

The State Of Maharashtra vs Dilip Kishor Bawiskar And Ors on 5 February, 2020

Author: Ranjit More

Bench: Ranjit More, M.S.Karnik

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 171 OF 2012

1 Dilip Kishor Bawiskar
2 Rakesh Gorakhraj Rajput ...Appellants
versus
The State of Maharashtra ...Respondent

ALONG WITH

CRIMINAL APPEAL NO. 496 OF 2014

The State of Maharashtra ...Appellant
versus.
1 Dilip Kishor Bawiskar
2 Rakesh Gorakhraj Rajput
3 Rajesh Padmakar Gupte
4 Deepak @ Kamlesh @ Altaf
@ Toni Waman Sapke ...Respondents

Mr.Daulat G. Khamkar for Appellants in Appeal No.171/2012 and
for R.Nos.1 and 2 in Appeal No.496/2014.

Mr.J.P.Yagnik -APP for the State/Appellant in Appeal.No.496/2014
and Respondent/State in Appeal No.171/2012.

Mr.R.A.More for R.No.3 in Appeal.No.496/2014.

CORAM : RANJIT MORE AND M.S.KARNIK, JJ.

Judgment reserved on : NOVEMBER 20,2019 Judgment pronounced on : FEBRUARY 5, 2020
JUDGMENT [Per Ranjit More, J.] :

1. Both these appeals are arising out of Judgment and Order dated 8th September 2005 delivered by the Special Judge under the MCOC Act, Pune in MCOCA Case No.3 of 2006. The Digitally signed by Sachin Sachin R. patilsr Patil R. Date:

Patil 2020.02.05
16:12:43
+0530

appellants in Appeal No.171 of 2012 were convicted for the offence punishable under section 364-A read with section 120-B of the Indian Penal Code and they were sentenced to suffer life imprisonment and directed to pay fine of Rs.1000/- each, in default they were directed to undergo rigorous imprisonment for one month. The appellants were also convicted for the offence punishable under section 3(25) of Arms Act and were sentenced to suffer RI for one year each and to pay fine of Rs.500/- each and in default they were directed to suffer RI for 15 days each.

The appellants were acquitted of the offence punishable under sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act").

2. Being aggrieved by the acquittal of the appellants of the offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, appellant-State of Maharashtra has preferred Appeal No.496 of 2014. The brief facts giving rise to both the appeals are as under:

3. Victim Mohan Krishnarao Gunjal (P.W.No.4) was residing at Panchavati, Pashan, Pune along with his wife Vandana (the informant) and daughter Priya (P.W.No.2). Mohan Gunjal was carrying on business of construction of dams. He retired from his business. He had three cars viz. Mercedes, Lancer and Maruti Zen. Mr. Bhimrao Lone (P.W.No.5) was working as a driver with Mohan Gunjal since last 7 years of the date of incident. Mohan Gunjal had a weak eyesight. He used to visit Panshop at Kamla Nehru Park, Pune at 7.30 p.m. everyday in his Mercedes car with Bhimrao.

4. On 15th November 2005, as usual, Mohan Gunjal went to Panshop near Kamla Nehru Park. Bhimrao parked Mercedes Car in parking area of Kamla Nehru Park. Bhimrao went to Panshop to collect the pans and Mohan Gunjal remained sitting in the car. When Bhimrao returned with packet of pans, one person approached him and asked him why he had beaten Chintu. At that moment Mohan Gunjal was sitting in the rear side of the car. Suddenly, one unknown person from the left side and two persons from the right side entered into the car. They pointed revolvers on both sides of Mohan Gunjal. One of them directed Bhimrao to hand over keys of the car. Accordingly, Bhimrao gave keys of the car to one of them. He started the car, however, he could not drive the car. Hence, they directed Bhimrao to drive the car. As per the directions of the kidnappers, the car was taken from Ferguson College Road, Raghuraj Corner and then to Bhosari. After covering a distance of 20 k.m., Bhimrao was directed to stop the car. He was also directed to sit in rear portion of the car. The said persons covered eyes of Mohan Gunjal and Bhimrao with scarfs. One of the kidnappers started driving the car. The car was stopped after about 3 and half hours. The kidnappers took Mohan and Bhimrao in one flat. Thereafter, kidnappers asked Mohan to give a call to his residence and asked him to inform about his well being. Accordingly, Mohan called his wife and told that he was safe and also told that he would call her on the next day. Mohan was told by the kidnappers that he was kidnapped for getting a ransom of Rs.one crore which was later reduced to Rs.25,00,000/-. Mohan was again directed to call at his residence asking his family members to make arrangement of amount of ransom. The kidnappers also gave a call at the residence of Mohan and threatened that dire consequences will follow if they failed to fulfill the demand. Bhimrao was also directed to call at the residence of Mohan for demand of ransom.

5. As Mohan did not return home in the night of 15 th November 2005, Priya daughter of Mohan lodged a complaint at about 10.00 p.m with Deccan Gymkhana Police Station. In the night intervening of 15th and 16th November 2005, wife of Mohan received a telephone call and in pursuance thereof, she lodged a complaint with police in the morning of 16 th November 2005. In pursuance of lodging of complaint, telephone at the residence of Mohan was tapped by the Authorities of B.S.N.L. Thereafter, wife of Mohan received calls of threats and demand of ransom of Rs.25,00,000/-. She was told that if she fails to make arrangement of ransom, her husband would be killed. She received 4-5 calls from the kidnappers.

6. Police Inspector Aagashe (P.W.No.23) reached the house of informant as per the directions of higher Officers on 16 th November 2005. On the basis of FIR, Police Inspector Aagashe registered C.R.No.655 of 2005 for the offence punishable under section 364-A of IPC against the unknown persons. In respect of the mobile numbers mentioned in the FIR, information was called from the service provider Airtel to ascertain the identity of the subscriber and the location of the mobile phones. Airtel informed the police Authorities that the location of the mobile phones was in Nashik. Accordingly Police Inspector Shri Govind Pawar (P.W.No.20) attached to Chaturshrungi Police Station, Pune was sent to Nashik. Mobile nos.9890287970 and 9890285310 were intercepted by complying necessary legal formalities. Investigating Officer also sought information from Airtel and BPCL mobile companies by addressing a letter to them. A call details in respect of mobile No.9890287970 were received from Airtel were immediately forwarded to PSI Govind Pawar at Nashik. The said mobile phone was registered in the name of Rajesh Shamji Surali (P.W.No.7) at Kalyan. Hence, API Tele (P.W.No.21) along with staff rushed to Kalyan. P.I. Govind Pawar reached Nashik to trace the location of cell phone No.9326188788. It was revealed that the said phone was registered in the name of Vijaykumar Rajput who was residing at Akshardham Society, Nashik.

7. With the assistance of two constables from Nashik Road Police Station and panch witnesses, PI Pawar reached Akshardham Society, where he was told that Vijaykumar Rajput was residing at Om Pacific Apartment adjoining to Akshardham Society. Accordingly, P.I. Govind Pawar along with two constables and panch witnesses reached Om Pacific Apartment. The name plate was showing the name of Vijaykumar Rajput at flat No.5 on second floor. Therefore, police party knocked the door of flat No.5 and announced that it was sieged and directed the kidnappers to come out. As the door was not opened, the raiding party broke open the main door of flat No.5 and entered in. After breaking open the door of bedroom, they found Bhimrao and two unknown persons. During the search two pistols on the waistband of the said two persons were found. Mohan Gunjal was found in another room. Upon enquiry with them, the names of the two kidnappers were that of Dilip Kishor Bawiskar (Appellant No.1) and Rakesh Rajput (Appellant No.2) respectively. They gave information that they were residents of Ulhasnagar, Kalyan. The police party seized two pistols, three knives, two SIM cards, two mobiles, agreement of lease of the flat etc from the said place under a panchnama in presence of the panch witnesses. It was noticed that the said kidnappers were having mobiles viz 9890285310 and 9890286920. Accordingly, panchnama (Exh.164) was prepared. Mr. Pawar prepared a report about the events and submitted to Senior Police Inspector, Nasik Road Police Station and brought Mohan and Bhimrao to Pune along with appellants.

8. P.I. Agashe recorded statements of Mohan Gunjal and Bhimrao on 18th November 2005. He also recorded supplementary statement of the informant-wife of Mohan and Priya-daughter of Mohan. Priya produced three audio cassettes in respect of recorded conversation on her landline telephone No.25899151 on 18th November 2005. The audio cassettes were seized under panchnama (Exhi.269) in presence of panch witnesses. During the course of investigation, involvement of original Appellant Nos.6 and 7 was disclosed. Hence, P.I Tele was deputed to carry out investigation in Kalyan. On 19 th November 2005, offences punishable under sections 3(25), 4 (25) of the Arms Act and section 37(1) read with section 135 of the Bombay Police Act were added in the crime by making necessary endorsement in the station diary. During further course of investigation, it was revealed that the appellants had conspired to kidnap Mohan Gunjal (P.W.No.4) for ransom and hence offence punishable under section 120(B) of IPC was also added in the crime.

9. During the course of investigation, A.P.I. Phuge (P.W.No.22) recorded supplementary statements of Priya (P.W.No.2) ,Mahendra (P.W.No.3) and other witnesses. During the course of investigation, Appellant No.2 expressed his desire by making a voluntary statement to show the places of occurrence of crime. Accordingly, PI Phuge along with staff and Panch witness and Appellant No.2 proceeded to Kamla Nehru Park, Pune in a Government vehicle and showed the place where he was sitting along with other co-accused. He also took them to Flat No.5,Om Pacific Apartment, Nashik. He told the police that the said flat was owned by his brother. Accordingly, panchnama was prepared. He also made a statement about the Mercedes car No.MH-12-CA-3365 which was used in the offence which was concealed by him and parked in front of row house of Mr.Sharma. His memorandum of statement was recorded under the Panchnama. In pursuance of the memorandum of statement, appellant No.2 took the police party to Mercedes car of which photographs were taken. Police also recorded statements of residents of Om Pacific Apartment. API Tele (P.W.No.21) had recorded the statements of Rajesh (P.W.No.7), Tejpal (P.W.No.6) and other witnesses on 19th November 2005.

10. On 22nd November 2005, appellant No.1 gave a memorandum of statement and expressed his desire to show the places where he had resided along with other accused persons. Accordingly, his statement (Exh.185) was recorded. In pursuance of the said statement, appellant No.1 led API Tele and panch witness to Vikram Lodge and then to Dog Canal House at Bhusari Colony. He recorded the statement of Mangal Ubhe, caretaker of Dog Canal. Panchnama was also prepared in respect of the places shown by Appellant No.1. Call details of land line telephone No.25899151 were also collected. Mobile No.93261188788 came to be seized from Vijaykumar Rajput under panchnama (Exh.128). Seized revolver and three cartridges were sent to Ballistic Expert for examination. During the course of investigation, it was revealed that accused Nos.3 and 4 were also involved in the crime. Hence, API Phuge arranged a trap to arrest accused Nos.3 and 4. He intercepted accused No.3. accused No.4 in an attempt to flee from the spot, fell from the slab and sustained injuries. He was admitted in Sasoon General Hospital, Pune. accused No.3 was arrested under panchnama. accused No.4 was also arrested subsequently under panchnama. At the instance of accused No.3, API Phuge seized Getz Car bearing No.MH-12-CK-1735 under panchnama. On 15th December 2005, three mobile handsets were produced by accused No.3 under panchnama. In pursuance of the report (Exh.197) dated 21st December 2005, Shobha Deshmukh, conducted test identification parade and submitted her report.

11. During the course of investigation, PI Aagashe came to the conclusion that appellants have committed offence punishable under the MCOC Act. Hence, he submitted a proposal (Exh.230) under section 23(1) of the MCOC Act to the competent authority. DIG, Crime Branch, Pune granted approval to take action against the appellants and other accused persons. Thereafter, investigation was conducted by ACP Sanjay Jadhav (P.W.No.27). ACP Jadhav addressed a letter to Airtel for getting the CDRs of mobile nos.9860929056 and 9890895617. Accordingly, he received CDRs on 27 th February 2006. Appellant No.6 was arrested on 10th March 2006 by Badlapur Police Station in an separate offence under the Arms Act. He was later on transferred in the instant case. Investigating Officer obtained voice sample of the appellants and others and sent to Forensic Science Laboratory at Chandigarh along with seized audio cassettes. On completion of investigation, ACP Jadhav sought sanction for prosecuting the appellants and other accused persons under the MCOC Act. Accordingly, sanction was granted by Competent Authority. Thereafter, charge sheet came to be filed against the appellants and other accused persons.

12. Thereafter, original Appellant No.7 was arrested. Sanction to prosecute the appellants and other accused persons for the offence under the Arms Act was also received by the Investigating Officer. Report of Voice samples received from Forensic Science Laboratory. Charge came to be framed against the appellants and other co-accused. The contents of the charge were read over and explained to the appellants and they denied the same and claimed to be tried.

13. To prove the case, prosecution has relied upon 28 witnesses. The appellants did not lead any evidence. Statement of accused-appellants were recorded. Defence of the appellants was of total denial. According to them they were falsely implicated. Bhimrao who was driver of Mohan had kidnapped him as he was in financial difficulty.

14. On going through the evidence on record, the Trial Court held that the appellants kidnapped Mohan for ransom by threatening to cause his death. Thus, they have been held guilty. It was held that prosecution has failed to prove charge under MCOC Act. Hence, both the appeals came to be filed.

15. Heard Mr.Khamkar, learned counsel for the appellants and Mr.Yagnik, learned APP for State. The learned counsel for the appellants submitted that the trial Court has not appreciated evidence of informant, her daughter Priyanka, victim Mohan Gunjal and Bhimrao in proper prospective. The victim has not attended the test identification parade. On the other hand, learned APP submits that there was material on record but the trial Court has not considered the evidence led in the case and wrongly acquitted the appellants of the offence punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

16. To prove the charge of kidnapping, the evidence of Mohan Gunjal and Bhimrao is crucial. The evidence of informant and her daughter Priya was also crucial to prove the demand of ransom for release of Mohan and his driver Bhimrao. Mohan Gunjal has categorically deposed that he retired from his business. He deposed that everyday at about 7.30 p.m. he used to visit Kamla Nehru Park for packet of pans by his Mercedes car. He further deposed that Bhimrao was his driver. He used to take him to Kamla Nehru Park for collecting pans. On 15 th November 2005 at about 7.30 p.m as

usual he went to Kamla Nehru Park in his Mercedes car. The car was parked in the parking area of Kamla Nehru Park. Bhimrao went to Panshop. When Bhimrao came back, one kidnapper entered into car from the left side and two kidnappers entered into car from the right side. The said persons pointed a revolver to him on both sides. One of the kidnappers asked the keys of the car from Bhimrao. Bhimrao accordingly gave keys to him. As he could not start the car, Bhimrao started the car. One of kidnappers sat besides him. The vehicle was taken from Ferguson College Road, Rangehill corner and Bhosari. After a distance of about 20 kilo meters nearby Bhosari, the car was stopped. Thereafter, kidnappers covered his face and face of Bhimrao by scarfs. Thereafter, the car was proceeded for three and half hours and they were taken to one flat. Similar is the evidence of Bhimrao. The said evidence is not disputed except the suggestion that Bhimrao himself kidnapped Mohan but the said suggestions were also refuted by both the witnesses. From the above evidence it is established that on 15 th November 2005, Mohan had been to Kamla Nehru Park to have a pan in his Mercedes car bearing No.MH-12 CA 3365. Thereafter, on point of revolver, Mohan and Bhimrao were kidnapped in the said Mercedes car and taken to unknown place.

17. As far as demand of ransom is concerned, evidence of informant-Vandana (P.W.No.1)wife of Mohan is very crucial. She has categorically deposed that she is having land line No. 25899151. On 15 th November 2005 her husband went to have a pan to Kamla Nehru Park at about 7.30 p.m with driver Bhimrao by Mercedes car. Till 10.00 p.m. Mohan did not return home, hence, she along with her daughter made enquiry with relatives and friends but that was in vain. Hence, her daughter lodged a missing report with police station. In the night intervening 15 th and 16th November 2005 at about 2.00 a.m, informant received a call which was of her husband-Mohan. He informed his well being on the phone. Thereafter, informant received 4-5 calls for ransom. She was directed to arrange ransom amount of Rs.15,00,000/-. On 16th November 2005, FIR (Exh.282) was lodged against the unknown persons. On 17 th November 2005, she again received a telephone call. Caller asked her whether she made arrangement of 15 lakhs. She disclosed that she could arrange only 3 lakh. Thereafter, caller told her that he would call again and would inform the place where the amount was to be handed over to him. The caller also asked to make arrangement of at least 5 lakh. She replied that she was unable to arrange 5 lakhs. On 17th November 2005, on land line police informed her that her husband and his driver was rescued safely and they were brought to Pune at about 7.30 p.m. On 17 th November 2005, she brought her husband and driver to her house.

18. The evidence of informant is supported by the evidence of her daughter Priya. She deposed that on 15 th November 2005 at about 7.00 to 7.30 p.m her father left home for having a pan. Since he did not return back till 9.00 p.m, she made an enquiry. She met the shop owner of Pan shop. He disclosed her that her father left at about 8.00 p.m. She went to Chaturshringi Police Station and gave description and information of her father. Accordingly, a missing report was recorded by Chaturshringi Police Station. In the said night at about 2.30 a.m, she received a telephone call. It was of unknown person. Thereafter, her father had a talk with her. Her father disclosed that he was fine and he will call her next day morning and the call was disconnected. In the morning, FIR was lodged by her mother and caller ID was fixed by the officials of BSNL to their land line. Thereafter, caller demanded ransom. The first call was received by her in the night intervening of 15 th and 16th November 2005. The callers were speaking in Hindi. On 17 th November 2005, she received a telephone call. They told that since they lodged FIR, it will result in dire consequences. Audio

cassettes containing conversation was handed over by police. Accordingly, Panchnama was prepared. She admits that she had given photograph of her father and driver to the police. She admitted that her statement was not recorded on 16 th November 2005 but that admission has no significance because her mother lodged FIR in the morning of 16 th November 2005. Her statement was recorded on 18th November 2005. She produced audio cassettes containing conversation of telephone calls. Her voice sample was not taken by the police but that is also not significant but the voice sample of the appellants were taken and the said was sent for analysis to the laboratory at Gaziabad.

19. On going through the evidence of informant and her daughter, it is established that the kidnappers demanded ransom from informant for release of her husband Mohan. The question arises about the identity of the kidnappers now posed before the Court is whether any of the appellants is involved in the kidnapping of Mohan Gunjal (P.W.No.4) for ransom by giving threats.

20. The informant and Priya (P.W.No.2) had only contact with the kidnappers on telephone. They have never seen the appellants kidnapping Mohan Gunjal (P.W.No.4). The direct evidence in respect of kidnapping is, therefore, available through the testimonies of Mohan Gunjal (P.W.No.4), Bhimrao (P.W.No.5), panch witness Prakash (P.W.No.9) and PI Govind Pawar (P.W.No.20) who had actually conducted the raid.

21. It has come in the testimony of Mohan Gunjal (P.W.No.4) that he had ailment of eyes. His vision is, therefore, doubtful. He did not identify any of the appellants during his evidence before the Court. He did not even participate in the test identification parade probably because of his impaired vision. His testimony is, therefore, of little help to identify role of any of the appellants in the present episode. His testimony that Bawiskar (Appellant No.1) used to call his family members telephonically and contact with another kidnapper viz: Altaf is the only material coming from his mouth. In the cross-examination however he candidly stated that except Altaf he had never heard name of any of the kidnappers. He admitted that he came to know about the names of Bawiskar (Appellant No.1) and Rajput (Appellant No.2) from the police authorities pursuant to the rescue operation. He also admitted that his statement in his evidence that Bawiskar (Appellant No.1) was frequently calling his family was not told by him while recording his statement. Hence, said statement is an improvement. The net result of the testimony of Mohan Gunjal (P.W.No.4) in respect of identification is that he only spelt the name of Altaf. Name of Appellant No.6 is mentioned as Deepak @ Kamlesh @ Altaf @ Ronny Waman Sapke. However, merely mentioning name of one of the kidnappers as Altaf is not sufficient. The prosecution was duty bound to establish the identity of the said Altaf by leading cogent and reliable evidence. Though Mohan Gunjal (P.W.No.4) mentioned about Altaf as one of the kidnappers, his identity is never established. There is no material to come to the conclusion that the person whom Mohan Gunjal (P.W.No.4) refers as Altaf is in fact Appellant No.6. Thus, as regards identification, testimony of Mohan Gunjal (P.W.No.4) is of no avail.

22. The crucial evidence in respect of identification is expected from Bhimrao (P.W.No.5). Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) were kidnapped on 15.11.2005 and they were rescued on 17.11.2005. It has also come in the testimony of Bhimrao that one of the kidnappers stayed in his

room in the night. The kidnappers also offered him food, tea and Gutka, during the period of confinement. He has stated that after travelling a distance of 20 k.ms., from the parking lot, the kidnappers covered the eyes of Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) with scarfs. His evidence however discloses that the scarfs were removed when they reached premises at Nasik. Accordingly, during the stay of confinement at Nashik, there was no scarf on the eyes of Bhimrao (P.W.No.5). Considering the contact of more than two days with the kidnappers, it is expected that Bhimrao (P.W.No.5) should identify the kidnappers. Evidence in this regard is little bit tricky. He did not identify Appellant Nos.6 and 3 who participated in test identification parade held on 15.12.2006, the report of which is at Exh.195. Similarly he did not identify them before the Court also. He has identified Appellant No.7 in the test identification parade dated 28.2.2007 (Exh.249). The evidentiary value of identification parade aforesaid is however, doubtful. At any rate, Bhimrao (P.W.No.5) did not identify Appellant No.7 in the Court which is relevant and important. He has identified Appellant Nos.1 and 2 during the course of his substantive evidence before the Court. The credibility of said identification needs to be tested on the touch stone of the trustworthiness of testimony of Bhimrao (P.W.No.5).

23. As stated earlier, Bhimrao (P.W.No.5) is a witness who was also kidnapped alongwith his employer Mohan Gunjal (P.W.No.4). Scrutiny of his evidence shows that it is in consonance with his statement recorded by the police. He neither exaggerated the accounts nor there were any contradictions appeared in his testimony. His testimony runs parallel to the evidence of Mohan Gunjal (P.W.No.4). His testimony needs a serious consideration in view of the specific defence of the Appellant that the plot of kidnapping of Mohan Gunjal (P.W.No.4) is an idea of Bhimrao (P.W.No.5). It has been brought from his cross examination that he was paid a salary of Rs.4,000/- to Rs.4,500/- per month and his earlier business endeavour of taxi failed resulting into non payment of installments showing his financial hardship. However, that by itself cannot be presumed to be a ground of his involvement in the matter of kidnapping. The fact that he admitted in cross examination that while bringing the pan, he made a phone call from STD booth and called a person at Chatushruni cannot be sufficient to raise any suspicion in respect of his involvement in the matter of kidnapping. The admission by him that he does not raise any hue and cry is also insignificant. It has come in the testimony of Mohan Gunjal (P.W.No.4) that since revolvers were pointed towards him from both the sides, Bhimrao (P.W.No.5) did not raise hue and cry. It appears logical. When the revolvers were pointed at Mohan Gunjal (P.W.No.4), raising any hue and cry by either of them would have led to a suicidal impact. Bhimrao (P.W.No.5) gave the telephone numbers to the kidnappers, is stated as a ground for the appellants to doubt veracity of his testimony. It appears probable that when he himself was kidnapped alongwith his employer, there was no other alternative for him than to follow the instructions of the kidnappers. It is with the said object he did call at the residence of Mohan Gunjal (P.W.No.4) and told them to follow the instructions of the kidnappers. These aspects from the testimony of the witness in no way shatters his testimony. On the contrary, there is nothing in the cross examination which could discredit the credentials of the witness. It is noteworthy that he has only identified Appellant Nos.1 and 2 and not other accused. Had he been an interested witness he would have involved all the appellants. The other Appellant which he did not identify in the test identification parade are also not identified before the Court. Considering the fact that he had continuous contact with the kidnappers for a period of about two days, identification of Appellant Nos.1 and 2 in the Court, appears probable and justified.

24. The most important, crucial and important testimony available on record in respect of the involvement of the appellants is that PI Govind Pawar (P.W.No.2) and Prakash(P.W.No.9) who was panch witness in respect of the raid conducted on 17.11.2005. It has come in the testimony of PI Govind Pawar (P.W.No.20) that while he was posted as a Senior PI at Chatushrungi Police Station, a missing report was lodged by Priya (P.W.No.2) on 16.11.2005 which was forwarded by him for investigation to Deccan Gymkhana Police Station. On 17.11.2005 he was directed by Deputy Commissioner of Police, Mr.Daithankar to rush to Nashik. DCP Daithankar directed him to make enquiries in respect of mobile 93261188788 in the name of Vijaykumar Rajput. He thus reached Nashik Road Police Station and obtained assistance of two Constables and called two panch witnesses which included Prakash (P.W.No.9). Accordingly the party reached Shop No.9, Akshardham Society, and made enquiries in respect of Vijaykumar Rajput. They were told that Vijaykumar Rajput had taken flat No.5 in Om Pacific Apartment, on lease basis. At the ground floor of the flat scheme,, they noticed name of Rajesh G. Rajput on a board of names of the residents of the Apartment. The raiding party, therefore, proceeded on second floor. They knocked the door. PI Govind Pawar (P.W.No.2) announced that they had sieged the premises and directed the appellants to come out. However, the door was not opened. He, therefore, broke open the main door of the flat. After entering into the flat he knocked the door of the bedroom. It was also not opened. The same was also broke open. Inside the room they found Bhimrao (P.W.No.5) along with two persons. They were directed to up their hands. They were taken in custody. During the course of search of the two unknown kidnappers, two pistols on their waistband were seized. Thereafter they rescued Mohan Gunjal (P.W.No.4) from another room. Upon enquiry these two persons told their names as Dilip Kishor Bawiskar (Appellant No.1) and Rakesh Rajput (Appellant No.2) respectively. They also told that they were residents of Ulhasnagar. In the room where these two appellants were caught, the raiding party also found two bags containing three knives. During the search, the police party recovered two SIM cards, two mobiles, agreement of lease of the flat, etc. All these articles were seized by conducting a panchnama (Exh.164) in presence of panch witnesses. PI Govind Pawar (P.W.No.2) further testified that two SIMs found during the search, when inserted in the mobile, their numbers were found to be 9890285310 and 9890286920 respectively. This testimony remained unshattered.

25. The prosecution has examined Prakash (P.W.No.9) to independently prove the panchanama (Exh.164) conducted by PI. Govind Pawar (P.W.No.2) during the course of raid on 17.11.2005. On careful consideration of his testimony, he appears to be an impartial witness. It is figured from his testimony that he is working in the loan Department of ICICI Bank since 2005. He denied the suggestion that he had regular contact with police authorities as he works in loan Department. There appears no force in such a suggestion. Merely because somebody works in Loan Department does not lead to a conclusion that he develops relationship with police authorities. Further PI Govind Pawar (P.W.No.20) was working in Pune and the witnesses resides at Nashik. Hence, there is no possibility of any contact of Prakash (P.W.No.9) with him. To challenge his credibility it is submitted that inability of the witness to tell the names and numbers of the residents of the building, absence of enquiry by him in respect of ownership of the flat and office bearers of the society. It needs to be kept in mind that Prakash (P.W.No.9) had been there to witness the raid and the consequent panchanama and not as an Investigator. It was not his job to collect details in respect of office bearers of the society or to enquire in respect of ownership of the flats and the

residents in the building. What is crucial to see is that his testimony is free from any of the contradictions. It has withstood the searchy cross examination. He had no reason to depose against the appellants. He is an independent and impartial witness. His testimony is duly corroborated by the panchanama (Exh.164) and testimony of PI Govind Pawar (P.W.No.20). It also finds the corroboration from the victims of the crime viz : Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5). Both of these witnesses stated before the Court that on 17.11.2005 the police party approached the flat, they broke open the door and rescued both of them.

26. Mohan Gunjal (P.W.No.4) deposed that on 3rd day of kidnapping at about 1.00 p.m the door was knocked. As door was not opened, it was broken and police came inside the room. He also deposed that one of the kidnappers fled from the room by breaking open grill of the window. The police brought two persons along with Bhimrao (P.W.No.5). All of them were taken to Nashik Road Police Station. At that time he came to know that he was in Nashik. He also deposed that at that juncture, he came to know that the names of the two persons were Bawiskar and Rajput (Appellant Nos.1 and 2 respectively). Similar is the account given by Bhimrao (P.W.No.5) in respect of the rescue operation.

27. It is crucial to note here that Bhimrao (P.W.No.5) identified Appellant No.1 from amongst the other appellants as the person who accompanied him in the night during the period of confinement at Nashik. He identified Appellant No.2 as the person who ran from his room when the police reached the spot. There is nothing on record to discredit aforesaid piece of evidence of Bhimrao (P.W.No.5). The said identification also gains importance in the light of the testimony in respect of the raid and rescue operation carried out by PI Govind Pawar (P.W.No.20) by conducting panchanama (Exh.164). The testimony of Prakash (P.W.No.9) as mentioned is found to be natural in its course. It is found to be inspiring confidence. The evidence of Prakash (P.W.No.9) that the police authorities seized two pistols from Appellant Nos.1 and 2 and they told their names during the course of seizure has unshattered. He has also deposed that the police found two bags in the bedroom where Appellant Nos.1, 2 and Bhimrao (P.W.No.5) were spotted. The said bag contained three knives, ten cotton swabs, three sticking tapes, screw driver, ply, spanner and gloves etc., which were seized by the police authorities in his presence. He also stated that three live cartridges were found in the revolver. Police also seized two Airtel SIM cards, two mobiles of Samsung and Nokia make. He also testified that the police authorities verified the mobile numbers by inserting the SIMs in the mobiles, which corroborates panchanama and testimony of PI Govind Pawar (P.W.No.20). More importantly he correctly identified Appellant Nos.1 and 2 in the Court. He identified the seized articles in the panchanama viz: the pistols, cartridges, mobiles, SIM cards, knives, spanner, screw driver, etc and their wrappers in the Court.

28. Prakash (P.W.No.9) is an independent and impartial witness. No material is brought on record to show that he had any enmity or ill-will against any of the appellants. The flow of testimony of Prakash (P.W.No.9) indicates his sincerity. He does not appear to be a professional panch witness. He categorically denied the suggestion that he merely signed on the panchanama at the instance of the police authorities and had no personal knowledge about the same. His testimony, therefore, demonstrates the genuineness of the raid and the rescue operation conducted on 17.11.2005 by PI Govind Pawar (P.W.No.20). A cumulative study of testimony of Prakash (P.W.No.9), panchanama

(Exh.164), testimony of PI Govind Pawar (P.W.No.20 coupled with that of Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.no.5), therefore, makes it abundantly clear that Appellant Nos.1 and 2 were nabbed red handed on 17.11.2005 in the premises at Flat No.5, Om Pacific Apartment, Nashik when raided by the police party in presence of panch witnesses. It is established through this evidence that when police party sieged Apartment it was not opened when knocked. The police party therefore required to break open main door of the flat and doors of the bedrooms of the flat. Appellant Nos.1 and 2 were found present in the bedroom along with Bhimrao (P.W.No.5). More importantly, fire arms were found in possession of Appellant Nos.1 and 2 at their waistbands alongwith two knives, sticking tape, cotton swabs, screw driver, ply, spanner, SIM cards and mobiles, three live cartridges, etc. These articles were produced before the Court and duly identified by Prakash (P.W.No.9). The very presence of Appellant Nos.1 and 2 in the Apartment along with the two kidnapped persons viz: Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.no.5) is yielding their involvement in the offence alleged. Thus, the significance of their presence at the place where the victims were kidnapped aggravates, their complicity considering the fact that they were found in possession of deadly weapons such as pistols, knives, sticking tape and cotton swabs. These are the implements which are useful for kidnapping. Once the prosecution has discharged its initial burden by demonstrating Appellant Nos.1 and 2 at the spot fully loaded with weapons and equipments indicating their role in kidnapping, it is now for Appellant Nos.1 and 2 to justify their presence at the said flat under section 106 of the Evidence Act. Unfortunately, the appellants did not make any attempt to discharge their burden in this regard.

29. The fact of apprehending Appellant Nos.1 and 2 during the course of raid has got another significant link to demonstrate their involvement in the offence by way of circumstantial evidence. As discussed above, it has come in the testimonies of Prakash (P.W.No.9) and PI Govind Pawar (P.W.No.20) that two SIMs were seized from Appellant Nos.1 and 2 during the search when they were apprehended during the rescue operation. PI Govind Pawar (P.W.No.20) stated that upon inserting SIMs in mobiles seized from Appellant Nos.1 and 2, the numbers of the mobiles were noticed as 9890285310 and 9890286920 respectively.

30. At this juncture, the testimony of Tejpal (P.W.No.6), Rajesh (P.W.No.7) and Call Details Reports ("CDR" for short) become significant. During the course of investigation the police authorities got information in respect of the mobile numbers from which the calls were made at the residence of Mohan Gunjal (P.W.No.4). The testimony of the informant that her land-line telephone number of 25899151 is undisputed. Tejpal (P.W.No.6) deposed that he had sold some SIM cards to Rajesh Surali (P.W.No.7). He mentioned their numbers as 9890287970, 9890286920 and 9890287912. Rajesh Surali (P.W.No.7) testified that he had never subscribed for the aforesaid mobile numbers. He deposed that he had lost his driving licence in the year 2003 and hence he lodged FIR with Kulgaon Police Station on 26.8.2003. The sum and substance of his testimony is that on the basis of driving licence of this witness, someone else had obtained the mobile SIMs in his name. It is noticed that mobile No.9890286920 was found with Appellant Nos.1 and 2 during the course of rescue operation on 17.11.2005. It is, therefore, clear that in respect of both the SIM cards seized from Appellant nos.1 and 2, they were never the subscribers. The police authorities have collected the CDRs from Airtel in respect of these numbers. Mobile No.9890285310, which is found at the time of raid with Appellant Nos.1 and 2 is in the name of one Marood Shaikh as per communication dated

17.11.2005 from Airtel (Exh.274). On page No.13 of CDR (Exh.274), it is noticed that from the mobile No.9890285310 two calls were made on 16.11.2005 at 10.54 a.m and 10.55 a.m respectively. It corroborates the testimony of the informant that she had received a call from the kidnappers at about 10.30 a.m. Upon further scrutiny it is noticed that as much as 16 calls were made from this mobile to 020-25899151. It is already established in the testimony of the informant that it is the residential land-line telephone number of Mohan Gunjal (P.W.No.4). This, therefore, directly and conclusively shows involvement of Appellant Nos.1 and 2 in the matter of kidnapping of Mohan Gunjal (P.W.No.4). This also corroborates the testimony of the informant that she had received threatening calls from the kidnappers demanding ransom of Rs.15,00,000/- along with the threats that in case the demands were not fulfilled Mohan Gunjal (P.W.No.4) would be murdered. Since the SIM card for mobile 9890285310 was seized from the custody of Appellant Nos.1 and 2 during the case of raid conducted by PI Govind Pawar (P.W.No.20) and as it is established from CDR (Exh.274) that in all 16 calls were made from said mobile to the residential telephone line of Mohan Gunjal (P.W.No.4), it is obvious that these calls were made by Appellant Nos.1 and 2 for demanding ransom from the family members of Mohan Gunjal (P.W.No.4).

31. As mentioned above, two pistols were seized from Appellant Nos.1 and 2 during the rescue operation dated 17.11.2005. The evidence of Investigating Officer shows that those revolvers were sent to Ballistic Expert. The said report is at Exh.281. The report shows that Exh.1 and 2 are pistols with magazines and Exh.3 are the three "KF 7.65 mm" pistol cartridges. Ballistic Expert has confirmed that both the pistols were in working condition and they were capable of chambering and firing 9 mm pistol cartridges. The Ballistic Expert also found residue of fired ammunition nitrite in the barrel washing of both the pistols. The three cartridges, upon examination were found to be live on test firing from country made pistol (Exh.2). It, therefore, follows that the intention of Appellant Nos.1 and 2 was ex facie clear from presence of deadly weapons with them. The kidnapped persons were found to be in their custody at Nashik. They made threatening calls to family members of Mohan Gunjal (P.W.No.4) from their mobile. Possession of deadly weapon thus unmistakably shows their only intention to cause serious bodily harm including possibility of murder of kidnapped person.

32. Thus, the established circumstance viz: presence of Appellant Nos.1 and 2 at Flat No.5, Om Pacific Apartment, Akshardham Society, Nashik where the victims were confined pursuant to their kidnapping is an incriminating circumstance against Appellant Nos.1 and 2. It is aggravated on account of seizure of two country made pistols along with three live cartridges from both the appellants which were capable of firing. The involvement of both the appellants is further proved in the light of recovery of SIM card bearing No.9890285310 from which about 16 calls were made at the residence of Mohan Gunjal (P.W.No.4) on 16.11.2005, as revealed from CDR (Exh.274).

33. One more circumstantial evidence is shown against appellants is the discovery of Mercedes car by Appellant No.2 pursuant to memorandum statements (Exh.172). Evidence of Saket (P.W.No.11), Panch discloses that firstly Appellant No.2 during the course of investigation took the police party to Nashik to Flat No.5, Om Pacific Apartment. There he gave memorandum statement to discover Mercedes car. Accordingly, he took the police party along with panch witnesses to Pride Society. The vehicle was covered. This concealing of the car is exclusively within knowledge of Appellant No.2.

Hence, discovery of Mercedes car is an admissible piece of evidence under section 27 of the Evidence Act. His testimony is also corroborated by that of Investigating Officer, API Phuge (P.W.No.22). This evidence discloses that Appellant No.2 discovered Mercedes car bearing No.MH-12-CA-3365. Undisputedly, Mohan Gunjal (P.W.No.4) owns the said vehicle. He along with his driver Bhimrao (P.W.No.5) were kidnapped in his Mercedes car. Appellant No.2 discovers this car during the investigations. This indicates direct involvement of Appellant No.2 in the offence.

34. In order to prove the criminal conspiracy against the appellants, prosecution has heavily relied on the evidence of witnesses; Tejpal Zumbarmal Jain (P.W.No.6), Rajesh Shamji Surali (P.W.No.7), Ravikiran Mohanrao Mane (P.W.No.8). According to Tejpal, he had sold 3 SIM cards to Rajesh Surali (P.W.No.7). He gave a SIM Nos.9890287970, 9820288920 and 9890287912. Out of that Mobile No.9890287920 was seized from the appellants after raid. To prove the source of the said mobile phones, the prosecution has relied upon the evidence of Rajesh Surali. He deposed that he never purchased SIM cards from Tejpal (P.W.No.5). According to him, in the year 2003, he lost motor driving licence. It appears from the evidence of Tejpal that he sold the above 3 SIM cards on the basis of driving licence but Rajesh Surali had denied to have purchased the said SIM cards. In fact, said SIM cards shown to have sold in the name of Rajesh but those were collected by different person whose identity was not proved by the prosecution

35. During the course of investigation, it was revealed that Appellant No.5 was using one of the SIM cards which was in the name of Ravikiran Mohanrao Mane (P.W.No.8). Hence police enquired with him. He deposed that he had a bank account with Shahu Bank. His passbook consist of his photograph affixed on it. Police took the witness Ravi to the shop of one Ghadge along with Appellant No.5. the shopkeeper disclosed that he had issued SIM on the basis of bank passbook to Appellant No.5. The pass book on which the photograph of Ravi was replaced but it is not clear that whether the Appellant No.5 has replaced the same. In fact, there is no allegation to that effect. Witness Ravi did not make any complaint in respect of his lost of passbook. He never seen Appellant No.5 stealing his passbook. Appellant No.5 had never made any voluntary statement and he had taken police party or witness Ravi to shop of Ghadge. Therefore, it cannot be said that at the instance of Appellant No.5 passbook was seized by the police. From the above evidence, it is not established that accused No.5 was in any way involved in obtaining one of the SIM cards seized by the police. On perusal of CDR it appears that Appellant Nos.1 and 2 were continuously in touch with persons using the SIM Cards in question. It appears that more two persons were in contact with Appellant No.2 but it is mere suspicion that Appellant Nos.3 and 5 were in contact with Appellant No.2. The said suspicion has not converted into proof. The prosecution has heavily relied upon the evidence of Anand @ Ganesh Devappa Chandanshive (P.W.No.12), Sanjay Dinkar Sarolkar (P.W.No.13) to establish the involvement of accused Nos.3 and 4 in the crime. Anand P.W.No.12 deposed that one Narendra Chandrakant Gaikwad is a contractor. Gaikwad introduced him to Ram Sopan More (accused No.3) Accused No.3 was arrested under Panchnama at Exh.228 on 14 th December 2005. One diary was seized from accused No.3. Even if the above evidence is accepted as it is, it no way established the involvement of accused Nos.3 and 4 in the crime. There is absolutely no evidence to show the complicity of accused Nos.3 and 4 in the matter. There is no evidence that mobile phones were seized from the possession of accused Nos.3 and 4 and they were in contact with Appellant Nos.1 and 2 who kidnapped the victims. Therefore, it is impossible to infer that

accused Nos.3 and 4 had participated in the crime by way of conspiracy.

36. The prosecution has examined Mahendra Tummale (P.W.No.3) to identify the culprits in the instant matter. He is parking attendant at Kamala Nehru Park, Pune. He stated that he knows Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) as both of them used to visit parking lot everyday at about 7.30 p.m to 7.45 p.m. Bhimrao (P.W.No.5) used to get the pan from Om panshop while Mohan Gunjal (P.W.No.4) used to seat in the car. He testified further that on 11.11.2005 they had visited for the last time. According to him an hour before coming of Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) at the parking, a silver coloured Santro car came in the parking. There were two persons in the car. They wandered in the parking area. He also deposed that both of them left parking lot via Bhandarkar Road. He has also deposed that while returning from parking lot, a person of black complexion was sitting near Bhimrao (P.W.No.5). The important piece of his evidence is he had been to test identification parade at Yerwada Prison. He identified Appellant No.1 in the test identification parade and before this Court. The reason for identifying Appellant No.1 by Mahendra (P.W.No.3) is that he had seen Appellant No.1 accompanying Bhimrao P.W.No.5) while he was leaving by Mercedes car from parking lot.

37. On the face of it there is anomaly in respect of date of the incident. Admittedly the incident of kidnapping occurred on 15.11.2005. Mahendra (P.W.No.3) states that he had witnessed some part of the incident on 11.11.2005. However, such a minor variation does not destroy his testimony at the threshold. He has categorically stated that Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) had lastly visited parking place on 11.11.2005. Shri Khamkar learned Counsel for the appellants argued that evidence of Mahendra (P.W.No.3) needs to be discarded as it does not inspire confidence. There appears force in the said submission. In the cross-examination witness admitted that he used to work from 9.00 a.m to 5.00 p.m along with two other parking attendants. After 5.00 p.m., other attendance viz: Satish Panmalekar, Rajesh Giri and Devidas Bhujbal used to work till 9.00 p.m. since the working hours of the witness were up to 5.00 p.m., he has to specify some special reason as to why he was present on the date of incident at about 7.30 p.m when Mohan Gunjal (P.W.No.4) along with Bhimrao (P.W.No.5) were kidnapped. The witness in his examination-in-chief stated his working hours as 8.45 a.m to 9.45 p.m which is incorrect in view of his cross examination when he stated that his duty ends at 5.00 p.m. No special reason is forthcoming for the presence of the witness at the parking lot after completion of his duty hours. Thus, the very presence of Mahendra (P.W.No.3) at the time of occurrence of the incident itself is doubtful. It is also improbable that a parking attendant would recall one of the inmates of a car and more particularly considering the evening time of 7.30 p.m. He has also admitted that the capacity of parking space is 300-400 vehicles. Nothing special did occur during the incident when the car proceeded, as it is flowing from the testimonies Mohan Gunjal (P.W.No.4) and Bhimrao (P.W.No.5) that none of them raised any hue and cry. The testimony of Mahendra (P.W.No.3) in the test identification parade and also before the Court is of no avail to the prosecution.

38. The prosecution has also relied upon CDR. As far as involvement of the other appellants persons are concerned, no attempt was made by the prosecution to seize a specific SIM card from other accused persons. The CDR simply established that the appellants were constantly in touch with the wife of Mohan for demanding ransom. Similarly, the appellants were also in touch with some other

persons but there is cogent evidence on record to establish that the said phones were in possession of other accused person with whom appellants were in constant touch. Therefore, CDRs are not helpful to the prosecution to establish the conspiracy between the appellants and the co-accused. The prosecution has also relied upon evidence in respect of voice identification. Witness Priya has categorically deposed that she has handed over audio cassettes to Investigating Officer Aagashe. It has also come in the evidence of the Investigating Officer that he had taken voice sample of appellant No.1 and original Appellant No.6 in presence of Panch witness and P.W.No.13 Sanjay Dinkar Sarolkar on 17 th March 2006. The said voice samples were referred to Central Forensic Science Laboratory (for short "CFSL"), Chandigarh along with 3 audio cassettes.

39. From the report of CFSL the prosecution is overwhelmed with the fact that the said report is positive. If this report is accepted then it indicates the involvement of Appellant No.6 but there is no other evidence on record to establish that Appellant No.6 was involved in the crime and he was not identified by the victims. So his presence at the time of rescue of victims is not proved. It is the case of the prosecution that Priya- daughter of Mohan has handed over three audio cassettes to the Investigating Officer Mr.Aagashe but in the cross examination she denied the said fact. She admitted that she never handed over any audio cassettes to the police. So, there is no other evidence on record to show that police had made an attempt to record the conversation between the informant and the appellants. Therefore, voice identification of Appellant No.6 is not helpful to the prosecution to prove the conspiracy in the matter. It is the case of the prosecution that some papers of transcription were given to appellant No.1 and Appellant No.6 for the purpose of recording their voice sample but the same transcriptions are not produced before the Court. Similarly, the transcriptions of recorded conversation are also not produced on record. It is not proved that the conversation recorded in the audio cassettes. Therefore, report at Exh.270 in respect of matching voice samples of appellants and Appellant No.6 given by CFSL, Chandigarh is of no use.

40. On going through the above evidence, it can be said that the appellants had conspired with each other to kidnap Mohan and Bhimrao for ransom. The appellants wrongly confined the victims Mohan and Bhimrao from 15th to 17th November 2005 till they were rescued by the police authority. The prosecution has proved the guilt of the appellants for the offence punishable under sections 364-A and 342 read with section 120-B of the IPC. The prosecution has not led any evidence to prove the offence punishable under section 37(1) read with section 135 of the Bombay Police Act. It is established that appellants were found in possession of country made pistols along with live cartridges. The said fact is proved in the evidence of Panch Witness. The prosecution has also relied upon Ballistic Report at Exh.281 which shows that the weapons were capable of effecting firing from it. The appellants also did not produce any valid licence for possessing arms found in their possession. Hence, offence under section 3(25) of the Arms Act is proved against the appellants. Thus, it can be said that the prosecution has proved the offence punishable under sections 364-A, 342 read with sections 120(B), 114 of IPC and under section 3(25) of the Arms Act against appellants only. There is no evidence against original accused nos. 3 to 7.

41. As far as offence under MCOC Act is concerned, the prosecution has vehemently submitted that the Trial Court has not appreciated the evidence in proper prospective. Admittedly, the prosecution has failed to prove criminal antecedents of the appellants. It is necessary to go through the

definition of organized crime which is defined under section 2(1)(e) of the Act which reads thus:

"Organized crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized 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."

42. The crux of the organized crime is continued unlawful activity by an individual either singly or jointly either with member of gang or on behalf of such syndicate involved is also defined in section 2(1) (d) which reads as under :

"Continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized 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."

43. Necessary ingredient involved is that more than one charge sheet have not been filed before the competent Court in respect of offence punishable with imprisonment of three years or more either singly or jointly as member of syndicate. Accused Nos.3 to 7 are acquitted of the charge under sections 364-A, 120(B) of IPC. It is also not proved on record that Accused Nos.3 to 7 were facing more than one charge sheet prior to the offence in question. It is not proved on record that Court had taken cognizance of any offence against the appellants having punishment for more than three years. Therefore, there is nothing to connect the appellants with their previous criminal activities. Thus, act of continuing unlawful activity by the appellants is missing. There was no commission of organized crime under section 2(1)(d) by the appellants. There is no evidence on record to establish that the appellants had committed offence punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

44. The Trial Court has rightly appreciated the evidence on record. Therefore, there is no reason to interfere with the findings of the Trial Court as far as offence under the MCOC Act is concerned. As far as other offences are concerned, the prosecution has established that the appellants had committed offence under sections 364-A and 342 read with section 120-B of IPC and under section 3(25) of the Arms Act. Therefore, both the appeals have no merit and the same deserve to be dismissed.

45. Hence, we pass following order:

(I) Criminal Appeal No.171 of 2012 preferred by the appellants is hereby dismissed.

(II) Criminal Appeal No.496 of 2014 preferred by the State is hereby dismissed.

[M.S.KARNIK, J.]

[RANJIT MORE, J.]