

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL (ST) NO.1845 OF 2025

WITH

INTERIM APPLICATION NO.405 OF 2025

WITH

INTERIM APPLICATION NO.404 OF 2025

WITH

INTERIM APPLICATION NO.2540 OF 2025

IN

CRIMINAL APPEAL (ST) NO.1845 OF 2025

Dhiraj Jogindar Kanojia

...Appellant

Versus

State of Maharashtra & Anr.

...Respondents

Ms. Farhana Shah a/w Advocate Amna Khan, for the Appellant.

Ms. G. S.Rao, APP for the Respondent No.1-State.

Mr. Ayubkhan Pathan, PSI, Sion Police Station, Mumbai, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 18th JULY 2025

ORAL JUDGMENT.:

1. Heard Ms. Farhana Shah, learned Counsel appearing for the Appellant and Ms. G. S. Rao, learned APP for the Respondent No.1-State.

Challenge:

2. The challenge in this Criminal Appeal, is to the Judgment and order dated 17th September, 2021 passed by the learned Special Judge, MCOCA, City Civil and Sessions Court, For Greater Bombay in Special Case No.11 of 2017. By the said Judgment and Order dated 17th September, 2021, Accused No.1 – Jafar @ Chikna Jafar Mohammad

Khan Deshmukh was held guilty for the offence punishable under Section 392 r/w 34 of the Indian Penal Code, 1860 (“**IPC**”) and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (“**MCOC Act**”). Accused No.2 - Dhiraj Jogindar Kanojia i.e. present Appellant and Accused No.3 - Vijay Krishna Kale @ Saddam were held guilty for the offences punishable under Sections 392, 504 and 506 r/w 34 of the IPC and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act. Accused Nos.1 to 3 are sentenced to undergo Rigorous Imprisonment (“**R.I.**”) for 5 years and to pay fine of Rs.10,000/- each, in default, to suffer R.I. for three months for the offence punishable under Section 392 r/w 34 of the IPC. Accused No.2 and 3 are also sentenced to undergo R.I. for 2 years and to pay fine of Rs.1,000/- each, in default, to suffer R.I. for one month for the offence punishable under Section 504 r/w 34 of the IPC. Accused Nos. 2 and 3 are further sentenced to undergo R.I. for 2 years and to pay fine of Rs.1,000/- each, in default, to suffer Simple Imprisonment for one month for the offence punishable under Section 506 r/w 34 of the IPC. Accused Nos. 1 to 3 are further convicted for the offence punishable under Section 3(1)(ii) of MCOC Act and sentenced to suffer R.I. for 7 years and to pay fine of Rs.5,00,000/- each, in default, to suffer R.I. for 2 years and are also convicted for the offence punishable under Section 3(2) of MCOC Act and sentenced to suffer R.I. for 7 years and to pay a fine of

Rs.5,00,000/- each, in default, to suffer R.I. for 2 years. They are further convicted for the offence punishable under Section 3(4) of MCOC Act and sentenced to suffer R.I. for 7 years and to pay a fine of Rs.5,00,000/- each, in default, to suffer R.I. for 2 years.

Submissions of Appellant -Accused No.1:

3. It is the main submission of Ms. Shah, learned Counsel appearing for the Appellant that, the prosecution has miserably failed to prove their case. It is her submission that, Criminal Appeal No.387 of 2022 and Criminal Appeal No.437 of 2022 filed by the Accused No.1 and Accused No.3 respectively, has been allowed by Judgment and Order dated 15th July, 2024 and 16th July, 2024, passed by a learned Single Judge and the impugned Judgment and Order of conviction and sentence dated 17th September, 2021, passed by the learned Special Judge, under MCOC Act, City Civil and Sessions Court, for Greater Bombay in Special Case No.11 of 2017 has been set aside against the Accused Nos. 1 and 3. She submits that various findings are recorded in the said judgment disbelieving the prosecution case. She submits that, the prosecution has failed to properly identify the Accused as there is contradiction between the evidence of PW1 and PW10. The identification of the motorcycle is not believable. The FIR does not give detailed description of the Mangalsutra. The recovered Mangalsutra had distinguishing features which were not described by PW1 either in the

FIR or in her deposition. The recovery evidence is weak. She further submits that, since the offence which is subject matter of this case i.e. incident dated 5th June, 2017 is not proved against the Accused, the charge under MCOC Act fails.

Submissions of the Learned APP:

4. On the other hand, Ms. Rao, learned APP opposes the submissions made by Ms. Shah, learned counsel appearing for the appellant. Learned APP submits that, the approval and sanction under the MCOC Act remain unchallenged. She submitted that, there are many other cases against the present Appellant i.e. Accused No.2. She submitted that the Accused No.1 was the Gang Leader, the sanction clearly mentions all these aspects. The sanction was granted after application of mind. She submitted that PW38 recorded the confessional statement of the Accused No.3. The same can be used against the maker as well as it can be used against the co-accused, who has tried at the same trial. She submitted that, evidence of PW1 and PW10 is reliable and there is no reason to disbelieve the case. Learned APP submitted that the Accused have been identified. There is no dispute about the TI parade. The memo of the TI parade is produced under Section 291-A of the Code of Criminal Procedure, 1973 (“**Cr.PC**”) and there is no serious challenge to the TI parade. Apart from these aspects, there is an evidence of recovery. Therefore, all these

circumstances, when considered together, prove the case against the Accused No.2 i.e. Appellant beyond reasonable doubt. The learned APP submits that Accused No.1 is involved in 40 criminal cases (CRs), Accused No.2 in 24 CRs and Accused No.3 in 61 CRs.

Prosecution Case:

5. Ms. Shah, learned Counsel appearing for the Appellant-Accused No.1 has submitted that Appeals filed by the Accused No.1 and Accused No.3 i.e. Criminal Appeal No.387 of 2022 and Criminal Appeal No.437 of 2022 have been allowed by a learned Single Judge. The prosecution case as reflected in the said Judgment of learned Single Judge as set out in Paragraph No.3 is as under:-

“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 Talaja 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."

6. 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.

7. 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.

Reasoning:

8. As already noted herein above, Accused No.1 - Jafar @ Chikna Jafar Mohammad Khan Deshmukh has filed Criminal Appeal No.387 of 2022 and Accused No.3 - Vijay Krishna Kale @ Saddam has filed Criminal Appeal No.437 of 2022 against the impugned Judgment and Order dated 17th September, 2021 passed by the learned Special Judge, under MCOC Act, City Civil and Sessions Court, For Greater Bombay in Special Case No.11 of 2017. The said Criminal Appeals filed by Accused No.1 and Accused No.3 have been allowed by a learned Single Judge by order dated 15th July, 2024 and 16th July, 2024, by which, the said impugned Judgment and Order of conviction and sentence dated 17th September, 2021 passed by the learned Special Judge, under MCOC Act City Civil and Sessions Court, For Greater Bombay in Special Case No.11 of 2017 is quashed and set aside against the Accused Nos. 1 and 3. Thus, in view of this position, it is necessary to consider the law laid down by the Supreme Court in the case of *Javed Shaukat Ali Qureshi v. Sate of Gujarat*¹ wherein, the Supreme Court in Paragraph No.15 has held that, when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal Court should decide like cases

¹ (2023) 9 SCC 164

alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

9. In view of this principle of law, it is required to note the evidence of PW1 and PW10, who are star witnesses as far as this Special Case No.11 of 2017 is concerned, as they are eyewitnesses to the incident. The PW1, who is the victim of the crime has stated that, at the relevant time a motorcycle had come from the opposite direction. Two persons were riding the motorcycle. The person who was sitting on the pillion seat snatched the Mangalsutra and chain from her neck. The Mangalsutra was having two coins of gold weighing 2 grams each. The Mangalsutra and chain were weighing around 3.5 tolas. She raised the shout, however by that time the motorcyclist had already fled the scene. She had further stated that thereafter some persons came near to her and out of them a boy had tried to chase the motorcyclist. The relevant deposition is in Paragraph No.3 of the deposition of PW1, which reads as under:-

*“3. I had seen the motorcyclist at the time of incident and they were described before the police. **The person who was driving the motorcycle was aged about 30-35 year and he was wearing helmet** and the motorcycle was of violet colour. **The pillion rider was also aged about 30-35 year and he was short.** Thereafter I had gone to my house. At the time of incident I had sustained injury on my neck. Therefore I had gone to the private medical practitioner.”*

Cross-examination of PW 1 in Paragraph Nos.10 and 11 reads as under:-

“10. ...I did not state before the police at the time of lodging

*the report that the third person was giving the signal to other two motorcyclist and that **the pillion rider was short. He was taller than the motorcyclist who was driving it. I did not see the face of the person who was driving the motorcycle. I did not see hairstyle of the driver of motorcycle. I did not state before the police that the driver of the motorcycle was having short hair. Now the portion marked 'A' from the 10 report is read over to me. I can not assign any reason as to why police have made reference about the hair of the other person in it. I did not state before the police at the time of lodging the report that the motorcycle was of violet coloured. Today for the first time I have seen the CCTV footage recorded in the pen-drive. Prior to today I was not knowing about such CCTV footage recording.***

*11. ...The identification parade was conducted in a hall. I do not remember that said hall was having windows and mesh. There were some short and tall persons having fair and black complex. **At the time of the incident I did not see face of the person who had snatched the Mangalsutra. I did not identify the accused at Taloja Jail.***

10. Thus, the above evidence of PW1 clearly shows that there are various contradictions and in any case PW1 has specifically stated that she had not seen the face of the person who snatched the Mangalsutra. The role of snatching the Mangalsutra has been assigned to present Appellant i.e. Accused No.2.

11. It is also relevant to note the evidence of PW10 who saw the incident and thereafter he chased the Accused. In Paragraph No.1, PW10 has stated as under:-

*“1. ...At the time out of **those two motor cyclists one was wearing helmet, who was driving the motor cycle. He had removed the helmet and threatened me by saying, ‘ye madarchaud, mere piche aayega to pet pe chaku marunga’.** He had shown me the knife. Thereafter the motor cyclists had proceed towards the direction of CST or Bandra.”*

(Emphasis added)

In Paragraph No.11 PW10 has stated as under:-

“11. ...Two motorcyclists are appearing in the said footage. They were accused Nos. 2 and 3. Out of them accused No.2 Kanojia had threatened me by showing the knife. Accused No.3 Vijay had removed his helmet and had abused me. At that time, accused No.1 Jafar was moving in the said area by the motorcycle.”

(Emphasis added)

Thus, it is very clear that there are serious contradictions between the evidence of PW1 and PW10. It is required to note that there are serious contradictions in the evidence of PW10 as recorded on different pages. In paragraph No.1 in examination-in-chief PW10 has stated that the person who was driving the motorcycle, i.e., Accused No.3 had removed the helmet and threatened him by showing the knife, whereas, in Paragraph No.10 of examination-in-chief, he stated that Accused No.2 had threatened him by showing a knife.

12. Thus, in view of the above evidence, it is relevant to note reasons recorded in Paragraph No.54 of the judgment of a learned Single Judge in Criminal Appeal No.387 of 2022 with Criminal Appeal No.437 of 2022, which reads as under:-

*“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”

(Emphasis added)

Thus, the learned Single Judge by analysing the evidence on record and by giving elaborate reasons has held that the evidence regarding the identity of the offenders is doubtful.

13. The learned Single Judge in the said case has also observed in Paragraph No.55 that evidence regarding recovery of Mangalsutra is not reliable. The said Paragraph No.55, reads as under:-

“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.”

(Emphasis added)

The learned Single Judge after discussing the evidence with respect to the recovery at the end of Paragraph No.57 has recorded following

finding:

“57. ...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.”

Thus, the learned Single Judge has held that evidence of the recovery of parts of the gold chain at the instance of the Accused No.1 and 2 will have to be discarded.

14. In Paragraph No.58, the learned Single Judge has also held that the evidence regarding identification of two motorcycles and the helmet is not reliable. The relevant Paragraph No.58, reads as under:-

“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.”

(Emphasis added)

15. Even as far as the user of the mobiles of Accused No.1, 2 and 3, it is observed in Paragraph No.59, as follows:-

“59. As already discussed, the prosecution has failed to conclusively establish that these three accused were using the aforementioned three phone numbers.”

16. The learned Single Judge has also disbelieved the confession allegedly given by the Accused No.3. The said aspect is elaborately

discussed in Paragraph No.60 to 62. The learned Single Judge after considering elaborately, the evidence of confession by Accused No.3 and the law in that behalf has held that there are serious infirmities in the confessional statement. There is no corroboration to the confession and therefore, it is not safe to rely on the confessional statement of the Accused No.3. It has been held that on the basis of the said confessional statement conclusion of guilt against the Accused No.3 cannot be reached. It has been further held by the learned Single Judge that the said confession statement given by the Accused No. 3 cannot be used against the Accused No.1 also, to raise the finding of guilt solely on the said confessional statement. The said reasoning is also applicable to the Accused No.2 and therefore, the said confessional statement of Accused No.3 cannot be used against Accused No.2 and on the basis of the same, he can not be convicted.

17. The learned Single Judge, in Paragraph Nos. 63 and 64, discussed the conviction and sentence for the offence under the MCOC Act. It was held that the failure of the prosecution to prove the offence of chain snatching on 5th June 2017 meant that the prosecution had not established that it was a part of a continued unlawful activity as defined under the MCOC Act. Furthermore, it was held that since the prosecution failed to prove that Accused No. 1 and Accused No. 3 were involved in unlawful activities on 5th June 2017, which were prohibited

by law and considered cognizable offences, there was no continuity of unlawful activity during the period relevant to the MCOC Act. As a result, the prosecution failed to establish that the crime was organized and committed by members of a criminal syndicate.

18. Thus, it has been concluded that prosecution has failed to prove that Accused Nos. 1 and 3 have committed any offence under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act. The said reasoning is squarely applicable to the case of the present Appellant i.e. Accused No.2.

19. As already noted hereinabove the Supreme Court in *Javed Shaukat Ali Qureshi* (supra) has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination. On the touchstone of these legal principles and in view of the said Judgment of the learned Single Judge acquitting Accused Nos. 1 and 3 on the basis of same evidence, it is also necessary to acquit the present Appellant on the ground of parity.

20. As a result of the above discussion, the present Appellant i.e. Accused No.2 deserves to be acquitted from the charges for which he

has been convicted and sentenced.

21. Hence the following order:

O R D E R

- (i) The Judgment and Order of conviction and sentence dated 17th September, 2021 passed by the learned Special Judge, under MCOCA City Civil and Sessions Court, For Greater Bombay in Special Case No.11 of 2017 against the Appellant i.e. Accused No.2 - Dhiraj Jogindar Kanojia, is set aside.
- (ii) The Appellant- Dhiraj Jogindar Kanojia in Criminal Appeal (St) No.1845 of 2025 is acquitted from all the charges.
- (iii) The Appellant shall execute the bond for his appearance in an Appeal, if preferred, against the acquittal.
- (iv) After the said bond is executed, the Appellant shall be released forthwith, if not required in any other case.
- (v) The Appeal is disposed of accordingly.
- (vi) With the disposal of the Appeal, the Interim Applications are also disposed of.

[MADHAV J. JAMDAR, J.]