner's side and broke the window glass. That person gave blow from the backside of the Koyta on the P.W.9 Sikandar. P.W.2 was assaulted by the blunt side of Koyta on the thigh and he was assaulted on his right arm with the sharp edge of Koyta. His jerkin was torn due to the assault. He

had Rs.3,500/- with him. Both the accused took that money. They also forcibly took the watch and the mobile phone from P.W.9 Sikandar. P.W.2 has described both these accused. After that, both the accused went away towards the Dive Ghat. There was an injury to P.W.2's arm. He made a phone call to the police by dialing 100. About half an hour after that, the police reached the spot. They were attached to Saswad Police Station and Mantarwadi Chowky. P.W.2 then took his vehicle to Mantarwadi police chowky. Since the incident had taken place within the jurisdiction of Saswad, they registered this FIR at Saswad Police Station. He had shown the spot of incident to them. He gave his FIR. It is produced on record at Ex.32. The police seized the torn jerkin. After about 2 to 3 months, the police called him to Yerwada Central Prison for attending the Test Identification Parade. According to him, he identified both the accused in that parade. He added that the Test Identification Parade was held within a period of one and a half month. After registration of the FIR, he was sent to the dispensary at Saswad for treatment. Both the accused were shown to him on the screen in the Court. He identified both the accused. According to him, the Appellant

had given a blow on his vehicle and had assaulted P.W.9. When P.W.2 had gone to the police station, there was one more driver present in the police station. He was from Sangli. P.W.2 identified his jerkin in the Court.

The cross-examination of this witness is only about the suggestion that he was deposing falsely. He was only suggested that each and every statement he had made in the examination-in-chief was not correct. This suggestion was duly denied by P.W.2. The FIR produced by him at Ex.32, substantially corroborates his version. The FIR was registered at Saswad Police Station vide C.R.No.182/2016.

7. P.W.9 Sikandar Shaikh is another important witness. He was the cleaner on the said Eicher tempo bearing No.MH-42-M-3725. He has deposed that they were travelling from Baramati to Pune. They were carrying curd from Baramati to Pune. He was travelling with P.W.2. They started from Baramati in the night. When they reached the spot near Pawar Wadi at about 02.15 a.m. two persons came on a two wheeler and intercepted their tempo. They started quarreling with P.W.2 and P.W.9. They

made allegations that their tempo had struck their two wheeler. One of them slapped P.W.2. The other removed a Koyta from his sack. He gave blows from the blunt side of the Koyta on the P.W.2's legs and hands. P.W.9 was forced to get down from the vehicle. They removed Rs.3,500/- and a mobile handset from him. He has given description of both of them. They went away on a motorcycle bearing No.MH-14-CB-2185. After that, P.W.2 made a phone call to police by dialing No.100. They went to the police station. Then P.W.2 gave his FIR. The police sent P.W.9 for medical treatment to Government Dispensary. His statement was recorded. After a few months, P.W.9 was called to Yerwada Central Prison for Test Identification Parade. He identified the Appellant and then the accused No.1. He identified both of them in the Court. Two months after the Test Identification Parade, he was called to the Tahasildar's office at Saswad. He was shown the recovered articles. He identified his watch of Titan company and the mobile phone of Samsung company. He identified both these articles which were produced in the Court.

In the cross-examination, he accepted that the road

between Jejuri and Pune had traffic and in the evening also there is traffic. The rest of the cross-examination is in the form of mere suggestions and nothing much turns on this cross-examination.

8. P.W.4 HC Mahesh Kharat had chased and arrested the accused. He deposed that he was on patrolling duty in that area during the night time between 10th and 11th September 2016. At about 01.00 a.m. his companion PSI Tapare was called telephonically by the Station House Officer of Saswad police station Mahajan and informed him that a truck driver was assaulted and robbery was committed. They were informed that the two offenders had gone towards Saswad on a two wheeler. They were travelling on a two wheeler bearing No.MH-14-CB-2185. The description of both these offenders was also given.

P.W.4 along with his other team members proceeded in that direction in a vehicle. When they got down at Dive Ghat, API Hulwan told them that they had intercepted one suspicious motorcycle. On further enquiry the police came to the conclusion that those two person were not concerned with the

offence. Therefore, they were let off. In the meantime, the SHO Mahajan informed that there was a second incident of robbery of a truck in the area which had taken place near Mohan Dhaba on Saswad Jejuri Road. The complainant in that case had reached Saswad police station. P.W.4 and his team was in the Police Chowky at Uruli Chowky. P.W.2 had reached that Police Chowky. He was sent to Saswad Police Station. P.W.4 and his team waited at the same Police Chowky. In the meantime, one Officer Jagtap saw the motorcycle going towards Pune side. Immediately, P.W.4 and his team started chasing that motorcycle. The persons riding the motorcycle realized that they were being chased. They tried to drive faster. But their motorcycle slipped and both of them fell down. P.W.4 and his team took them in custody and brought them to Saswad police station. The said motorcycle was driven by Police Naik Kolhe and he brought it to Saswad Police Station. The search of both these persons was conducted. The two wheeler had the same registration number as per the information. The Police Officers were convinced that those two persons were the offenders in the offence. Both of them were the accused Nos.1 and 2 (the Appellant in this case).

Their search revealed that the accused No.1 had Rs.10,000/- in cash. There was one Samsung mobile handset, one ATM Card and one more watch with him. The Appellant had three mobile handsets of Samsung company. There was one more mobile phone of ITEL company and there was cash of Rs.4,300/-. He was carrying a sack which contained some documents and a Koyta. There was a driving license in the name of one Mahesh Mohite. There was also one document related to a heavy vehicle. All these articles were seized under the Panchanama. This witness identified the articles produced in the Court.

In the cross-examination, he stated that he had made an entry that he was on patrolling duty in the night. But he was not aware whether the entry was produced in the documents in the present case. He could not tell whether Mr. Tapare had taken entry regarding the information given by SHO Mahajan. There was also no note of the names or the details of the two suspects who were let off. Apart from that, there were mere suggestions put to him about this deposition that he was deposing falsely. All these suggestions were denied by him.

9. P.W.3 Prakash Jadhav is another important witness. He was not directly connected with the present offence, but he was similarly robbed at around 03.15 a.m. in that same area. He had given the registration number of the two wheeler on which those offenders had come. The number was MH-14-CB-2185, which was the same motorcycle which was seized by P.W.4's team. He had also identified the same accused in the Court on VC. He had also identified him in the Test Identification Parade.
10. P.W.1 Dhanaji Pawar was a Pancha in whose presence the tempo and the spot of incident were inspected. The Panchanama is produced on record at Ex.30. The Panchanama describes the damage suffered by the tempo because of the blows given by the Koyta.
11. P.W.5 Yogesh Fadtare was a Pancha for arrest of the accused and seizure of the articles. That Panchanama is produced on record at Ex.39 and Ex.40.

In the cross-examination, he stated that the police had called him by making a phone call. He had gone to the police station on 2 to 3 occasions. He denied the suggestion that he had not read the Panchanama before signing. He denied the suggestion that the search and seizure Panchanama was not conducted.

12. P.W.7 Swapnil Gaikwad was a Pancha. His evidence is not very material because in his presence the accused No.1 had shown the spot from where the motorcycle was stolen. But nothing was discovered or recovered pursuant to the statement made by the accused No.1. Therefore, this evidence has no importance at all.

13. P.W.6 Dr. Prachi Uttarwar had examined P.W.2 and P.W.9 medically. She has deposed that the P.W.2 had suffered following injuries :

- (1) Contusion abrasion right arm measuring 3 cm x 0.5 cm;
- (2) Contusion below right elbow measuring 6 cm x 6 cm;
- (3) Blunt trauma over right forearm measuring 8 cm x 8 cm;

- (4) Blunt trauma over right knee measuring 8 cm x 8 cm;
- (5) Blunt trauma below right knee measuring 3 cm x 3 cm;

14. P.W.9 had suffered one contused abrasion over back left infra scapular region measuring 3 cm x 0.5 c.m.

In the cross-examination, she stated that the injuries suffered by P.W.2 were not possible by fall in an accident. The injuries suffered by P.W.9 was possible by a fall. She had stated in her examination-in-chief that the injuries sustained by both the injured were possible by reverse side of the muddemal 'sickle'.

15. P.W.8 API Rajesh Malegave had investigated the case from 11/09/2016 at about 08.30 a.m. The offence was registered vide C.R.No.182/2016 at Saswad Police Station. He conducted the Spot Panchanama, the Panchanama of damage to the vehicles, arrest Panchanama and seizure of articles Panchanama. He had recorded the statements of witnesses, had seized the jerkin and tried to find the details of the motorcycle stolen by the accused and used in this offence. He arranged to

conduct the Test Identification Parade by giving a letter to the Tahasildar.

In the cross-examination, he stated that he did not remember whether they had taken any entry in the station diary before going to the spot of incident. He did not remember how many team members were there when they had gone to the spot. He had arranged for the Pancha with the help of Police Patil. But it was not mentioned in the Panchanama. The rest of the cross-examination is full of suggestions which he had denied.

16. P.W.11 PI Sureshsing Gaud had reached the Police Chowky at Uruali Devachi. He has deposed about apprehending the accused and their arrest and seizure of articles. During investigation he found that the accused No.1 was involved in 9 previous offences and there was one offence against the present Appellant. Therefore, he forwarded a proposal to apply the provisions under MCOC.

In the cross-examination, he stated that there used to traffic on Pune Saswad Road. But he added that at the night time traffic is less. It was one way road. There was no divider. He denied that it was not possible to see vehicles because of head light of the vehicles coming from the opposite side.

17. P.W.10 Vishwas Nangare Patil was the Inspector General of Police at Kolhapur, at the relevant time. He had given approval u/s 23 of MCOC Act, vide his order dated 08/11/2016.
18. P.W.12 Bipinbihari Singh was the Additional General of Police during the relevant period. He had granted sanction u/s 23(2) of MCOC Act, for prosecuting the accused under the provisions of MCOC Act.
19. P.W.13 Deputy Superintendent of Police had carried out the investigation, as provisions of MCOC Act were applied. He had filed the charge-sheet.
20. Apart from this oral evidence, the prosecution

produced the C.A. report at Ex.35. However, no blood was detected either on the Koyta or the Jerkin. The memorandum of Test Identification Parade was produced at Ex.76. That memorandum is dated 20/10/2016. There is also another Panchanama at Ex.77 where P.W.9 was made to identify the articles seized from the accused. That Panchanama was conducted on 29/12/2016. He had identified his watch and a mobile phone.

21. Learned counsel for the Appellant made the following submissions :

There is variance between the evidence of P.W.2 and P.W.9. There is difference in the deposition regarding the genesis of incident. P.W.9 has deposed that the accused entered their tempo after picking up quarrel that their tempo had struck their motorcycle. However, this particular portion is not deposed by P.W.2. His only deposition was that both the accused intercepted the vehicle and committed this robbery. Therefore, there is crucial difference in their evidence.

22. The spot of incident is not proved by the prosecution. The Pancha for Spot Panchanama i.e. P.W.1 has not given cogent evidence. This spot is different from the spot from where the robbery was committed, which is deposed by P.W.3.
23. Though P.W.2 has deposed that he was assaulted with the sharp side of Koyta and in the process his Jerkin was torn, but the C.A. report does not show presence of blood on the Jerkin. The evidence shows that there was heavy traffic on that road, though no independent witness or truck driver or a cleaner of other vehicles is examined by the prosecution.
24. P.W.4 has admitted that they had not taken any entries in the station diary or anywhere else about receiving the information and taking steps in arresting the accused. He submitted that the evidence of Test Identification Parade and identification of article is not free from doubt. He submitted that the prosecution has failed to prove the case against the Appellant. He further submitted that the acquittal of the accused under MCOCA also should also be taken into consideration.

25. Learned APP on the other hand submitted that there is no material difference between the evidence of P.W.2 and P.W.9. Their evidence is corroborated by recovery and identification of the articles. The accused are identified not only in the Test Identification Parade, but also in the Court. This was not an isolated incident. In the same night, there was robbery committed in respect of the another vehicle as is deposed by P.W.3. All these events are brought out on record in the sequence in which they had taken place. There is no scope to tamper with the evidence by introducing false evidence. She, therefore, submitted that the prosecution has proved its case beyond reasonable doubt.

Reasons and conclusion -:

26. Before referring to the facts in the present case, it is necessary to note that the Appellant was acquitted from the charges of commission of offence punishable u/s 3(1)(ii) and 3(4) of the MCOC Act. Therefore, the evidence of P.W.10 and P.W.12 is not material. The prosecution has not challenged the acquittal of the Appellant from the provisions of MCOC Act.

27. The main witnesses in this case are P.W.2 and P.W.9. Though the learned counsel for the Applicant has submitted that there is variance between their deposition, I do not find that there was material difference in their stories. Both of them have consistently deposed that the accused had intercepted and stopped the vehicle driven by P.W.2, in which P.W.9 was travelling. They entered the vehicle and committed the robbery. All these factors are consistently deposed by both these witnesses. Both of them were assaulted by the accused and their deposition to that effect is supported by evidence of P.W.6 Dr. Prachi Uttarwar. This ocular evidence is supported by the medical evidence.

28. The accused were immediately arrested soon after the incident when they were trying to run away on their two wheeler. They were chased by the Police Officers on receiving information regarding the two offences concerning the P.W.2 and P.W.9 as well as P.W.3. As the Police officers were chasing them, their motorcycle slipped and they were caught at the spot. At the

time of their arrest the articles stolen by them from various victims were found with them. Subsequently, the watch and the mobile handset was identified by P.W.9 as those belonging to him. In this case, a separate Panchanama and procedure was followed in December 2016, wherein those articles were mixed with similar looking articles and out of them P.W.9 identified his own articles. Those articles were immediately seized from the offenders soon after the incident. This is another strong incriminating evidence against both the accused.

29. Both the accused were subjected to Test Identification Parade. The memorandum of said parade is produced on record as mentioned earlier. There is no infirmity pointed out in respect of the procedure followed in the Test Identification Parade. There is hardly any dispute about the conduct of the Test Identification Parade. The defence had not requested the Court to permit cross-examination of the Tahasildar, who had conducted the Test Identification Parade by calling him in the Court. The evidence of the Test Identification Parade remained unchallenged.

30. Both the accused were also identified in the Court. Even there is no challenge to their identification in the Court. The articles produced in the Court are also identified by the witnesses. Thus, there is a strong chain of circumstances proved by the prosecution in this case. The police on the patrolling duty were sharp and efficient enough to chase and apprehend the accused. This is supported by the evidence of P.W.3 who had reached the police station making grievance about the offence committed in respect of his vehicle as well. The entire evidence led by the prosecution is quite consistent and there is no weak link in the entire chain of circumstances. The prosecution has successfully proved its case beyond reasonable doubt against the Appellant. In this case, the efforts put in by the police and the efficiency shown by the police is appreciated. They have not only acted efficiently, but had led proper evidence during the course of the trial.

31. As a result of this discussion, I am of the opinion that the prosecution has proved its case beyond reasonable doubt, as

far as the commission of the offence is concerned. The next question would be as to what should be the sentence. From that point of view, I have heard learned counsel for the Appellant as well as the learned APP. The Appellant was arrested on 11/09/2016 and since then he is continuously in custody. Therefore, almost 9 years have passed. The maximum substantive sentence imposed on the Appellant is 10 years. That period would be almost over considering the remission to which the Appellant would be entitled to. Therefore, I am inclined to reduce the substantive sentence to the period that has already undergone by him, since his arrest. The minimum sentence provided u/s 397 of IPC is 7 years. Therefore, he has already crossed that period. Apart from the substantive sentence, the learned Trial Judge has imposed a fine of Rs.1,00,000/- and in default of payment of fine, the Appellant is to suffer simple imprisonment for six months. Considering that the Appellant is in custody for a very long period, some leniency can be shown in reducing the fine amount. It is also taken into consideration that the Appellant is in custody since 11/09/2016 and therefore he was not in a position to earn substantially to pay the fine

amount of Rs.1,00,000/-. Therefore, I am inclined to show leniency as far as quantum of fine and 'in default' sentence is concerned. To that extent, the sentence can be modified. Considering this discussion, the following order is passed.

32. Hence, the following order :

ORDER

- (1) The Appeal is partly allowed.
- (2) The conviction of the Appellant for commission of offence punishable u/s 397 r/w 34 as well as u/s 341 r/w 34 of the Indian Penal Code, passed by the Additional Special Judge under MCOC Act, Pune, in MCOC Case No.6/2017, vide the Judgment and Order dated 05/07/2023, is maintained. However, the sentence is modified as under :
 - (i) For commission of offence punishable u/s 397 r/w 34 of the Indian Penal Code, the Appellant is sentenced to suffer rigorous imprisonment for the period he has undergone from 11/09/2016 in custody till today.

- (ii) The Applicant shall pay a fine of Rs.5,000/- and in default of payment of fine, he shall suffer simple imprisonment for 15 days.
- (iii) The sentence of three months and payment of fine of Rs.1,000/- and in default payment of fine to suffer simple imprisonment for 15 days for commission of offence punishable u/s 341 r/w 34 of the Indian Penal Code, is maintained.
- (iv) The substantive sentences are directed to run concurrently.
- (v) The Appellant is entitled for set off u/s 428 of Cr.P.C.
- (vi) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)