Presented on : 19/09/2008
Registered on : 19/09/2008
Decided on : 06/05/2017
Duration : 08Y/07M/17D.

EXH.

IN THE COURT OF THE SPECIAL JUDGE UNDER M.C.O.C. ACT, PUNE, AT PUNE.

SPL. MCOC CASE No. 05 of 2008

State of Maharashtra (Thorough Dattawadi Police Station Crime NO. 50/2008)	Complainant

versus

1)	Tanaji Ratan Pawar. Age 39 years, Occ.: Nil. R/o.: At Post Ter, Taluka and District Osmanabad.	.. Accused.
2)	Kalidas @ Kalya Prabhu Pawar. (**Since deceased, case is abated against him vide order dated 29/09/14 passed on Exh.1.**)	
3)	Vikram Laxman Pawar. **(Absconding)** Age 41 years, occu. Nil, R/o. Khamkarwadi, Taluka & District Osmanabad.	
4)	Umesh Dnyanoba Ban. Age 34 years, occu. Nil, R/o.: At Post Ter, Behind Maharashtra Sant Vidyalaya, Taluka and District Osmanabad.	

5) Sachin Chandrakant Shinde.
Age: 31 Years, Occ.: Driver.
R/at:- K-20 Railway Porter Chwal, Near
Ganesh Temple, Pune Station, Pune.

6) Vijay Bajirao Shinde.
Age: 38 years, Occ.: Nil.
R/at: Jai Bhawani Housing Society,
Shaniwar Peth, Shankar Pawar Chwal,
Mangalwedha, District Solapur.

7) Pintu @ Jalindar Uddhav Mali
Age: 32 Years, Occ.: Nil.
R/o.: Tambari, Taluka &
District Osmanabad.

Offences u/s. 395 of I.P.C. and Sections 3(1) (ii), 3(2) and 3(4)of M.C.O.C. Act.

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Advocates:
1) Mr. S.M. Jagtap, S.P.P. for the State.
2) Mr. V.V. Dushing, advocate for Accused Nos. 1, 4 & 6.
3) Mr. V.B. Koshe advocate for accused No.5
4) Mr. G.N. Aiwale, Advocate for accused No. 7.

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JUDGMENT

(Dictated and delivered in open Court on 06/05/2017)

1. The accused are facing trial for the offence punishable under section 395 of Indian Penal Code for having committed dacoity on 09/04/2008 at 3.15 a.m. at the house of the informant Mr. Bhalchandra Mahadev Chine located on plot No. 46, Lakaki Society, Sahakarnagar No.2, Pune-9.

2. So also the accused are facing trial for the offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred as to 'the MCOC Act"), for having committed several offences against property during preceding ten years being members of the organised crime or organised crime syndicate, acted singly or jointly with use of violence etc. for pecuniary gain, conspired, abetted or facilitated commission of organized crime for pecuniary gain.

3. The prosecution case in short is that, during the intervening night dated 08/04/2008 to 09/04/2008, Mr. R. L. Shinde API attached to Dattawadi police station was on patrolling duties. On 09/04/2008 at around 3.45 a.m., on receipt of wireless message from police control room informing that the incident of theft had taken place at the house of one Mr. Chine, located in Sahakarnagar No. 2 at Pune, he along with other policemen proceeded there. On reaching at the house of said Mr. Chine, upon inquiry he came to know that the incident of dacoity had taken place there. As per the narrations of Mr. Chine, he recorded his report.

4. Mr. Chine alleged that he was residing in his bungalow with his mother Sumati, maternal aunt Smt. Vimal Kashinath Ronge. He was serving in bank of

Maharashtra, Kesari Wada branch, Pune as a clerk. His sister Neha along with her husband Dattatray D. Kulkarni and her son Yogesh were residing in the flat located on the first floor of that building.

5. He alleged that,on 08/04/2008, at around 11.00 p.m.,he himself, his mother and maternal aunt slept in the hall. However at around 3.15 a.m. upon hearing sound of opening of steel Alimirah, he woke up. He happened to see one person there and he realized that that person was a thief. Because of that he shouted "CHOR CHOR". Upon that, that person armed with 'KATWANI' came near him. Wielding that weapon he threated uttering the words "CHILLAO MAT NAHI TO MAR DALUNGA". Upon that he uttered words, "MARO MAT, JO LENA HAI VO LE JAVO, MAI CO-OPERATE KARUNGA". Then in threatening tone he asked him to sit down. Because of that he sat there. Then two more persons entered into the hall. One of them asked his maternal aunt to keep quite and his companion snatched away the golden bangles and golden chain from his mother. Then the person who was found present near Almirah brought from that Almirah one briefcase in the hall. On asking by one of them to hand over the key of the front door lock which was put from inside, he handed over the same. Then those culprits opened the door and departed.

6. He alleged that, after a while he informed on phone about the incident to said Dattatray Kulkarni. Thereafter upon taking stock of the situation, he found that the dacoits had entered in the house after bending the iron grills of the window. He also realized that those dacoits had taken away his mobile handset, briefcase along with cash amount as well as documents kept in it. Then Mr. Kulkarni informed the police about the incident.

7. He alleged further that, when he came out of his residence, one Mr. Bapu Kamble his neighbourer told him that he happened to see 7 to 8 persons and they had gone towards Taljai Hills. He alleged that the dacoits had taken away two golden “PATALYA” weighing 4 TOLA , one Golden chain weighing 25 grams, one bundle of currency notes of 100/- rupees denomination, 7 bundles of currency notes of 10/- Rupees denomination each and one bundle of currency notes of 5/- Rupees denomination, one Safari briefcase containing identity card, driving licence and fixed deposit receipts issued by the bank in his name as well as one mobile handset of Samsung make having IMEI No. 35265201147369/3 with Sim card of Idea company having cell No. 9881102741. So also he mentioned in his report the description of the four dacoits along with the overt acts committed by each of them, stating that he would be able to identify the articles taken away by those dacoits.

8. On the basis of the report lodged by Mr. Chine, Crime No. 50/2008 came to be registered at Dattawadi Police station, Pune. The investigation was carried out. Spot panchnama was drawn.

9. During the course of investigation, Mr. S.P.Nishandar, ACP had received the secret information that the accused persons involved in this crime were residents of village Ter, District Osmanabad. He ordered Mr. S.V.Pawar, P.I. to arrest those accused. Accordingly on 10/04/2008, he had gone to village Ter and arrested accused Umesh. Upon taking search of his person, he was found possessing 37 currency notes of ten rupees denomination which he seized as per panchnama. So also on 11/04/2008, he arrested accused Sachin Shinde near Green Park hotel along with his Indica car bearing registration No. MH-12-CT-7289 as well as one mobile handset of NOKIA make. The statement of owner of that car Mr. Vijay Ghorpade was also recorded.

10. During the course of investigation it was revealed that the accused Pintu @ Jalindar was arrested by Osmanabad police in Crime No. 374/2007 registered at Osmanabad City Police station and brand new 15 currency notes of 10 rupees denomination bearing Series No. 17B were seized from him. Because Mr. Nishandar, ACP came to know that the accused Pintu @ Jalindar was also involved in Crime No. 50/2008 registered at Dattawadi police station, Pune,

he was taken into custody. The series No. 17B of those notes tallied with the series of the notes which were robbed from the informant Mr. Chine.

11. Mr. Nishandar, ACP also came to know that the accused Vijay Shinde was also involved in this crime and he was using the cell phone No. 9970612932. He had also come to know that he was available at Mangalwedha as per mobile tower location. Therefore, he had sent Mr. Pawar, PI to Mangalwedha and accused Vijay Shinde came to be arrested.

12. During the course of investigation accused Vijay made disclosure leading to discovery of currency notes which he had received out of the booty. Accordingly his memorandum statement was recorded. He led police and panchas to his house. On production of 30 currency notes of 100/- Rupees denomination as well as two bundles of currency notes of 10/- Rupees denomination of the series 17-B i.e. total Rs.5,000/- by him, the same were seized.

13. As it was revealed that the accused persons being members of organized crime syndicate committed dacoity on 09/04/2008 and they continued their unlawful activities for pecuniary gain during preceding 10 years with use of violence etc., Mr. Nishandar, ACP sent a proposal to Additional D.G. and Commissioner of Police, Pune City for

invoking the penal provisions of M.C.O.C. Act, 1999 against them and the same was allowed.

14. It was revealed that the accused Kalidas and Tanaji involved in Crime No. 50/2008 registered at Dattawadi police station, Pune were arrested in Crime No. 419/2008 registered at Osmanabad City Police Station. Therefore, they were also taken into custody and interrogated.

15. During the course of interrogation, accused Tanaji made disclosure on 28/07/2008 leading to discovery of one mobile handset of Samsung make. Accordingly his memorandum statement was recorded in presence of panchas. Then the accused Tanaji led the policemen and panchas to his house at village Ter and on asking by him to his wife to handover the mobile handset which was handed over to her by him earlier, she handed over one black coloured mobile handset of Samsung make with its IMEI No. 35265201147369/3 and the same was seized.

16. The identification parades were conducted. The informant identified the accused Vijay, Vikram, Kalidas and Tanaji stating that they were amongst those dacoits who committed dacoity.

17. During the course of investigation, it was revealed that all the accused conjointly committed dacoity on 09/04/2008 at 3.15 a.m.. They being the members of organized crime

syndicate, had hatched conspiracy to commit the dacoity. They continued committing similar offence of dacoity with use of violence during the span of preceding ten years and cognizance of more than two change-sheets filed against them was taken by the competent Court. Therefore, the sanction as contemplated under section 23(2) of the MCOC Act was sought for filing charge-sheet against them. Accordingly it was duly accorded by the Additional Inspector General of Police and the Commissioner of Police, Pune City. Under these circumstances, after completion of investigation, charge-sheet came to be filed in this Court.

18. Under this backdrop of the circumstances, Charge has been framed at Exh.219 by my learned predecessor. The contents in it were read over and explained to the accused Nos. 1 Tanaji, No. 4 Umesh, No. 5 Sachin, No. 6 Vijay and No. 7 Pintu @ Jalindar in vernacular to which they pleaded not guilty and claimed to be tried. Their defence is of total denial.

19. In order to prove it's case, the prosecution has examined in all 15 witnesses. The learned SPP filed evidence closed pursis Exh. 382.

20. The statements under section 313 of Cr.P.C. of the accused Nos. 1 and 4 to 7 have been recorded and the arguments advanced by the learned counsel representing both the sides have been heard at length.

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21. Following points arose for determination and the same have been answered as under along with the findings there on, for the reasons to follow.

	POINTS	FINDINGS
1]	Whether the prosecution has proved that on 09/04/2008 at 3.15 a.m., the accused persons committed dacoity by forcibly taking away golden ornaments, cash amount, mobile handset, etc. of Mr. Bhalchandra Mahadev Chine and his mother from their residence located on plot No. 46, Lakaki Society, Sahakarnagar, Pune, and thereby committed an offence punishable under section 395 of I.P.C.?	..Proved against accused Tanaji, Umesh, Sachin, and Vijay.
2]	Whether the prosecution has proved that in the course of same transaction, the accused persons during the period of preceding ten years of the aforesaid date, acted singly or jointly either as member of organized crime syndicate or on behalf of such syndicate with use of violence, intimidation or other unlawful means and committed several offences against property like robbery, dacoity, theft etc. for pecuniary gain and thereby committed an offence punishable under section 3(1)(ii) of the Maharashtra Control of Organized Crimes Act, 1999?	..Proved against only the accused No.1 Tanaji and No. 4 Umesh.

3]	Whether the prosecution has proved that in the course of same transaction, the accused persons while acting singly or jointly either as member of that organized crime syndicate or on behalf of such syndicate with use of violence, conspired or abetted or knowingly facilitated commission of an organized crime syndicate and thereby committed an offence punishable under section 3(2) of the Maharashtra Control of Organized Crimes Act, 1999?	..Proved against only the accused No.1 Tanaji and No. 4 Umesh.
4]	Whether the prosecution has proved that in the course of same transaction, these accused were the members of the organized crime syndicate and thereby committed an offence punishable under section 3(4) of the Maharashtra Control of Organized Crimes Act, 1999?	..Proved against only the accused No.1 Tanaji and No. 4 Umesh.
5]	What order?	..As per final order.

REASONS

Points Nos. 1 to 4:

22. Before adverting to the oral and documentary evidence adduced by the prosecution, it would be just, proper and desirable to take into consideration the undisputed facts which are as under :

(1) PW1 Mr. Bhalchandra Mahadev Chine was serving in Bank of Maharashtra, Kesari Wada Branch,Pune as a clerk in the year 2008. He was residing along with his mother Smt. Sumati and maternal aunt Smt. Vimal Kashinath Ronge, in his own residential building constructed on Plot No. 46, Lakaki Society, Sahakarnagar No. 2, Pune.

(2) Mr. Chine set police machinery into motion by lodging report Exh. 252 on the basis of which Crime No.52/2008 came to be registered at Dattwadi police station, Pune on 09/04/2008.

(3) The spot panchnama was drawn at the house of the informant Mr. Chine showing that his house was comprising of only four rooms i.e. hall, kitchen, bedroom and a room called DEV-GHAR.

(4) The learned counsel for the accused No. 1 and 4 to 7 submitted in writing on that spot panchnama that the same is admitted by those accused. Therefore the same has been marked as Exh. 271. As specified in that panchnama Exh. 271, after bending two iron grills of a window, sufficient space was created for entering into that house of Mr. Chine through that space. That situation shown in that spot panchnama Exh.271 has not been disputed by the accused persons in any manner.

(5) It has not been seriously disputed that the incident of dacoity as alleged in report Exh. 252 by Mr. Chine had in fact taken place.

(6) Even the assertion of PW1 Mr. Chine in his examination-in-chief that he received from police his Samsung mobile handset, melted gold as well as some of the currency notes, his brief case, driving licence and pass books, has not been denied by putting any suggestion to him in cross-examination.

23. The sum and substance of the deposition of PW1 Mr. Bhalchandra M. Chine is that, during the intervening night dated 08/04/2008 to 09/04/2008 while he himself, his mother and maternal aunt were sleeping in the hall of his house, he woke up upon hearing sound of twisting of the handle of iron Almirah kept in 'DEV-GHAR' and he saw one person present near that Almirah. On realizing that he was thief he started shouting “CHOR CHOR”. Upon that one another person rushed to him armed with the weapon “KATAWANI” and he threatened him wielding it. He snatched the golden bangles, chain ear-tops etc. from his mother. By that time, the person who was found present near Almirah came out carrying one briefcase from that Almirah. Two other companions of those thieves were also present there. As demanded by one of the culprits, he handed over to him the key of the lock put on the main door

from inside and after unlocking that door by using the key handed over by him on their demand, those culprits departed after opening the main door.

24. He deposed further that, upon giving phone call to his brother-in-law Mr. Kulkarni and his sister who were residing upstairs,they rushed to him. Upon taking stock of the situation, he realized that after bending the iron grills of the window of the inner room, the thieves had entered in his house. The briefcase taken away by the culprits was containing cash amount of Rs.20,000/- to 22,000/- , driving licence and bank passbooks issued in his name. Those culprits had also taken away his mobile handset and golden ornaments of his mother.

25. He deposed further that upon giving phone message to the police, policemen arrived. Upon showing the spot of incident to the police, spot panchnama was drawn.

26. He deposed that he lodged report Exh. 252. He gave detailed descriptions of the four culprits stating the actual overt acts committed by each of them.

27. He also deposed that he had kept brand new currency notes at his residence and he was knowing the numbers of series of the same which were taken away by the culprits.

28. It has also come in his evidence that he was called for identification parade and in it he identified the four accused.

29. PW10 Mr. R.S. Shinde, API who was on patrolling duties had reached at the residence of PW1 Mr. Chine at around 4.05 a.m. on receipt of wireless message from police control room as deposed by him. On realizing that the incident of dacoity had taken place, he recorded the report Exh. 252 as narrated by PW1 Mr. Chine and he had drawn spot panchnama Exh. 271 which is admitted by the defence side.

30. The learned SPP argued vehemently that PW1 Mr. Chine not only narrated the entire episode which had taken place during the intervening night dated 08/04/2008 to 09/04/2008 but he also deposed that he had actually seen the faces of the four dacoits when they were present at his residence. After taking through the detailed report Exh. 252 lodged by PW1 Mr. Chine, he argued vehemently that the specific descriptions given by him in respect of the colour of clothes worn by the dacoits, their height and features, certainly demonstrated that he had sufficient opportunity to observe keenly the facial expression of those dacoits.

31. He also pointed out that as evident from the identification parade reports Exh. 325 and 333 respectively, he identified accused Vijay, Vikram, Kalidas and Tanaji. Not

only that even the mobile handset belonging to Mr. Chine came to be seized as per memorandum statement Exh. 305 of accused Tanaji and panchnama Exh. 307, on handing over the same to police by Geeta, the wife of Tanaji. So also brand new currency notes bearing same number of series 17B mentioned by PW1 Mr. Chine came to be seized from the accused Pintu @ Jalindar as well as accused Vijay.

32. He fairly conceded that PW5 Malhari and PW6 Mahadev who had witnessed the seizure of Rs. 150/- from accused Pintu on 11/04/2008 as per panchnama drawn by Mr. N.G. Ankushkar, API attached to LCB Osmanabad turned hostile and Mr. Ankushkar, API could not be examined. Because of that the contents in that panchnama dated 11/04/2008 could not be proved. According to him, the assertion of PW12 Mr. Nishandar by itself as specified in proposal Exh. 326 that the identity of accused Jalindar is established even if no other evidence proving his identity has been produced.

33. So also he argued that, as admitted by the accused Sachin, in answer to question No. 77, he was having cell phone No. 9850027051 though he stated that he does not know as to whether Surendra Raut's cell Number was 9921973276 or otherwise.

34. He pointed out that as deposed by PW15, Sachin Mahadeo Shinde, the Nodal Officer of Idea Cellular

Company, as specified in letter Exh.337, the cell No. 9850027051 was subscribed by Sachin Shinde and cell No. 9921973276 was subscribed by Surendra Raud resident of Ter, District Osmanabad. He also deposed that as specified in copies Exh.338 and 339 of call details record, as per the tower locations, on 09/04/2008, at the time of incident, those cell phones were used in Sahakarnagar area at Pune. As such according to him presence of these accused at the scene of occurrence has been sufficiently established.

35. He argued that, police officers PW11 Mr. S. V. Pawar, P.I. and PW12 Mr. S.C. Nishandar, ACP deposed in detail how the police machinery was swung into motion and went on arresting the accused persons promptly followed by the discovery and recovery of the articles and amounts at their instance. Thus the prosecution has sufficiently proved the guilt of the accused persons beyond reasonable doubt of the offence punishable under section 395 of I.P.C.

36. So also after taking through the copies of police papers produced on record, he argued vehemently that, these accused are continuously members of organized crime syndicate and during last ten years prior to the date 09/04/2008, they committed several such offences against body and property. As such their guilt of the offences punishable under section 3(1)(ii), 3(2) and 3(4) of MCOC Act is also proved sufficiently and they deserve conviction.

37. On the other hand, the learned counsel for accused Nos. 1 and 4 to 7 argued that, the evidence on record is not at all reliable one. It has been pointed out that PW1 Mr. Chine admitted that he was wearing spects since 30 to 40 years and on removal of spects the articles at longer distance are not clearly visible to him. As such, if it is the case of the prosecution that on 09/04/2008, at 3.15 a.m., he woke upon hearing sound of twisting of handle of iron Almirah kept in DEV-GHAR, he might not be able to see the faces of the so called dacoits. So also he admitted that because of the incident of dacoity he was stunned and he was under stress for about half an hour. As such it cannot be said that he was able to recollect the sequence of events specified in report Exh. 252 lodged by him.

38. The learned defence counsel also pointed out that though PW2 Bapu Kamble, deposed that he had noticed 7 to 8 person in front of the house of PW1 Mr. Chine, he had not stated that he was able to see their faces. As such even if the incident of alleged dacoity had taken place at the house of Mr. Chine, it cannot be said that the identity of the accused persons has been established in any manner.

39. It has been argued that PW3 Sachin Samudre, PW4 Namdev Kunjir, PW5 Malhari Havaldar, PW6 Mahadev, PW7 Prakash Khude and PW9 Sudhakar Deshmukh, these panch witnesses, turned hostile. As such, because these

witnesses turned hostile, it cannot be said that the contents in different panchnamas showing seizure of the Muddemal articles from and at the instance of the accused persons has been sufficiently proved. Therefore, merely because the police officers PW11 Mr. Pawar, P.I. and PW12 Mr. Nishandar, ACP deposed that the Muddemal articles were seized at the instance of the accused persons, that by itself cannot be believed for want of sufficient corroboration from the independent witnesses.

40. Upon careful scrutiny and scanning of the facts and circumstances on record in consonance with the arguments advanced by the learned counsel representing both the sides, it is found that the entire controversy hinges on the point as to whether PW1 Mr. Chine was able to see the faces of the dacoits and whether he was able to recollect their description in order to identify them in identification parade as well as during the course of his examination-in-chief before the Court.

41. It is pertinent to note that PW1 Mr. Chine deposed that his house is comprising of only four rooms and that has not been disputed by the defence side. Because the situation described in spot panchnama is specifically admitted by the accused as per the endorsement of their learned counsel on it, that panchnama has been marked as Exh.271. Even in

that panchnama Exh. 271, the specific area and dimensions of each of those rooms have been specified.

42. Mr. Chine deposed that, during intervening night dated 08/04/2008 to 09/04/2008, he himself, his mother and maternal aunt were sleeping in the hall. Upon hearing the sound of twisting of handle of Almirah kept in DEV-GHAR, he woke up at 3.15 a.m. and realized that the person seen near the Almirah was thief. Because of that he shouted as “CHOR, CHOR”. Upon hearing his shouts another culprit armed with weapon KATAWANI rushed to him and threatened to kill if he shouted. Then that culprit snatched away golden ornaments of his mother. The culprit who was present near Almirah in DEV-GHAR had rushed towards him carrying the briefcase kept in that Almirah. So also two other culprits entered into the hall by that time. On his demand he handed over to him the key of the lock which was put on by him from inside to the main door. Then after unlocking the door those culprits departed.

43. Significantly enough no suggestions have been put to him denying this detailed sequence of events deposed by him. So also no suggestions have been given to him that the dacoits had covered their faces with mask or pieces of clothes. Even no suggestions have been put to him that at the time of incident there was complete darkness and for want of sufficient light he could not see the faces of the

dacoits. As stated by him in his cross-examination, the room called 'DEV-GHAR' was visible from the place in the hall where he was sleeping. A plain reading of the report Exh. 252 certainly demonstrated that giving specific description of the four dacoits along with specific overt acts committed by each of them he lodged that report.

44. During his cross-examination, it has been brought on record that policemen had drawn the sketches of the culprits by making necessary inquiry with him and his relatives about the descriptions of the accused persons. That necessarily follows that, because he was able to narrate before the policemen the detailed descriptions, features and facial expressions of those dacoits, the policemen could prepare the sketches of their faces. PW1 Mr. Chine categorically denied that he could not provide proper description to policemen and because of that the sketches of the culprit could not be prepared. On the contrary, he deposed that policemen had shown those sketches of culprits to him and his relatives. This fact brought on record by the defence side that as per the description given by PW1 Mr. Chine to police, the sketches of dacoits were prepared and shown to him and his relatives, has ratified and confirmed that the impact on his mind of that horrific incident of dacoity was such that the same was not erased from his memory.

45. No doubt, the learned defence counsel during the course of cross-examination of Mr. Chine, brought on record the fact that he uses the spects since 30 to 40 years . He also admitted that with the number 3 to 3.5 of his glasses, he is able to see the articles at longer distance. However, he also deposed that DEV-GHAR was visible from the place in the hall where he was sleeping at the time of incident. As such it goes without saying that he was able to see the culprits who twisted handle of Almirah in DEV-GHAR, due to which he woke up and realized that the person seen near Almirah was the dacoit.

46. Apart from that 'longer distance' is certainly a relative term which may differ from person to person. As such it was certainly imperative on the part of the defence side to bring on record the admission of Mr. Chine that from the spot in the hall where he was sleeping, he was not able to see the face and description of the dacoit who was present near Almirah in DEV-GHAR at the time of incident. However that has not been done. So also no suggestion has been given to him that due to his weak eyesight he was unable to see from the hall of his house, the person or articles present in DEV-GHAR.

47. At the cost of repetition it may be mentioned that the admission given during the cross-examination by PW1 Mr. Chine that he was using spects for 30 to 40 years with 3.

to 3.5 numbered glasses assumed no significance in view of the identification parade reports Exh. 325 and Exh. 333 respectively. Admittedly, during the course of recording of deposition of PW12 Mr. Nishandar, because the learned defence counsel for all the accused stated that they have no objection to exhibit the identification parades reports as provided under section 291-A of Cr.P.C., the same have been marked as Exh. 325 and 333 respectively.

48. As specified in report Exh. 325 and Exh.333, PW1 Mr. Chine identified accused Vijay as well as accused Kalidas, Tanaji and Vikram stating that they committed dacoity at his house. After recording the statements of all the accused persons under section 313 of Cr.P.C., during the course of final arguments, an application Exh. 391 was filed only for and on behalf of accused Nos. 1, 4 and 6 with a prayer to call Tahasildar to enable, only to cross-examine him as regards those identification parade reports Exh. 325 and 333 respectively. However, that application Exh. 391 came to be rejected after hearing the elaborate arguments advanced for both the sides. Admittedly none of the accused have challenged that order and that order reached to it's finality. That necessarily follows that because those identification parade reports Exh. 325 and 333 have not been disputed, the same certainly assumed much significance. Those reports Exh. 325 and 333 corroborated

sufficiently the case of the prosecution that accused persons named in those reports were amongst those dacoits. So also PW1 Mr. Chine identified the accused Umesh, Vijay and Tanaji during the course of recording his deposition stating that they were amongst the dacoits who committed dacoity at his residence on 09/04/2008 at 3.15 a.m.

49. It is significant to note that PW1 Mr. Chine denied the suggestion that on 29/07/2008, accused Tanaji was shown to him and he identified him in the police station. On the contrary he deposed that after the incident, he saw the accused Tanaji only at the time of identification parade. Not only that he denied the suggestion that photographs of all the accused were published in newspaper. He denied the suggestion that policemen had shown him the panchnamas pertaining to the seizure of articles as well as the arrest of the accused persons.

50. Thus, the facts and circumstances prominently demonstrated that PW 1 Mr. Chine had sufficient opportunity to see the faces of the dacoits on the date and time of the incident. Admittedly the accused Umesh and Tanaji are residents of Ter, District Osmanabad. So also other accused are residents of different places. There is certainly no reason for PW1 Mr.Chine to depose false against the accused persons stating that he identified them as real culprits.

51. PW1 Mr. Chine confidently deposed that he had clear look of the dacoits. Apparently the terror and horror created by the accused persons by giving threats to him, his mother and maternal aunt by wielding KATAWANI, left a permanent imprint in his mind as regards the facial expression of those dacoits. Those long lasting impression and imprints had not diminished or disappeared from his memory and the same got embossed forever. As such the horrifying impact and imprint of the faces and descritpion of the dacoits is certainly not likely to be erased from his memory. The categorical description in report Exh. 252 lodged by him in respect of the four dacoits with colour of their clothes they had worn, their height, builtup and features, immediately after the incident of dacoity on 09/04/2008 certainly demonstrated that the images of those dacoits were not likely to be erased easily from his memory.

52. His specific assertions that upon hearing the sound of twisting of the handle of Almirah, when he shouted “CHOR CHOR”, one other dacoit after rushing towards him threatened him wielding the weapon 'KATAWANI' that he would kill him in case he shouted, certainly demonstrated that he saw him from very close proximity. So also he positively asserted that by the time the dacoit who was present near the Almirah and two more dacoits rushed in the hall where he was present strengthened his assertion

that he could see the faces and description of those 3 dacoits also from very close proximity. Because of that his admission that he uses spects since 30 to 40 years for seeing the articles and persons at “longer distance” is not helpful to the accused in any manner whatsoever. Thus it is certainly established that he had sufficient opportunity to watch the overt acts of those four dacoits from very close proximity. Because of that his convincing testimony as regards the description and identity of those accused persons cannot be discarded.

53. The assertion of PW1 Mr. Chine that the dacoit who was opening the Almirah in DEV-GHAR had come to the hall carrying briefcase containing amount and other documents and two other dacoits were also present there that time has not been denied by defence side by putting any suggestion to him denying his those assertions. That necessarily follows that PW1 Mr. Chine, his mother and maternal aunt had sufficient opportunity to observe minutely the facial expressions of the dacoits along with their description as regards wearing apparels, their skin complexion etc. Because of that they were able to supply sufficient information regarding them to police which enabled them to draw their sketches.

54. As deposed by PW2 Bapu. J. Kamble, prior to 7 to 8 years, during the night of incident, while he was sleeping

in front of his house, he had noticed at around 3.00 to 3.15 a.m., 7 to 8 persons present in front of the house of Mr.Chine. Immediately thereafter he heard the shouts, hue and cry made by Mr. Chine. Because of that he rushed there to see as to what was the matter. Mr.Chine and his family members told him about the incident. Then policemen came to the house of Mr. Chine.

55. It is pertinent to note that PW2 Bapu Kamble has been cross-examined only for accused No. 1, 4 and 6. However, his assertion that upon hearing shouts, hue and cry made by Mr. Chine, he rushed to his house and he came to know from him about the sequence of events has not been denied by putting any suggestion to him in that regard. The suggestion put to him that, he deposed false that during the night of the incident he had seen 7 to 8 persons standing in front of the house of Mr. Chine, has been specifically denied by him. Admittedly PW2 Mr. Kamble has not been cross-examined for accused No.5 and 7. In view of his deposition, it has been certainly established that 7 to 8 dacoits committed the offence of dacoity during that night by forcibly taking away the belongings of PW1 Mr. Chine and of his mother as described in report Exh.252. Thus it has been certainly established that PW2 Bapu Kamble has sufficiently corroborated the assertions of Mr. Chine that the culprits who had

committed the offences were more than 5, which certainly attracted the offence of dacoity against them.

56. The prompt arrest of the accused persons followed by seizure of the incriminating articles from them also ratified the involvement and participation of the accused persons in commission of the offence of dacoity. As evident from the order Exh.299, on the date 09/04/2018 itself PW12 Mr. Nishandar ordered PW 11 Mr. Pawar, P.I. to arrest the dadcoits as it was revealed that the dacoits were from Osmanabad District.

57. As deposed by PW11 Mr. S.V.Pawar, P.I. , on 10/04/2008 itself, he had gone to village Ter, District Osmanabad and arrested accused Umesh . He seized from him 37 currency notes of 10/- rupees denomination as shown in panchnama Exh.286.

58. He deposed that, he had received the secret information that accused Sachin was available near Green Park Hotel, Baner, Pune, along with Indica car No. MH-12-CT-7289. Accordingly he arrested him. He seized his mobile handset of Nokia make with SIM card of Idea company. As specified in that panchnama Exh.316 the IMEI No. of the mobile handset was 35837900/596937/9.

59. Similarly accused Vijay came to be arrested on 15/04/2008. He made disclosure Exh.277 leading to

discovery of cash amount of Rs.,5000/-. Pursuant to that 30 currency notes of 100 rupees denomination and two bundles of currency notes of ten rupees denomination total Rs. 5000/- were seized after noting down serial numbers of the same in panchnama Exh. 278 dated 16/04/2008.

60. Likewise accused Tanaji was taken into custody. As per disclosure Exh. 305 made by accused Tanaji leading to discovery of one black coloured mobile handset of Samsung make, he led the panch witnesses and policemen to his house at village Ter. As deposed by Pw11 Mr. Pawar, P.I., accused Tanaji accosted his wife as “Geeta”. Upon that one lady came out. On asking by accused Tanaji to her to hand over the mobile handset which he had handed over to her earlier, she handed over the same to police which came to be seized as per panchnama Exh.307 dated 28/07/2008. Significantly enough that mobile handset which came to be seized as per panchnama Exh. 307 at the instance of the accused Tanjai, was bearing the very same IMEI No. 35265201147369/3, which PW1 Mr. Chine had already quoted in report Exh. 252 lodged on 09/04/2008 itself.

61. The very fact that the mobile handset with the IMEI Number quoted in the report Exh. 252 lodged on 09/04/2008 itself by Mr. Chine was found in possession of none other than the wife of the accused Tanaji, certainly

demonstrated that the mobile handset was handed over to her by the accused Tanaji. As such it was certainly imperative on the part of the accused Tanaji to explain as to how that mobile handset had travelled all the way from the house of PW1 Mr. Chine located in Sahakarnagar, Pune to a distant place that too to his wife Geeta who was residing in village Ter in Osmanabad District. However, no plausible explanation has been offered in that regard by him.

62. It is pertinent to note that as deposed by PW14 Mr. Abhijit Kudi, he was serving as manager in the shop known as 'Mobile Shoppe", where the mobile handsets were being sold. He deposed in detail the procedure as regards preparation of bills in respect of mobile hand sets sold from time to time. He deposed that on 23/08/2008, policemen had brought to him one copy of the bill dated 11/03/2007 issued in the name of one customer Mr. N.M. Chine. He identified the signatures on it of himself in the capacity of manager, of Mr. Chine as customer and of the employee who had prepared the copy of bill marked as Exh. 376.

63. During his cross-examination it has been brought on record that if IMEI number of mobile handset mentioned on the bill issued to any customer tallies with the IMEI number mentioned on the particular mobile handset, then it can be said that, the said mobile handset was sold from that shop.

..31

64. As such apparently Mr. Chine had purchased that mobile handset from that Mobile Shoppe which came to be seized subsequently as shown in panchnama Exh. 307 at the instance of the accused Tanaji. Though PW14 Mr. Kudi has been cross-examined, nothing shattering credibility of his evidence could be brought on record. As such there is no reason to disbelieve that, the mobile handset purchased by Mr. Chine on 11/03/2007 from the shop "Mobile Shoppe" was robbed from him on 09/04/2008 which subsequently came to be seized as per panchnama Exh. 307 dated 28/07/2008.

65. In the instant case no doubt, the incident of dacoity had taken place on 09/04/2008. However, apparently the accused Tanaji could be taken in custody by police in Crime No. 50/2008 registered at Dattawadi police station only on 18/07/2008. As per memorandum statement Exh.305 and panchnama Exh. 307, the seizure of the mobile handset of Mr. Chine was effected from Geeta his wife at village Ter in Osmanabad District.

66. Thus the seizure of mobile handset as per memorandum statement Exh. 305 of the accused Tanaji and panchnama Exh. 307 certainly ratified that the accused Tanaji was one of the dacoits who had actually committed the dacoity at the house of Mr. Chine on 09/04/2008.

67. Moreover, no doubt PW12 Mr. Nishandar has been

cross examined at a considerable length. However, no suggestion has been put to him denying his assertion in report Exh.335 sent for seeking sanction as contemplated under section 23(2) of MCOC Act that melted gold weighing 30 grams has not been seized from accused Tanaji during the course of investigation in Crime No. 419/2007 registered at Osmanabad Police Station. Admittedly nothing has been brought on record by defence side to prove that accused Tanaji was affluent enough to possess 30 grams melted gold which was seized from him.

68. Because the mobile handset owned by Mr. Chine came to be seized as per panchnama Exh. 307 dated 28/07/2008, i.e. after more than 3 months of the dacoity dated 09/04/2008 a legitimate point arose as to whether presumption as contemplated under section 114(a) of Evidence Act can be drawn.

69. The answer to this can be very well found in the observations in para No. 13 In the judgment in the case of ***Earabhandrappa @ Krishnappa Vs. State of Karnataka, AIR 1983 S.C. 446.*** While dealing with somewhat similar fact situation, it has been laid down in para 13 in that case that-

"The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false

denial by, itself is an incriminating circumstance. The nature of presumption under illustration (a) to Sec. 114, must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen articles is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property."

70. So also in the case of "***Gulab Chand Vs. State of Punjab, AIR 1995 SC 1598,*** it has been observed that *"selling of stolen ornaments, next day by the accused and recovery of some ornaments from his house was an important time factor and the accused not being affluent to possess the ornaments, it was reasonable to draw inference of murder and robbery."*

71. In this view of the matter, discovery and recovery of the mobile handset owned by PW1 Mr. Chine which came to be seized as per panchnama Exh. 307 at the instance of accused Tanaji from his wife and seizure of melted gold

weighing 30 grams in Crime No. 419/2007 registered at Osmanabad Police station, certainly rendered strong assurance of his actual involvement and participation in commission of the offence of dacoity.

72. Much emphasis has been given by the learned defence counsel on the point that PW3 Sachin, PW4 Namdeo, PW5 Malhari, PW6 Mahadev and PW9 Sudhakar turned hostile. Because those panch witnesses have not supported the case of the prosecution, testimonies of the police officers i.e. PW11 Mr. Pawar and PW12 Mr. Nishandar could not find sufficient corroboration from the independent witnesses. Therefore the evidence as regards discovery and recovery of Muddemal articles has been carefully scanned and scrutinized.

73. At the cost of repetition, it may be observed that PW1Mr. Chine has positively asserted that he received from police his Samsung mobile handset, melted gold, some currency notes, briefcase, driving licence, bank pass-books etc. That specific assertion of Mr.Chine has not been denied by either of the accused. That necessarily follows that they have not disputed the unequivocal assertions of Mr. Chine that the articles and the amounts seized by police have been returned to him on establishing by him identity and his ownership over those articles and amounts.

74. As deposed by PW11 Mr. Pawar, on 09/04/2008 itself as per the order Exh. 299 given by PW12 Mr. Nishandar, ACP, he went to village Ter and arrested accused Umesh Ban. He seized from him 37 currency notes of Ten Rupees denomination as shown in panchnama Exh. 286 in presence of panchas PW3 Sachin S. Samudre and PW8 Mr. Amjad Tamboli. To the misfortune of the prosecution PW3 Sachin Samudre turned hostile. However, PW8 Mr. Tamboli fully supported the case of the prosecution. Though he has been cross-examined only for accused Nos. 1, 4 and 6, nothing shattering credibility of his evidence could be brought on record to disbelieve the seizure of Rs. 370/- from the accused Umesh. It is pertinent to note that out of those 37 notes of 10 rupees denomination seized as per the panchnama Exh. 286, 34 currency notes were of 17-B series. PW12 Mr. Nishandar deposed that PW1 Mr. Chine had mentioned the series number of the currency notes and the same tallied with the series numbers seen on those seized notes.

75. In order to prove that on 16/04/2008 , an amount of Rs. 5000/- has been seized as per disclosure Exh.277 made by accused Vijay, the prosecution has examined PW4 Namdev Kunjir and PW 7 Prakash Khude. To the misfortune of the prosecution both of them turned hostile.

76. Still the fact remains that PW 4 Namdev Kunjir deposed that on 16/04/2008 police called him to act as panch witness. He deposed that the accused who was in police custody made disclosure leading to discovery of Rs.5000/-. Accordingly his memorandum statement Exh.277 was recorded. He positively asserted that the accused led policemen and panchas to Mangalwedha and on production of Rs.5000/- by him that amount was seized as per panchnama Exh.278. He categorically admitted his signature on documents Exh.277 and 278. Not only that it is pertinent to note that at the end of the panchnama Exh.278 it has been specified that after reading the same , the panchas had signed it. Thus as admitted by PW4 Mr. Namdev exactly on the 7th day from the date of the incident of dacoity, that amount of Rs.5000/- came to be seized. He admitted the entire sequence of events specified in documents Exh.277 and 278. As such merely because he made a lame attempt by stating that accused Vijay had not made that disclosure Exh. 277 and had not produced the amount seized as per panchnama Exh. 278, the contents in those documents can't be disbelieved.

77. Likewise PW5 Malhari Havaldar and PW6 Mahadev Kawale both are examined to prove that, exactly on the third day i.e. on 11/04/2008 of the incident dated 09/04/2008, an amount of Rs. 150/- comprising of 15

notes of 10/- rupees denomination have been seized from accused Jalindar. No doubt, PW5 Malhari and PW6 Mahadev both turned hostile.

78. However, PW12 Mr. Nishandar deposed that during the course of investigation he came to know that the accused Pintu @ Jalindar was arrested in Crime No. 374/2007 registered at Osmanabad police station and 15 brand new currency notes were seized from him. Therefore, Mr. Nishandar requested through letter Exh. 318 for custody of the accused Jalindar in Crime No. 50/2008 registered at Dattawadi police station, Pune.

79. It is pertinent to note that the prosecution has produced at Sr. No. 39 with Ferist along with the charge-sheet the panchnama dated 11/04/2008 drawn by Mr. N.G. Ankushkar, API attached to LCB Osmanabad in respect of seizure of 15 currency notes of 10/- rupees denomination from accused Jalindar. Admittedly PW5 Malhari and PW6 Mahadev, the panch witnesses turned hostile and said Mr. Ankushkar, API has not been examined. Even during the course of recording of their examination-in-chief the attention of these panch witnesses was not invited towards that panchnama dated 11/04/2008. Because of that that panchnama dated 11/04/2008 pertaining to seizure of 15 currency notes of 10/- rupees denomination remained unexhibited and it's contents could not be proved. Thus in

strict legal parlance, seizure of the currency notes from accused Jalindar could not be established.

80. It is also worth noting that on 25/02/2016, the examination-in-chief of PW1 Mr. Chine was recorded in presence of accused No. 1 Tanaji, No.4 Umesh No. 5 Sachin, No. 6 Vijay and No. 7 Jalindar. After seeing these accused, PW1 Mr. Chine identified only the accused Tanaji and Umesh as the same dacoits to whom he had seen at his residence when they committed the dacoity. As such on 25/02/2016, he had not identified the accused Jalindar present before the Court stating that he was also one of the dacoits. Thus identity of the accused Jalindar could not be established beyond reasonable doubt.

81. PW9 Sudhakar Genu Deshmukh is one of the panch witnesses on memorandum statement Exh. 305 of accused Tanaji and panchnama Exh. 307 of seizure of mobile handset at his instance. Though he denied the contents in those documents Exh. 305 and 307, he specifically admitted his signature on the same.

82. At the cost of repetition, it may be observed that pw11 Mr. S.V. Pawar deposed that as per the disclosure Exh. 305 made by the accused Tanaji in presence of PW9 Sudhakar Deshmukh and Namdeo Kunjir as shown in panchnama Exh.307, the mobile handset of Mr. Chine which was

possessed by the wife of accused Tanaji came to be seized from village Ter.

83. It is also worth noting that some of the currency notes of 10/- rupees denomination seized from accused Umesh as per panchnama Exh. 286 and from accused Vijay as per panchnama Exh. 278 were of 17B series which was mentioned by PW1 Mr. Chine as deposed by PW12 Mr. Nishandar. That certainly can't be considered to be a sheer coincidence. Finding of the currency notes of the same series from the possession of accused Umesh and Vijay prominently demonstrated that they were amongst the dacoits who had received their share in the booty looted from PW1 Mr. Chine.

84. Under these peculiar circumstances, a legitimate point arose as to whether the depositions of the police personnels as regards search and seizure of mobile handset and amounts evidenced by the documents Exh. 277, 278, 286, 305 and 307 can be relied upon even if the panch witnesses PW3 Sachin, PW4 Namdeo, PW 5 Malhari, PW6 Mahadev, PW7 Prakash and PW9 Sudhakar, turned hostile.

85. The answer to this can be very well found in the observations in the authority ***State Government of NCT of Delhi Vs. Sunil & Anr. (2001) 1 SCC 652.*** It has been specifically laid down in that authority that -

"It is an archaic notion that actions of the police officer should be approached with initial distrust.. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witness or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

86. So also it has been laid down in para 8 the judgment

in the case of ***Karamjit Singh Vs. Delhi Administration, AIR 2003 SC 1311*** that ,

"Th*e testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good ground*."

87. The testimonies of the police personnel PW11 Mr. Pawar and PW12 Mr. Nishandar established the entire sequence of events which culminated in arrest of the accused persons and seizure of the mobile handset as well as brand new currency notes from and at the instance of accused persons. Nothing has been brought on record in their deposition to demonstrate positively that they had any grudge or animosity against those accused for grinding an axe against them to falsely implicate them in this crime. At least it was certainly imperative on the part of those accused while recording their statement as contemplated under section 313 Cr.P.C. to furnish some plausible explanation as regards the incriminating circumstances associated with them. However, none of the accused offered any plausible

explanation at the time of recording their statements under section 313 Cr. P.C.

88. Thus the fact that the recovery was made in consequence of the information given by the accused persons is ratified and confirmed by discovery of mobile handset as well as brand new currency notes and other belongings of PW1 Mr. Chine and his mother, certainly rendered strong assurance to the guilt of the accused No.1 and 4 to 6 of the offence punishable under section 395 of I.P.C.

89. One more circumstance which cannot be lost sight of is that, as deposed by PW11 Mr. Pawar, in response to the memorandum statement Exh. 277 dated 16/04/2008 of accused Vijay leading to discovery of an amount of Rs.5,000/-, that amount came to be seized as per panchnama Exh.278. The memorandum statement Exh. 277 specifically reads that the accused Vijay disclosed the names of other accused also stating that he along with those accused named in that memorandum statement Exh.277 committed offence of dacoity. Thus that statement Exh.277 certainly helped in unfolding the entire sequence leading to arrest of other accused including the accused Tanaji at whose instance the mobile handset owned by PW1 Mr. Chine came to be seized as shown in panchnama Exh. 307. Thus, that information furnished by the accused Vijay as

specified in memorandum statement Exh. 277 is clearly admissible as provided under section 27 of Evidence Act. Because that led to identification and arrest of accused Tanaji at whose instance mobile handset owned by Mr. Chine came to be seized as per panchnama Exh. 307. Thus that memorandum statement Exh. 277 led to the discovery of the fact proving complicity of other accused persons and the entire chain of circumstances clearly made out that the accused persons conjointly acted and committed robbery.

90. Somewhat similar fact situation was dealt with in the judgment in the case of ***Mehboob Ali and another Vs. State of Rajastan, 2015 DGLS (SC)1010.*** In that case initially the accused Puran Mal was arrested and forged currency notes were recovered from him. On the basis of the information furnished by him that the counterfeit currency notes were handed over to him by accused Mehboob and Firoz, they both were arrested who in turn have unfolded the entire sequence leading to arrest of accused Anju Ali. Accused Anju Ali was arrested on being identified by Mehboob Ali and Firoz and recovery of fake currency notes was made from Anju Ali. Anju Ali identified yet another co-accused Majhar from whose possession also fake currency notes were recovered and information supplied by Majhar ultimately led to arrest of Liyakat Ali from whose possession also fake currency notes and semi-printed currency notes

were recovered along with instrument of printing fake currency notes.

91. It has been observed in para 15 in that case of "***Mehboob Ali (2015 DGLS (SC)1010)***, that

"*on the basis of the information furnished by accused Mehboob Ali and Firoz, other accused Anju Ali was arrested . The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the Police. The statement of both accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes.*

Thus the information furnished by aforesaid accused persons vide information memos is clearly admissible which has led to the identification and arrest of accused Anju Ali. "

92. In this view of the matter the information furnished by the accused persons leading to arrest of the co-accused and recovery of incriminating articles like brand new currency notes and mobile handset of Mr. Chine, are certainly admissible as provided under section 27 of Evidence Act.

93. PW1 Mr. Chine had ample opportunity to see the faces of the 4 dacoits. His evidence is corroborated by recovery of the stolen property i.e. cash amounts, mobile

handset, briefcase, identity card, pass-books etc. That by itself is sufficient to confirm positively that dacoity was committed by the accused No.1 and 4 to 6 and none else. When such serious incident of dacoity had occurred, it created long lasting impression on the mind of PW1 Mr. chine. Because of that he could identify the accused persons even after considerable lapse of time. Thus the evidence as regards the identification of the accused persons is certainly not doubtful.

94. Because of the recovery of the articles belonging to PW1 Mr. Chine and his mother from the possession of these accused persons soon after or in close proximity of time, after the dacoity, the presumption contemplated under section 114(a) of Evidence Act is certainly attracted. Despite that they failed to give plausible explanation about possession of those articles.

95. The evidence as regards the Call details, more particularly the location of mobile handset owned or possessed by the informant as well as the accused persons also assumed much significance. As deposed by PW15 Mr. Sachin M. Shinde, the nodal officer, attached to idea cellular company, as per the letter Exh. 336 received from ACP , Pune, he was directed to provide Call Details Record in respect of the cell number 9850027051 as well as 9721732676 along with names and addresses of the

subscribers of the same. Accordingly he informed through letter Exh.337 that as per the record maintained by the company, the subscriber of cell No. 9850027051 was one Sachine Shinde, resident of Khandve Nagar, Pune Whereas Cell No. 972132676 was subscribed by one Surendra J. Raut resident of village Ter, District Osmanabad. In letter Exh. 337, he has specified cell site addresses. Whereas in copies Exh. 338 and 339 of call details record, the location and physical address of the tower from which the contact was established with the cell phone numbers has been shown.

96. The prosecution has examined said Mr. Surendra Raut as PW13. He deposed that prior to 7 to 8 years, he was running a shop "Krishna Mobile Shopee", wherein he was selling the SIM cards of several telecom companies like Idea, Airtel etc. As per the scheme launched by Idea Cellular company, target of sale of 100 SIM cards had been given and after selling 97 SIM cards, three cards had remained with him. He was told by the representative of Idea Company to retain those three SIM cards with him after submitting requisite documents existing in his name and furnish to the company the documents standing in the name of prospective customers of those three cards as and when he sold those three cards. Accordingly he sold one SIM card to one Bapu Kale after receiving from him the requisite documents. However, because those documents

sent by him were not reached to Idea Company, that Sim card sold to Bapu Kale continued to remain in his name in the record maintained by the company.

97. Significantly enough these specific assertions of PW13 Surendra Raut have not been denied by the defence side, by putting any suggestion to him in that regard. As such merely because he stated in cross-examination that without possessing any licence issued under the Shop Act, he had run that mobile shopee and he had not preserved any documents in respect of sale of SIM cards by him, his candid assertion that he actually sold one SIM card to Bapu Kale cannot be disbelieved.

98. In answer to question No. 77 put to accused Sachin while recording the statement under section 313 Cr. P.C. he categorically admitted that cell No. 9850027051 was possessed by him and he does not know as to whether Surendra J. Raut has subscribed the cell No. 9921973276 or otherwise. As specified in copy Exh. 338 of call details record, the location of cell phone No. 9850027051 was at the address of the cell sight shown as 10033:553 at around 3.15 a.m. on 09/04/2008.

99. As specified in letter Exh.337 the address of cell phone site 10033:692 was “Amar Saket, Swargate, Pune” and address of cell phone site 10033:552 was “Saikrupa Society Sahakarnagar, Parvati, Pune”. That necessarily

follows that the location address shown as 10033: 553 in copy Exh. 338 of call details record as regards cite address of cell phone No. 9850027051 on 09/04/2008 at 3.15 a.m. was certainly in close vicinity of Sai Krupa Society located in Sahakarnagar Parvati, Pune. By virtue of that it has been also established sufficiently that the location of cell phone No.9850027051 subscribed by the accused Sachin was also in vicinity of Sahakarnagar area at Pune on 09/04/2008 at 3.15 a.m..Therefore, the presence of accused Sachin in Sahakarnagar Pune at odd hours at around 3.15 a.m. on 09/04/2008 has been established beyond reasonable doubt. Despite that he has not offered any plausible explanation satisfying his presence at odd hours in Sahakarnagar, Pune.

100. In the copy Exh. 339 of call details record, as per the entries at Serial No. 53 and 54 on 09/04/2008 at 3.15.38 and 3.15.37, the dialogue at the address of cell site 10066:692, 10033: 552 was established with cell No. 9921973276 in handset having IMEI No. 35837900/ 596937/9. As specified in panchnama Exh. 316 drawn on 11/04/2008 i.e. immediately after two day of the incident of dacoity, "NOKIA" handset seized from accused Sachin was bearing exactly the same IMEI number 358379005969370.

101. As specified in letter Exh. 337 received from Idea Company, addresses of cites 10033:692 and 10033:552

were “Amar Saket, Swargate”, Pune and “Sai Krupa Society”, Sahakarnagar, Parvati, Pune respectively. That necessarily follows that even the location of that cell phone bearing IMEI No.35837900/596937/9 seized from accused Sachin as per panchnama Exh. 316 was also in the area of Swargate and Sahakarnagar, Pune on 09/04/2008 at around 3.15 a.m.

102. No plausible explanation has been given by accused Sachin as to how he came in possession of that mobile handset bearing IMEI No. 35837900/596937/9 and the SIM card having cell phone No. 9921973276 issued in the name of Surendra J. Raut which according to said Surendra was sold to Bapu Kale by him.

103. Under such circumstances it can be safely observed that the prosecution has sufficiently proved with the help of depositions of PW13 Surendra Raut and PW15 Mr. Sachin M. Shinde as well as the particulars specified in letter Exh.337 and copies Exh. 338 and 339 of call details record that the locations of the said cell phones were found in vicinity of scene of occurrence on 09/04/2008 at 3.15 a.m.

104. The learned defence counsel argued vehemently that, admittedly the certificate contemplated under section 65-B of Evidence Act was not produced along with the letter Exh.337 as well as copies Exh. 338 and 339 of call details record which were produced with charge-sheet. The

prosecution has tried to fill up that lacuna by producing the certificate Exh.381 along with application Exh. 377 dated 12/01/2017. Because of that it cannot be said that compliance of the mandate contemplated under section 65-B of Evidence Act has been properly made. Therefore, for want of compliance of that mandate, the evidence as regards letter Exh.337 and copies Exh. 338 and 339 of C.D.R. cannot be taken into consideration.

105. Under such circumstance a legitimate point arose as to whether the certificate contemplated under section 65-B of Evidence Act produced at the time of evidence much after production of the copies of C.D.R., can be considered as proper compliance of the mandate contemplated under section 65-B of evidence Act.

106. The answer to this could be very well found in the judgment dated 3rd March, 2016 delivered by Honourable Bombay High Court in ***Criminal Writ Application No.54/2016 in case of Avadut Waman Kushe Vs. State of Maharashtra, (2016 SCC ONLINE BOM. 3236).*** In that case in somewhat similar fact situation, question posed was whether the certificate under section 65-B (4) of Indian Evidence Act required to be filed for admission in evidence of the electronic record must necessarily be filed simultaneous with the electronic record or whether it can be filed at any subsequent stage of the proceedings.

107. In that case of ***Avadut Waman Kushe,*** as observed in para No. 2, the compact discs of the conversation recorded were produced along with the charge-sheet. However, at that time the certificate required under section 65-B(4) of the Indian Evidence Act did not accompany the C.D. Later, when the evidence of the complainant was being recorded, the prosecution desired to run the C.D. for identifying her voice and the voice of the accused. At that time the petitioner raised objection by filing application that in absence of the requisite certificate, the C.D. was secondary evidence and hence not admissible in evidence. The prosecution filed it's reply along with requisite certificate. On filing reply by the prosecution, the Sessions Court rejected that application and permitted production of certificate. It was argued for the petitioner in revision that the prosecution ought to have submitted the certificate while producing the C.D. on record and subsequent filing of the certificate cannot be treated as compliance of mandatory provision. However, it has been held in that judgment that "*the certificate need not be filed at the time of production of electronic record. It can be filed at the time, the record is tendered in evidence. The subsequent filing of the certificate cannot reduce it's effectiveness as a safeguard against tampering etc*."

108. In this view of the matter merely because certificate Exh. 381 as provided under section 65B of Evidence Act was not produced along with charge-sheet while producing the letter Exh. 337 and copies Exh. 338 and 339 of CDR , the convincing evidence in respect of that letter Exh. 337 and copies Exh.338 and 339 of CDR cannot be discarded.

109. Though the learned defence counsel argued that there are material contradictions and the discrepancies in the evidence adduced by the prosecution, no such contradictions or discrepancies have been pointed out by the defence side. It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. Thus undue importance should not be attached to the omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the witnesses.

110. In this context, it has been laid down in para 5 in the judgment in the case of ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat, AIR 1983 SC 753***, that-

"*Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:*

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident.

It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one persons mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid

succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events , or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnesses by him perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. Moe so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses."

111. The overwhelming evidence specifically in the form of assertions of PW1 Mr. Chine the depositions of police personnel and other proved facts and circumstances as regards identification of the accused Tanaji, Umesh, Sachin and Vijay, the property seized at their instance and C.D.R. were specifically brought to the notice of the accused during the course of recording their statements under section 313

of Cr.P.C.. As such it was certainly obligatory on their part while being examined under section 313 of Cr.P.C. to furnish some explanation regarding the incriminating circumstances associated with them. However, they preferred to give evasive answers either by saying that they "do not know" or "it is all false". This is also one of the additional circumstances rendering strong assurance to the guilt of the accused persons.

112. Thus, it can be safely observed that the oral and documentary evidence adduced by the prosecution has proved beyond reasonable doubt the guilt of the accused Nos. 1 and 4 to 6 of the offence punishable under section 395 of I.P.C. Hence, point No. 1 is answered in affirmative as against accused Tanaji, Umesh, Sachin and Vijay and negative as against accused Jalindar.

113. Having arrived at the conclusion that the offence punishable under Section 395 of I.P.C. has been proved against the accused Nos. 1 and 4 to 6, the facts and evidence on record have been carefully scrutinized to ascertain as to whether the offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act are proved against them.

114. Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act read as under:

"Who ever commits an offence of organized crimes shall

> *(i) If such offence has resulted in the death.....*
>
> *(ii) In any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs*.
>
> 3(2):- *Whoever conspires or attempts to commit or Advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.*
>
> *3(4):- Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."*

115. The term "*continuing unlawful activity*" is defined in section 2(d) of the MCOC Act as under :

> "*Sec.2(d) :* "*Continuing unlawful activity*" *means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, under-taken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;*

116. The term "*Organized crime*" has been defined in section 2(e) of the MCOC Act as under:

> *Sec. 2(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;*

117. The term "*Organized Crime Syndicate*" is defined in section 2(f) of the MCOC Act as under:

> *Sec. 2(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."*

118. As specified in para No. 34 in the judgment in the case of ***Madan s/o Ramkisan Gangwani Vs. State of Maharashtra, 2009 ALL MR (Cri.) 1447-***

"For charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in;

(i) an activity

(ii) which is prohibited bylaw.

(iii) which is cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either single or jointly,

(v) as a member of organized c rime syndicate i.e. acting as a syndicate or a gang, or on behalf such syndicate.

(vi) (a) in respect of similar activities (in the past) more than one charge-sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offences.

(vii) the activity is undertaken by:

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) unlawful means.

(viii) (a) with the object of gaining pecuniary benefits or gaining undue or other advantage for himself or any other person, or

(b) with the object of promoting insurgency.

119. In this view of the matter, the material placed on record with charge-sheet deserves careful consideration.

120. As evident from the proposal Exh. 326 dated 02/07/2008 submitted by PW12 Mr. Nishandar to Addl. D.G. and as deposed by him he had sent that proposal for seeking permission to invoke the provisions of the MCOC Act against the accused persons. As specified by him in that proposal Exh.326, he described in detail the different crimes registered at different police stations against each of the accused persons. Not only that at the fag end of that proposal he has also submitted that 6 crimes have been

registered against accused No.1 Tanaji as well as No. 4 Umesh. 9 crimes have been registered against accused No.2 Kalidas (since deceased) and 5 crimes have been registered against accused N. 3 Vikram Laxman Pawar. Whereas one crime each was registered against each of the accused Jalindar, Sachin and Vijay Shinde.

121. No doubt, he alleged through that proposal Exh.326 that all the accused were members of the organized crime syndicate though only one crime was registered against accused Jalindar, Sachin and Vijay.

122. As evident from the order Exh. 327 and 328, approval for invoking the provisions of section 3(1)(ii), 3(2) and 3(4) of the MCOC Act has been granted. Pursuant to that order PW12 Mr. Nishandar carried out the investigation with the help of PW11 Mr. Pawar. Accordingly PW11 Mr. Pawar as well as PW12 Mr. Nishandar both deposed in detail the entire sequence of events which culminated in submission of report Exh.335 by PW12 Mr. Nishandar for sanction as contemplated under section 23(2) of the MCOC Act for filing charge-sheet.

123. PW12 Mr. Nishandar also specified in report Exh. 335 that PW1 Mr. Chine gave supplementary statement stating that the currency notes of 10 rupees denomination robbed from him were of the series 17-B. So also he asserted that Mr. Chine identified in identification parade

the accused Vijay Shinde vide report Exh.325 and accused Vikram, Kalidas and Tanaji on 11/08/2008 vide report Exh.333. Because those reports were not disputed by the defence side, in view of the provisions of section 291-A of Cr.P.C. the same were marked as Exh. 325 and 333 respectively. Thus, those reports also fully corroborated the assertions of PW 1 Mr. Chine about the identification parade of the accused persons.

124. The learned defence counsel for the accused No.1 Tanaji and No. 4 Umesh fairly conceded by mentioning in application Exh. 395 dated 06/04/2017 that still the criminal cases initiated as per Crime No. 47/03 for the offence punishable under section 395 of I.P.C. and Crime No. 97/06 and Crime No. 121/06 for the offence punishable under section 457 and 380 r.w. of I.P.C., registered at Ausa police station are still pending against them. So also it is not disputed that the criminal case initiated as per Crime No. 24/04 registered at Killari police station for the offence punishable under section 457 r.w. 511 of I.P.C. is still pending against the accused Tanaji and Umesh.

125. The learned defence counsel argued that, admittedly the accused Pintu @ Jalindar, Vijay Shinde and Sachin are involved in only one crime i.e. present Crime No.50/2008. As such the requirements of more than one charge-sheet, filed against these accused for similar activities in

competent court, during the period of preceding ten years, has not been complied with as against them. Because of that they cannot be convicted of the offences punishable under section 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

126. So also as regards accused Tanaji and Umesh it has been argued that, no doubt more than two charge-sheets field against them are pending of which cognizance has been taken by the competent Court. However, only because of that they cannot be held guilty of the offences punishable under section 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

127. In support of these arguments reliance has been placed upon the judgment in the case of "***Madan R. Gangwani Vs. State of Maharashtra, 2009 ALL MR (Cri.) 1447***".

128. On the other hand, the learned SPP argued vehemently that, because all the accused conjointly conspired and committed the offence of dacoity being the members of organized crime syndicate and because more than two charge-sheets filed particularly against accused Tanaji and Umesh are pending of which cognizance has been taken by the competent Court, all the accused deserve conviction.

129. As evident from the proposals Exh. 326 and 335 respectively submitted by PW12 Mr. Nishandar as provided

under section 23(1) and 23(2) of the MCOC Act, the criminal activities were committed during the relevant period in succession in the locality particularly by the accused Tanaji and Umesh along with their other associates excluding accused Vijay Shinde, Sachin and Jalindar. However, as described in documents Exh. 326 and 335 by Mr. Nishandar, the accused Tanaji and Umesh were indulging in such crimes singly or jointly as member of the gang. Moreover all the offences indulged by them were covered in Chapter XVII of I.P.C. i.e. offences against property with objective of gaining pecuniary benefit or gaining undue economic or other advantage for themselves. The reported offences committed by the accused Tanaji and Umesh were ascribable to offences under Chapter XVII of I.P.C. presupposes that the unlawful activities indulged in was by use of violence or threat of violence or intimidation, coercion or other unlawful means.

130. As observed in para No. 183, in that judgment in the case of "***Madan Gangawani"***, cited supra the evidence tendered in that case disclosed that,

"*(i) Acts or omissions uncovered in course of investigation and which are subject matter of the trial were not shown to have been committed by use of violence, etc. with the objective or gaining pecuniary or other benefit.*

(ii) Acts for which various appellants had been separately charge-sheeted on thirty one occasions in the past were mostly committed before MCOC Act came into force.

(iii)As to cases after MCOC Act came into force- in one case charge-sheet itself is not proved to have been filed; and four crimes did not pertain to gaining pecuniary or other benefit by use of violence etc., leaving only one crime of preparation to commit dacoity. Even if acquittal therein is ignored, it does not indicate plurality of unlawful activity and therefore, does not amount to organised crime.

(iv) Since involvement of any of the accused in organised crime is not established questions of any of them being member of organised crime syndicate, or their conspiring and providing harbour to one of the appellants, or their holding properly derived from organised crime, or the possession of wealth disproportionate to their income amounting to an offence under Section 4 of the Act, do not arise.

(v) In any case, most of properties are shown to have been purchased before MCOC Act was enacted."

131. Here in the instant case, the accused Tanaji and Umesh were constantly members of the organized crime or organized crime syndicate. The prosecution has sufficiently proved that more than one charge-sheets have been filed against accused Tanaji and Umesh before competent court within the preceding period of ten years. It is also not disputed that the Courts have taken the cognizance of such unlawful activities which are punishable for imprisonment of three years or more undertaken either singly or jointly by accused Tanaji and Umesh as member of organized crime syndicate by use of violence or threat of violence or coercion or any other unlawful means with the object of gaining pecuniary benefits or gaining economic or other undue advantages or for promoting insurgency.

132. Thus, the material placed on record sufficiently demonstrated that the accused Umesh and Tanaji abetted or knowingly facilitated commission of an organized crime and they acted as members of organized crime syndicate. As such the offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act have been certainly made out against the accused Tanaji and Umesh. Therefore, with great respects to the ratio and principles laid down in the judgment in the case of ***Madan R. Gangwani (2009 All MR (Cri.) 1447)***, the same are not helpful to the accused in any manner.

133. Admittedly the accused Sachin, Vijay Shinde and Jalindar are involved in only one crime. Moreover, there is absolutely no iota of evidence to prove positively that they had indulged in organized crime or organized crime syndicate and there is nothing to prove the requirements as specified in para No.34 in the judgment in the case of ***Madan R. Gangwani (2009) All MR (Cri.) 1447)***. Therefore, the learned defence counsel are perfectly justified in making the submissions that the accused Sachin, Vijay Shinde and Jalindar cannot be held guilty of the offences punishable under section 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

134. With these observations points Nos. 2 , 3 and 4 are answered accordingly.

135. Here pause is taken to hear the accused Tanaji, Umesh, Sachin and Vijay, on the point of sentence.

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Under MCOC Act.

136. The accused No. 1 Tanaji is firstly heard on the point of the sentence. He submitted that he is a poor labourer. According to him he is the only earning member in his family. His wife Geeta and his four sons are depending upon him. Thus, he prayed for leniency.

137. The accused No.4 Umesh is heard on the point of sentence. He submitted that he is the only earning member in his family. His aged parents, his wife, his two sons and one daughter are depending upon him. Thus he prayed for leniency.

138. The accused No.5 Sachin is heard on the point of sentence. He submitted that he is a poor labourer and first offender. He is the only earning member in his family. His wife, his son and daughter are depending upon him. Thus he prayed for leniency.

139. So also the accused No.6 Vijay is heard on the point of sentence. He submitted that he is hearing impaired. He

submitted that his aged mother, his wife, his two sons and one daughter are depending upon him. He has also prayed for lenience.

140. The learned counsel Mr. Janapurkar is present and argued for accused No. 1 Tanaji, No. 4 Umesh das well as No. 6 Vijay that, having regard to the above submissions of the accused Tanaji and Umesh leniency may be shown to them and minimum sentence may be awarded.

141. The learned counsel Mr. Koshe is present for accused No. 5 Sachin and he argued that considering the age of the accused and his family backgrounds as well as his submissions as above , leniency may be shown to him and minimum sentence may be awarded.

142. The learned SPP Mr. Jagtap is also present and he submitted that, the accused persons hatched the conspiracy to commit the dacoity at the house of Mr. Chine who was residing with his aged mother and maternal aunt. He also submitted that, having regard to the manner in which these accused executed the plan by committing the dacoity, they do not deserve any leniency.

143. The crucial question which needs to be decided is the proper sentence. What should be the approach while sentencing the perpetrator of dacoity has been succinctly laid down way back in the year 1956 in the case of ***Om***

Prakash and others Vs. The State, AIR 1956 Allahabad 163. It has been specifically laid down in para No. 15 in that case that -

"*Dacoity in our opinion should be treated as one of the most serious offences noticed by our Penal Code. It is invariably the work of a well knit organistion. It involves deliberation and pre-planning. It's victims are law-abiding citizens who have given no provocation to the miscreants. It is accompanied by physical violence on people who have no adequate means of defending themselves and who cannot be fore-armed because they have not been fore-warned. Frequently they have tortured and their womenfolk dishonoured. Often even children are not spared.*"

144. So also it has been laid down in same para No. 15 in the case of "Om Prakash " cited supra that-

"*A dacoit is actuated by the contemptible motive of appropriating property lawfully belonging to another. The crime itself is difficult to trace, and only a small proportion of the criminals taking part are arrested; even then it is often difficult to secure the conviction of more than a fraction of them. For these reasons it is a grievous mistake to treat dacoits lightly in the matter of punishment*."

"*A criminal trial is held in the public interest with the twin objects of punishing the wrong doer and deterring others from* *following in his foot-steps. Accordingly, unless there is satisfactory proof of the existence of mitigating circumstances, the sentence of dacoits should invariably be heavy and deterrent.*"

145. Like wise in the case of ***State of Madhya Pradesh Vs. Munna Choubey, AIR 2005 S.C. 682,*** in para No. 9 it has been laid down that -

" The law regulates social interests, arbitrates conflicting claims and demands, Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict whee living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society."

146. *So also in* para No. 15 in that case of " Munna Choubey" cited supra , it has been laid down that -

"Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offence against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of an per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view

merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

147. In this view of the matter, keeping in mind the well settled principles laid down as above, in the judgments in the cases of ***Om Prkash (AIR 1956 Allahabad 163) and Munna Choubey (AIR 2005, S,.C. 683)*** , and having regard to all the factors bearing on the point of the sentence, it is found that following sentences would meet the ends of justice. With these observations following order is passed.

ORDER

(1) Accused No.1-Tanaji Ratan Pawar, No. 4 Umesh Dnyanoba Ban , No. 5- Sachin Chandrakant Shinde and No.6- Vijay Bajirao Shinde are convicted under section 235(2) of Cr. P. C. of the offence punishable under sections 395 of Indian Penal Code.

(2) They are sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5000/- (Rs. Five thousand only) each. In default of payment of fine they shall suffer rigorous imprisonment for six months.

(3) Accused No.1-Tanaji Ratan Pawar and No. 4- Umesh Dnyanoba Ban are convicted under section 235(2) of Cr. P.C. of the offences punishable under sections 3(1)(ii), 3(2)

and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999.

(A) For commission of the offence punishable under section 3(1)(ii) of M.C.O.C. Act, the accused No.1-Tanaji Ratan Pawar and No. 4- Umesh Dnyanoba Ban are sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,00,000/- (Rs. Five lacs) each. In default of payment of fine they shall suffer rigorous imprisonment for three years.

(B) For commission of the offence punishable under section 3(2) of M.C.O.C. Act, the accused No.1-Tanaji Ratan Pawar and No. 4- Umesh Dnyanoba Ban are sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,00,000/- (Rs. Five lacs) each. In default of payment of fine they shall suffer rigorous imprisonment for three years.

(C) For commission of the offence punishable under section 3(4) of M.C.O.C. Act, the accused No.1-Tanaji Ratan Pawar and No.4- Umesh Dnyanoba Ban are sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,00,000/- (Rs. Five lacs) each. In default of payment of fine they shall suffer rigorous imprisonment for three years.

(4) All the above substantive jail sentences shall run concurrently.

(5) Set off as provided under section 428 of Cr. P.C. is given to -

(a) Accused No. 1- Tanaji for the period from 18/07/2008 to 29/07/2011.

(b) Accused No. 4 – Umesh ban for the period from 10/04/2008 to 14/01/2011,

(c) Accused No. 5- Sachin Shinde for the period from 11/04/2008 to 16/03/2011.

(d) Accused No. 6- Vijay Shinde for the period from 14/04/2008 to 20/01/2012.

(6) The accused No. 5- Sachin Chandrkant Shinde, No. 6- Vijay Bajirao Shinde and No. 7- Pintu @ Jalindar Uddhav Mali are acquitted under section 235(1) of Cr. P.C. of the offences punishable under section 3(1)(ii), 3(2) and 3(4) of M.C.O.C. Act.

(7) The accused No. 7- Pintu @ Jalindar Uddhav Mali is acquitted under section 235(1) of Cr.P.C. of the offence punishable under section 395 of I.P.C.

(8) Accused Pintu @ Jalindar shall be set at liberty forthwith if not required in any other offences.

(9) The record and proceedings in MCOC Case No.05/2008 shall be preserved by the concerned superintendent and clerk attached to the record section for production of the same as and when the supplementary

charge-sheet would be filed by police attached Dattawadi Police Station, Pune, on execution of standing non-bailable warrant issued against the accused No.3 Vikram Laxman Pawar.

(10) The Muddemal NOKIA mobile handset and SIM card seized as per panchnama Exh. 316 shall be returned to Dattawadi Police Station, Pune for it's production before this Court as and when the accused No. 3 Vikram Laxman Pawar would be put to trial after his arrest.

(11) The Muddemal articles handed over to the informant Mr. Bhalchandra Mahadev Chine on execution of indemnity bonds shall be retained by him for production during trial against accused Vikram as and when he would be put to trial after his arrest.

(12) The Indica Car bearing registration No. MH-12-CT-7289 returned to it's registered owner on execution of an indemnity bond shall be retained by him for production during trial against accused Vikram as and when he would be put to trial after his arrest.

(13) The accused Pintu @ Jalindar shall execute Personal Bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one or two sureties in like amount as provided under section 437-A of the Code of Criminal Procedure, to appear before the Honourable High Court, as and when such Court issues notice in respect of any appeal or petition filed against the

Judgment of this Court and the bail bonds shall be in force for a period of six months.

(14) Copy of the judgment shall be handed over to the accused Tanaji Pawar, Umesh Ban, Sachin Shinde and Vijay Shinde forthwith.

Pune (A.G.Bilolikar)
Date: 06/05/2017. Special Judge, Pune
Under MCOC Act.

I affirm that the contents of this P.D.F. file judgment are same word for word as per original Judgment.

Name of steno: S.S.Chimbalkar
Name of the Court: A.G.Bilolikar, Additional Sessions Judge,
Pune
Judgment signed by P.O. on: 06/05/2017
Judgment uploaded on : 06/05/2017