

Registered on : 15/01/2013.
 Received on : 15/01/2013.
 MCOC SPL.C.NO.2 OF 2013 Decided on : 20/08/2019.
 Duration : 06 07 05
 Years Months Days

Registered on : 29/06/2017.
 Received on : 30/06/2017.
 MCOC SPL.C.NO.7 OF 2017 Decided on : 20/08/2019.
 Duration : 02 01 22
 Years Months Days

Exh-473

IN THE COURT OF MCOCA SPECIAL JUDGE AT GREATER BOMBAY
 (Exclusive Special Court constituted for the cases under
 MCOCA/TADA/POTA AND OTHER SESSIONS CASES
 against the accused-Rajendra Sadashiv Nikalje @ Chhota Rajan)

MCOC SPECIAL CASE NO.02 OF 2013
(CNR NO. MHCC02-001741-2013)

ALONG WITH

MCOC SPECIAL CASE NO.07 OF 2017
(CNR NO. MHCC02-007256-2017)

The Central Bureau of Investigation, New Delhi
 (R.C. 4(S)/2016/SCU.V/SC-II/CBI/New Delhi and
The State of Maharashtra (at the instance of DCB-
 CID, Mumbai, C.R. No.104/2012, Amboli Police
 Station, C.R. No.214/2012)

.... Prosecution.

Versus.

(1) Nityanand Narayan Nayak,
 (Presently lodged at Mumbai Central Prison)
 age : 44 years, occupation : Chocolate

Distributor, R/o. Room No.13, Plot No.3, NCC Compound, Gate No.7, Malvani, Malad (West), Mumbai.

(2) Selvin Challapan Danial,

(Presently lodged at Mumbai Central Prison)

age : 50 years, occupation : Garage, R/o.: Surya Society, Room No.10, MHADA Colony, Akruli Road, Lokhandwala, Kandivali (East), Mumbai.

(3) Rohi @ Satish Kalya @ Satish Tangapan Joseph

(Presently lodged at Mumbai Central Prison)

age : 43 years, occupation : Painting Contractor, R/o.: Jawahar Nagar, Golibar Road, Ganesh Society, Khar (East), Mumbai.

(4) Dilip Atmaram Upadhyay,

(Presently lodged at Mumbai Central Prison)

age : 34 years, occupation : Security Guard, R/o.: Karmaveer Dadasaheb Gaikwad Nagar Zopadpatti, Dhobi Ghat, Group No.4, Mukund Ambedkar Road, Sion (East), MHADA colony, Sion Koliwada, Antophill, Mumbai.

(5) Talvinder Singh Gurubacchan Singh Bakshi @ Sonu,

(Presently lodged at Mumbai Central Prison)

age : 44 years, occupation : Mobile Sale-Purchase, R/o.: City Tower, 9th Floor, Flat No.904, City Tower, Shaikh Mistry Durga Road, Wadala (E), Antop Hill, Mumbai.

(6) Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Sir,

(Presently lodged at Tihar Jail, Jail No.2, New Delhi). age: 62 years, occupation: Farsan Centre business, r/o. 6/192 & 6/120, Tilak Nagar Colony, Chembur, Mumbai-400 089.

.... Accused.

And

(1) Gurudeep Singh @ Bobby Prem Singh Raina ... Wanted Accused.

CORAM : HIS HONOUR THE SPECIAL JUDGE
MCOCA/POTA/NIA/TADA AND ADDL.
SESSIONS JUDGE A.T. WANKHEDE.

C.R.NO. : 57.

DATE : 20/08/2019.

SPP Mr. P.D. Gharat for CBI/prosecution.
Adv. Mr. Hasnain Kazi for accused no.1.
Adv. Mr. Sudeep Pasbola @ Adv. Mr.Tushar Khandare for
accused nos.2 and 6.
Adv. Mr. Santosh Deshpande for accused no.3.
Adv. Mr. Aniket Wagal for accused No.4.
Adv. Mr. S.G. Rajput for accused no.5.

JUDGMENT

(DICTATED IN OPEN COURT)

1. The accused are prosecuted for the offences punishable under sections 307, 120 B read with section 34 of IPC, Sections 3, 25 and 27 of Arms Act and for the offences under section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act (herein after referred as 'MCOCA Act') in connection with crime No.214 of 2012 registered with Police Station, Amboli, thereafter registered with DCB-CID, Extortion Cell, Mumbai vide Crime No.104 of 2012 and with CBI vide FIR no. RC.4(S)/2016/CBI/SCU-V/SC.II/New Delhi.

2. The prosecution case as can be seen from the police report and accompanying documents, in brief is as under :-

Informant/injured Bailur Raghavendra Shetty having business of hotels and building construction in Mumbai, Bangalore and other cities.

On 03/10/2012, as usual he went to his office at Crystal Plaza and at about 21.30 hours left the office to go to the house of his friend Dinesh Bansal which is situated behind Tanishq Show Room, Andheri (West), Mumbai by his Skoda Car No.MH 06-AS-6210. He took right turn from the signal of Tanishq Showroom on the link road to go towards a lane by the side of Tanishq Showroom. When he reached near Purvi Building, one motorcycle came to the driver side, on which, two persons were ridding. The pillion rider pointed the fire arms towards him and fired four rounds on him. One of the bullet hit to his right hand arm and other rounds stuck to the car. To save his life, he move his car in fast speed. He observed that assailants were chasing him, so, he took his car towards Oshiwara Police Station. The assailants went towards Mega Mall. He stated about the assault on him to the police. He was taken by police to the Kokilaben Hospital for treatment. It is alleged that the assailants fired on the injured with intent to kill him and then ran away.

3. PW.36 API Prakash Chandrakant Sawant was assigned the duty of night Station House Officer of Amboli Police Station, he received message from Kokilaben Hospital that a person who received bullet injury admitted to their Hospital. Accordingly, he went to Kokilaben Hospital and came to know that Bailur Raghavendra Shetty is the inured. He made inquiry with the injured and recorded his statement. On the basis of said statement and on receipt of the information regarding cognizable offence, he registered FIR with the Amboli Police Station against two unknown motorcycle riders, under sections 307 read with 34 of the IPC and sections 3, 25 and 27 of the Arms Act vide Crime No. 214 of 2012 on 03/10/2012 at 22:00 hours.

4. Preliminary investigation of the said crime was conducted by PW.40 PI Vilas Rathod who was attached to Police Station, Amboli. He went to the Kokilaben Hospital, then to the spot and prepared spot panchanama Exh.325 in presence of panchas. He then went to Oshiwara Police Station and prepared panchanama Exh.135 of the black Skoda Car No.MH-06-AS-6210. At that time ballistic experts were also present there. They inspected the car and found some blood on the place near the driver seat on the right side and broken pieces of glasses. They also found one hole on the front side of dash board and another on the front door of the left side of the car. On opening the dash board and front door, two bullets were found. They seized all these articles by affixing label on it and prepared panchanama Exh.135. Photographs of the said car were also taken.

5. IO Vilas Rathod also called CCTV footage of the Tanishq Showroom room and got it in the CD. He prepared the panchanama of it vide Exh.352.

6. On 19/10/2012, as per the order of Assistant Commissioner of Police, investigation of said crime was transferred to Anti Extortion Cell and investigation handed over to API Sanjeev Dattatray Dhumal (PW.42). On 20/10/2012, PW.38 API Laxmikant Narayan Salunkhe of the Property Cell, Crime Branch found accused Nityanand Nayak moving suspiciously at Kalina and brought him to the property cell. On interrogation he came to know that the accused Nityanand Nayak was wanted in connection with crime No.104/2012 of DCB CID. Accordingly, he arrested the accused Nityanand Nayak and performed arrest panchanama vide Exh.334. During personal search of accused

Nityanand Nayak two mobile phones of Nokia company, one railway pass, a card of SBI bank, cash amount of Rs.480/-, a bag having Rs.30,000/- etc. was found. On 23/10/2012, Anti Robbery Cell of DCB CID arrested accused Selvin Danial at Bangalore Airport and given him in custody of Anti Extortion Cell, Mumbai. The personal search of accused was made. During his personal search one blackberry mobile phone, one Nokia Mobile phone, one SIM Card of Videocon Company and cash amount of Rs.850/- was found. The personal search and Arrest panchanama Exh.149 of accused Selvin Danial was prepared.

7. IO Sanjiv Dhumal took the house search of accused Nityanand Nayak and prepared house search panchanama Exh.311(admitted). He recorded the statement of injured and witness Suresh Kutti, Madhu Kottiyal and Sujit Rewale. During investigation he found involvement of accused Rohit Tangappan Joseph @ Satish Kalya in the crime. As accused Rohit was in judicial custody, on 31/10/2012 his custody was taken from the Arthur Road Central Jail and arrested him vide arrest panchanama Exh.130. During interrogation with accused Satish Kalya the complicity of accused Chhota Rajan was revealed, hence on 02/11/2012 proposal for invoking the provision of MCOC Act was made to the office of Commissioner of Police. Accordingly on 05/11/2012, prior approval under section 23(1) of MCOC Act was granted by Joint Commissioner of Police (Crime) to apply the provisions of MCOC Act. On 02/11/2012, IO Sanjiv Dhumal conducted the office search of accused Selvin Danial vide panchanama Exh.112(admitted).

8. After invoking the provisions of MCOC Act, the investigation of said crime handed over to ACP Mr. Arvind Mahabadi. He gave letter on

06/11/2012 to this Court for applying the provisions of MCOC Act. He produced the accused Nos. 2 and 3 for remand before the Special Court. He also took the custody of accused No.1. On 07/11/2012, accused No.1 and 2 voluntarily agreed to confess. Accordingly, he made proposal to Joint C.P. Crime and requested to depute officer of the rank of Deputy Commissioner of Police to record confessional statement of accused nos.1 and 2. DCP Port Zone was directed to record statement of Accused Nityanand Nayak and DCP Zone-4 was directed to record statement of accused Selvin Danial. Accordingly, ACP Mahabadi handed over the custody of accused Nos.1 and 2 to DCP Port Zone and DCP Zone-4 respectively. Confessional statement of the accused No.1 and 2 came to be recorded. The accused were retained to the custody of ACP Mahabadi on 10/11/2012. He gave letter to DCP for having the confessional statement of these accused and received the same.

9. On 26/11/2012, API Nitin Patil arrested accused Dilip Upadhyay and Talvinder Singh at Jalandhar Bus Stop, Punjab. Personal search of accused was made in presence of panchas. One china made mobile phone, a leather wallet having one currency note of Rs.500/-, 3 currency notes of Rs.10/-, one driving licence was found with accused Dilip Upadhyay. The same were seized and sealed. During personal search of accused Talvinder, two mobile phones, one black wallet, PAN card, one currency note of Rs.100/-, one voter ID card, one driving licence was found. The same were seized and sealed. PSI Nitin Patil produced the accused before IO ACP Mahabadi on 29/11/2012.

10. On 30/11/2012, the accused were produced before the Special Court and they remanded to police custody. During interrogation

accused Talvinder made a statement that he had thrown the weapon in the Vashi creek. Search was made at the Vashi creek, but did not find the weapon. As the accused Dilip Upadhyay disclosed that the motor cycle was kept in Antop Hill, search of Motor cycle was made and one Bajaj Discover Motor cycle was seized in presence of panchas vide panchanama Exh.361 on 05/12/2012. On 08/12/2012, accused No.4 and 5 voluntarily agreed to confess. Accordingly, IO Mahabadi send proposal to Joint Commissioner (Crime) for deputing the officer of the DCP rank for recording confessional statement. On 10/12/2012 Joint CP (Crime) deputed DCP Zone-5 to record confessional statement of accused Dilip Upadhyay and DCP Zone-1 to record confessional statement of accused Talvinder Singh. On 11/12/2012 IO Mahabadi produced the accused No.4 and 5 before DCP Zone-5 and DCP Zone-1 respectively. The custody of the accused retained on 12/12/2012. He made request to concerned DCPs to have the confessional statement of the accused Nos.4 and 5 and received the same.

11. On 15/12/2012, he made application to Special Court to perform test identification parade of accused Nos.4 and 5. After permission of Special Court, test identification parade of accused Nos.4 and 5 conducted by Naib Tahasildar Mr. Narkar (PW.37) at Arthur Road Jail on 21/12/2012. He made investigation pertaining to the account of wanted accused Gurdip Singh and in that regard recorded the statement of the Branch Manager of Kalina and Sion Branch of ICICI Bank. He made communication to Indigo Airways and Jet Airways about the travel made by accused Dilip Upadhyay and Talvinder Singh and obtained manifesto. He also made communication to have the CDRs of the mobile numbers of accused and witnesses with Vodafone, Airtel,

Loop Mobile, Uninor communication to obtain the CDRs of the mobile numbers of accused and witnesses and received the CDRs. Said I.O. also made investigation about the visit of accused nos.4 and 5 to Jammu and Kashmir after commission of offence. He sent API Dalvi, who recorded the statement of manager of Hotel Verma and obtained the copy of hotel register etc. He issued letter to Kokilaben Hospital and Seven Hill Hospital to obtain injury certificate of the informant and received the same. He called the report of finger print expert about the finger prints on the vehicle of the informant. He obtained certified copy of the charge-sheet in MCOC Spl.Case No.19 of 2011 and of Anti Extortion Cell C.R. No.3 of 2005. He recorded the statement of witnesses. He completed the investigation and by obtaining sanction of Commissioner of Police Dr.Satyapal Singh (P.W.41) on 14/01/2013 under Section 23(2) of MCOC Act submitted the charge-sheet against accused nos.1 to 5 and wanted accused Gurdip Singh @ Bobby Premsing Raina and accused Rajendra Sadashiv Nikalje @ Chotta Rajan on 3.10.2012 before this Court.

12. This court took cognizance of the offence under Section 307, 34 r/w 120(B) of IPC r/w Section 3,25,27 of Indian Arms Act and Section 3(1)(ii), 3(2),3(4) of MCOC Act against the accused. During pendency of the trial, the wanted/absconding accused Rajendra Sadashiv Nikalje @ Chotta Rajan came to be arrested by CBI on 06/11/2015 in R.C. no.7(A)/2015/SCU-V/SC.II/CBI/New Delhi. Thereafter, accused no.6 moved application to surrender before this Court vide Exh.57 and by order dated 21/04/2016, he was taken in judicial custody. As per notification no.228/56/2015-AVD-II dated 21/11/2015 issued with the consent of State Government of Maharashtra, Home Department vide notification no.TER-1115-CR-363/SPL-I B dated 13/11/2015 ordered

for transfer of investigation to CBI. I.O. Richhpal Singh, Dy. Supdt. of Police, CBI/SC-II/New Delhi conducted the investigation and submit the charge-sheet Exh.428 against the accused on 23/6/2017.

13. The Ld. predecessor of this Court framed charge against the accused under Section 307 r/w 120(B), in the alternative under Section 307 r/w Section 34 of IPC r/w Section 3,25,27 and Sec.5,27 of the Arms Act r/w Section 3(1)(ii), 3(2), 3(4) of the MCOC Act,1999 vide Exh-84. Separate plea of the accused came to be recorded vide Exh-85 to 90. The accused pleaded not guilty and claimed for the trial.

14. In support of the charge, prosecution examined in all 48 witnesses and closed their evidence by filing pursis Exh-430.

15. The incriminating piece of evidence explained and read over to the accused by way of statement under Section 313 of Cr.P.C. vide Exh-432 to 437. The accused denied all the charges levelled against them. The defence of the accused is of total denial and innocence and false implication. The accused did not testify themselves nor examined any witness in support of their defence. However, accused nos.1 to 6 filed their written statements under Section 313(5) of Cr.P.C. vide Exh.443, Exh.444, Exh.438, Exh.447, Exh.439 & Exh.446 respectively. The written submissions of the accused are as follows :-

(i) Written statement of the accused no.1 Nityanand Nayak u/s.313(5) of the Cr.P.C. (Exh.443).

That on 07/11/2012 he was produced before this Court and at that time, he had complained that the investigating officer was pressurizing him to sign on blank

papers. He has further stated that he did not want to make confessional statement. He had further stated that if his signature were so obtained then they would be under pressure and duress. He said that his signatures were obtained under pressure on already prepared document. Which he later on came to know that they were obtained on his fabricated confessional statement. Accordingly, on 12/11/2012 when he was produced before the Court at that time, he informed to the Court that he had not given any confession and his signatures were obtained on some prepared document under pressure of Police. He said that he was never produced before DCP for the purpose of recording of confession. He had not made any confession before DCP. He said that only his signatures were obtained on prepared document, by the Police which he was not allowed to read and not explained to him. He said that he was produced before the learned Magistrate in Esplanade Court by the Police, however, at that time, he was threatened by officer of crime branch present there, that he should not make any complaint to the Magistrate and therefore, he could not muster the courage to complain to the Magistrate that, he had not made any confession and his signatures were obtained on the prepared document i.e. confession under pressure. He said that when he was produced before the Court, he immediately informed regarding his signatures being obtained under pressure by the police and he had not made any confession. He said that he had been falsely implicated in this case. Hence, he

prayed that be pleased to acquit him from the above captioned matter.

(ii) Written statement of the accused no.2 Selvin Danial u/s.313(5) of the Cr.P.C. (Exh.444).

That on 07/11/2012 he was produced before this Court and at that time, he had complained that the investigating officer was pressurizing him to sign on blank papers. He has further stated that he did not want to make confessional statement. He had further stated that if his signature were so obtained then they would be under pressure and duress. He said that his signatures were obtained under pressure on already prepared document. Which he later on came to know that they were obtained on his fabricated confessional statement. Accordingly, on 12/11/2012 when he was produced before the Court at that time, he informed to the Court that he had not given any confession and his signatures were obtained on some prepared document under pressure of Police. He said that he was never produced before DCP for the purpose of recording of confession. He had not made any confession before DCP. He said that only his signatures were obtained on prepared document, by the Police. Which he was not allowed to read and not explained to him. He said that he was produced before the learned Magistrate in Esplanade Court by the Police, however, at that time, he was threatened by officer of crime branch present there, that he should not make any complaint to the Magistrate and

therefore, he could not muster the courage to complain to the Magistrate that, he had not made any confession and his signatures were obtained on the prepared document i.e. confession under pressure. He said that when he was produced before the Court, he immediately informed regarding his signatures being obtained under pressure by the police and he had not made any confession. He said that he had been falsely implicated in this case. Hence, he prayed to acquit him from the above captioned matter.

(iii) Written statement of the accused no.3-Rohee Tangappan Joseph @ Satish Kalya u/s.313(5) of the Cr.P.C. (Exh.438).

He stated that PI Sanjeev Dhumal had falsely stated that his name was revealed in the investigation and therefore, he was arrested. He stated that Police in order to frame him in the case had falsely created the confessions of the accused persons thereby naming him in their confession. He stated that he did not know Bobby and other co-accused persons in this case. He had never met any of the accused persons at any point of time. He had never ever communicated with any other co-accused in this case. He said that when this case took place he was in Arthur Road Prison. He was kept in 'Anda Cell' at Arthur Road Prison since last 8 years. He said that no any mobile phone could be used in the jail. There was no recovery of any mobile phone from the jail or from him. He said that no phone calls were made or received by him in the jail and he had not given any SIM card to anyone, the Police in

order to frame him in the case had made false statements and also created false evidence against him. He denied that he had sent some persons through whom Rupees Three Lacs were given by him to Selvin. This is nothing else but fabricated statement created by police against him. He did not have any money for his family or his own survival. He was not the member of any Chhota Rajan Gang. Police had falsely labeled him as a member of Crime Syndicate. He said that whenever, he was taken to Court from the jail the police escort/party are there with him and he was not permitted to meet any person by the Police guards. He had never met any co-accused in any court premises. He stated that the allegations levelled upon him of order eliminating B.R. Shetty, or paid any money as the said allegation against him is the afterthought story of Police to implicate him falsely in this case. He said that false and fabricated charge-sheet and evidence is created and filed against him. He is innocent and he be acquitted from all the charges levelled against him.

(iv) Written statement of the accused no.4-Dilip Atmaram Upadhyay u/s.313(5) of the Cr.P.C. (Exh.447).

It is submitted by the accused that he is falsely implicated in this case. He had nothing to do with alleged offence. It is submitted by the accused that as a security guard, he required to visit various officers to attend as a security guard and as far as present case is concerned, accused might have visited place of office of PW.28 as a

Security Guard and police suspect on accused only because he might have visited office of PW.28 for the purpose of job as a Security Guard. It is submitted by the accused that he visited Punjab for the purpose of job only and he received a call from unknown person who asked him to meet him at Ludhiana where better job opportunity was there. As the accused went there for job police arrested him just because he was previously visited the office of PW.28 as a Security Guard and his visits were recent to date of attack on PW.28. It was submitted by the accused that he was forced to sign on confessional statement i.e. first his blank signatures were taken and then statement was written and without reading over to him submitted before Magistrate. It is submitted by the accused that no weapon or vehicle recovered from accused, and he has nothing to do with any of the co-accused nor he was having any contact or any relation with co-accused. Therefore, accused prayed that as he was innocent and only made as a scapegoat to protect the real culprit. Accused never there on spot as alleged on the day of the incident against PW.28. Therefore, accused pleaded his innocence and prayed for dismissing of all the charges leveled against him.

(v) Written statement of the accused no.5-Talvinder Singh Gurubacchan Singh Bakshi u/s.313(5) of the Cr.P.C. (Exh.439)

He said that he had studied upto 10th standard in English Medium from Gurunanak High School, Sion-Koliwada, Mumbai. He said that he can read, write, speak

and understand English very well. He is very much comfortable in reading, writing and speaking in English. He said that he himself and co-accused Dilip Upadhyay were arrested on 26th November 2012 by Police Officer Nitin Patil and therefore, they were produced before ACP Arvind Mahabadi at his office, both of them were pressurized by ACP Arvind Mahabadi, PI Sanjiv Dhumal and others for making confessional statement but they refused for it. He said that as they apprehended that ACP Mahabadi and PI Dhumal may prepare false record of their confessional statement, both of them, decided to report about it to the Court and accordingly on 29th November 2012 when they were produced by ACP Arvind Mahabadi before the Court they made an application before the Court stating that they did not wish to make any confession statement before any competent authority, said application is on record of the Court. He said that on 11/12/2012, he was produced by ACP Arvind Mahabadi before Deputy Commissioner of Police Mr. Ravindra Shisave at his office, he reported him orally that ACP Mahabadi and PI Sanjiv Dhumal were pressurizing him and co-accused Dilip Upadhyay for making confessional statement and therefore, they filed an application before MCOC Court stating that they did not wish to make any confession before any competent authority. He said that DCP Mr. Ravindra Shisave promised him that he would not be compelled to make any confession. Therefore, ACP Mahabadi took him to yellow gate Police Station and lodged him into their lock-up. On

the next day i.e. on 12th December 2012 again ACP Mahabadi took him to the office of Deputy Commissioner of Police Mr. Ravindra Shisave who asked him to sign document containing few pages, he told him that the said document was the panchanama and he had to sign it as a panch witness. He said that Deputy Commissioner of Police Mr. Ravindra Shisave did not read over the contents of the said document to him, neither he allowed him to read said document and on the contrary, he misguided him that he was signing the document as a panch witness as it was the panchanama and therefore, he had signed said document. He said that Deputy Commissioner of Police Mr. Ravindra Shisave also obtained his signatures on blank papers by misguiding him. He said that therefore on the same day ACP Mahabadi and PI Sanjiv Dhumal took him to the office of Chief Metropolitan Magistrate at Esplanade, Mumbai before whom he had stated that the Police has not read over the contents of the statement but they misguided him that he was signing the document as a panch witness and it was nothing but it was panchanama and therefore, he signed it. He said that he never told Deputy Commissioner of Police Mr. Ravindra Shisave that he could understand little bit of English but he was comfortable with Hindi. He said that as he had studied upto 10th standard in English Medium he is more comfortable in English than Hindi. He said that after attending before Chief Metropolitan Magistrate at Esplanade, Mumbai, he realized that Deputy Commissioner of Police Mr. Ravindra Shisave had misused

his signatures obtained by him by misleading him and prepared his forged confessional statement and therefore when on 15/12/2012 he himself and co-accused Dilip Upadhyay were produced before the Court by PI Dhumal they filed an application before this Hon'ble Court stating therein that they had already stated in writing that they did not wish to make any confession before any competent authority, however, the Police Machinery had already extracted confession from both of them and both of them were retracting from whatever alleged statement/confessions extracted from them and that both of them were unaware of the contents of the alleged statement/confessions extracted from them and that their signatures were obtained on blank papers by the Police. He said that he had never made any confession before Deputy Commissioner of Police Mr. Ravindra Shisave as alleged by him. He said that he was Sikh by religion and as their tradition from his childhood when he was in 5th standard, he started wearing turban and till today, he is continuously wearing it. He said that he had never cut his hairs and removed his mustache and beard. He said that at that time of his arrest he was having mustache and beard as he is having today. He said that he is innocent, he had not committed any offence. For the first time he saw complainant B.R. Shetty before the Court, he had never seen his car and motor bike referred in this case. He said that for the first time, he saw co-accused-Nityanand Narayan Nayak, Selvin Challpan Danial, Rohi @ Satish

Tangappan Joseph in the Court. He said that he never spoke to anyone of them on mobile phone at any time. He said that he never used mobile No.9892277753 and 9870337033. He said that in October-2012, he never ride any motor bike nor he went to Andheri. He said that he is innocent, he had not committed any crime, he had been falsely implicated by the Police in this case.

(vi) Written statement of the accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan u/s.313(5) of the Cr.P.C. (Exh.446).

He stated and submitted that he was falsely implicated in the present case and he had nothing to do with the alleged incident of firing of PW.28 B.R. Shetty on 03/10/2012. He said and submitted that he did not know PW.28 B.R. Shetty. He had never telephoned him and/or had never abused him on the telephone. He said that since B.R. Shetty was not known to him and he had never called him on phone, there existed no dispute between him and said PW.28 B.R. Shetty. He said that therefore there was no reason for him to target said B.R. Shetty and made an attempt on his life. He said that he had not spoken to accused-Satish Tangappan Joseph when he was lodged in custody and/or at any time and he never told Satish Tangappan Joseph or Gurdeep Singh or anybody else to commit murder and/or made attempt on the life of PW.28 B.R. Shetty. He said that the evidence of PW.28 that he had called him once on phone and abused him is false, fabricated and motivated and he was stated so at the

instance of police. He said that he was innocent and he had been falsely implicated in this case. He further said that in order to mala fide invoked the provisions of MCOC Act, he had been dragged in this case. He said that false confessions, have been extorted and/or fabricated to suggest that the alleged firing on B.R. Shetty PW.28 was done at his behest or at his instance. He said that the confession of his co-accused had been obtained under threat, force, coercion, deception, false promises etc. in order to concoct evidence against him and against them. He further said that the confessions of his co-accused alleging that, he had instructed/ordered the other accused to fire on PW.28 B.R. Shetty is hearsay evidence. It is not based on personal knowledge of the confessing accused. It is absolutely false and fictitious.

16. It is necessary to point out here that as per order of the Central Government, the accused Rajendra Sadashiv Nikalje is kept in Tihar Jail. Therefore, the trial against the accused Rajendra Sadashiv Nikalje @ Chotta Rajan conducted through Video Conferencing.

17. Heard the Ld.SPP Mr. Gharat for Prosecution/CBI and Ld. Advocate Mr.Kazi for accused no.1, Adv. Mr.Pasbola for accused no.2 & 6, Adv. Mr.Santosh Deshpande for accused no.3, Adv. Mr.Wagal for accused no.4 and Adv. Mr.S.G.Rajput for accused no.5 at length. Also perused the memorandum of written arguments alongwith citations filed by prosecution(Exh.451), Advocate Mr.Rajput for accused no.5(Exh-461), Advocate Mr.Santosh Deshpande for accused no.3 (Exh-465). Perused the memorandum of arguments later on filed by learned

Advocate Mr. Pasbola on behalf of accused no.6 (Exh.469) and the written reply arguments filed by learned SPP at Exh.469-A.

18. Perused the entire record and proceeding and the arguments advanced by the rival parties alongwith citations. Following points arise for consideration of this Court and findings to them are given for the reasons stated as under :-

Sr. no.	Points	Findings
1	Whether the prosecution proved that the accused nos.1 to 6 alongwith wanted accused Gurudeep Singh @ Bobby Prem Singh Raina and other unknown associates, during the period between September-2012 to 03/10/2012 generally, within the limits of Mumbai in furtherance of their common intention agreed to do or caused to be done an illegal act i.e. to commit murder of the informant-Bailur Raghavendra Shetty (PW.28) and in pursuance of the criminal conspiracy, between 21.40 hrs. to 21.50 hrs. on 03/10/2012, the accused nos.4 and 5 followed the informant-Bailur Raghavendra Shetty (PW.28) who was driving his Skoda car, on a motorcycle driven by the accused no.5 of which the accused no.4 was the pillion rider and when the informant-Bailur Raghavendra Shetty (PW.28) was near Purvi building on the road adjacent to Tanishq showroom, Andheri, Mumbai, the accused no.4 opened fired at the informant-Bailur Raghavendra Shetty (PW.28) to commit his murder and all accused have committed an offence punishable u/s.120(B) r/w. 307 of IPC r/w. section 3, 25, 27 of the Arms Act r/w. section 3(1)(ii), 3(2), 3(4) of the MCOC Act, 1999 ?	Proved.
2	Whether the prosecution proved that during	

	the course of same transaction, on 03/10/2012, between 21.40 hours to 21.50 hours, when the informant-Bailur Raghvendra Shetty (PW.28) started from his office in his Skoda car bearing registration no.MH-06-AS-6210 driving himself and when he was on the road by adjacent to the Tanishq showroom, Andheri, Mumbai, near Purvi Building to meet his builder friend and when he slowed down his car due to the speed breaker, both accused nos.4 and 5 came from behind on the motor cycle bearing registration no. MH-03-AB-8938 which the accused no.5 was driving and on which the accused no.4 was the pillion rider and the accused no.4 fired gunshots on the informant-Bailur Raghvendra Shetty (PW.28) causing him bullet injury on his right arm with such intention and knowledge and under such circumstances that if both the accused had by that act caused the death of the informant-Bailur Raghvendra Shetty (PW.28) they would have been guilty of murder and accused nos.4 and 5 have committed an offence u/s. 307 r/w.120(B) of IPC and alternatively u/s.307 r/w. section 34 of IPC ?	Proved.
3	Whether it is proved that the accused no.4 on or about 03/10/2012 between 21.40 hours and 21.50 hours in furtherance of common intention of all the accused and pursuant to the above said conspiracy, during the course of same transaction, on the road adjacent to the Tanishq showroom, Andheri, Mumbai near Purvi Building had in their possession and carried the firearm and ammunition without holding a license issued in accordance with the provisions of the Arms Act which you used in contravention of section 5 and the accused no.4 has committed an offence punishable u/s 27 of the Arms Act ?	Not proved

4	Whether it is proved that the accused nos.1 to 6 alongwith the wanted accused no.1-Gurudeep Singh @ Bobby Prem Singh Raina being the members of the organised crime syndicate as defined u/s.2(f) of the M.C.O.C. Act, 1999 headed by the accused no.6 did conspire to continue unlawful activities and to commit organised crime as defined u/s.2(e) of the M.C.O.C. Act, 1999 i.e. on 03.10.2012 between 21.40 hours to 21.50 hours on the road adjacent to the Tanishq Showroom, Andheri, Mumbai, near Purvi Building attempted to commit murder of the informant-Bailur Raghvendra Shetty (PW.28) by using firearm with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for themselves or any other person and accused nos.1 to 6 have committed an offence punishable u/s 3 (1) (ii) of the M.C.O.C. Act, 1999?	Proved.
5	Whether it is proved that the accused nos.1 to 6 conspired, abetted and/or facilitated the commission of the aforesaid organised crime and/or acts preparatory to organised crime, in furtherance of criminal conspiracy and accused nos.1 to 6 have committed an offence punishable u/s.3(2) of the M.C.O.C. Act, 1999?	Proved.
6	Whether it is proved that the accused nos.1 to 6 alongwith the wanted accused no.1-Gurudeep Singh @ Bobby Prem Singh Raina, during the period of 10 years, preceding to 03.10.2012 formed an organised crime syndicate as defined u/s 2 (f) of M.C.O.C. Act, 1999 under leadership of the accused no.6 and thus accused nos.1 to 6 alongwith the wanted accused no.1-Gurudeep Singh @ Bobby Prem Singh Raina are members of said organised crime syndicate and accused nos.1 to 6 have	

	committed an offence punishable u/s 3 (4) of M.C.O.C. Act, 1999 and within the cognizance of this Court ?	Proved.
7	What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 to 6 :-

19. The reasons for the findings on all these points can be conveniently discussed together, as separately discussing these points would involve certain repetitions and overlapping of evidence. Furthermore, for the purpose of suitable and proper discussion, classification is made on various other points such as incident, scene of offence, confession etc.

INCIDENT OF FIRING

20. It is the story of prosecution that on 3/10/2012, when the injured PW.28 B.R. Shetty was going from his office at Crystal Plaza, towards the house of his friend by his Skoda car bearing No. MH-06/AS-6210, in a lane in between Tanishq showroom and Purvi building two unknown persons came on motorcycle on the right side of his car and opened fire at him and attempt to commit his murder.

21. In order to substantiate the fact of incident, the prosecution heavily relied on the evidence of PW. 28 B.R. Shetty i.e. injured, as such his evidence needs detail scrutiny. He deposed that on 3/10/2012 he left his office around 9.30 p.m. and was going to the house of his friend namely Dinesh Bansal in Skoda car bearing no. MH06 AS 6210. There was a traffic signal near Tanishq showroom. He took a right turn from

that signal. There was a speed breaker, so he slowed down the speed of his car. At that time he saw two persons on one motorcycle on the right side of his car. They opened fire at him by using firearm. He heard four rounds of the firearm. One bullet hit him on his right hand arm. As his car was automatic, he drove it away. He tried to look in the right side mirror of car to see who were behind him, but he could not see anything. He saw in rear view mirror and found those persons behind car. He went to nearby police chowky, but it was closed, so he went to Oshiwara Police Station. He further deposed that the persons who fired at him may followed him till Oshiwara Police Station. Police came forward to help him. As he had bleeding police took him to Kokilaben Hospital in their vehicle where he was given first aid. In the night he was shifted to Seven Hills Hospital where he was kept till 17/10/2012. The bullet which had hit him is still in his body.

22. The evidence of PW.28 B.R. Shetty is clear that the incident took place on 03/10/2012 at about 9.30 pm. onwards. Apparently about the incident there is no other direct witness except PW.28 B.R. Shetty. After the incident PW.28 B.R. Shetty was taken to the Kokilaben Dhirubhai Ambani Hospital, where at he was given preliminary treatment. The prosecution produced on record the medical treatment papers of PW.28 B.R. Shetty of Kokilaben Hospital through the evidence of PW.46 Dr. Smt. Safira Riaz Nandoliya. This witness is examined by the prosecution only to produced the document such as the papers pertaining to the patient, history and treatment given to him i.e. from the time of his admission on dated 03/10/2012 till his discharge on 04/10/2012. It is explicit from the evidence of PW.46 Dr. Nandoliya that the patient namely B.R. Shetty was admitted to their hospital on 03/10/2012 and

he was treated by Dr. Anvay Mulay. This has corroborated the version of PW.28 B.R. Shetty that after the incident he was admitted to Kokilaben Hospital and took preliminary treatment. Even it is the evidence of PW.46 Dr. Nandoliya that the patient was discharged against the medical advise.

23. As per evidence of PW.28 B.R. Shetty, after getting first aid at Kokilaben Hospital, in the night he was shifted to Seven Hills Hospital where he was admitted till 17/10/2012. The prosecution examined PW.47 Dr. V. Satyaprasad, who deposed that on 04/10/2012 at around 4 am. one B.R. Shetty was brought to their hospital to the outpatient emergency department. He also deposed that previously the patient was admitted to Kokilaben Dhirubai Ambani Hospital and from there against medical advise he was brought to their hospital. This has substantiated the fact that after taking discharge from the Kokilaben Dhirubai Ambani Hospital against medical advise, PW.28 B.R. Shetty admitted to Seven Hills Hospital on 04/10/2012. Even the medical papers produced on record by PW.47 Dr. V. Satyaprasad vide Exh.429 substantiate that B.R. Shetty was admitted to their hospital on 04/10/2012 at 4.26 am. There is no dispute that the person by name B.R. Shetty is PW.28 B.R. Shetty only.

24. In regard to the date and time of incident, the evidence of PW.36 API Prakash Chandrakant Sawant and also PW.40 PI Vilas Rathod is helpful. It has come in the evidence of PW.36 API Prakash Chandrakant Sawant that on 03/10/2012 he was on duty at Andheri Police Station as night station house officer. He received message from Kokilaben Hospital, Andheri that one person who had received injury was

admitted in the hospital, so he went to the hospital. On inquiry he came to know that the injured is Bailur R. Shetty. The fact that PW.36 API Prakash Chandrakant Sawant was on duty as night station house officer on 03/10/2012 and received a message from Kokilaben Hospital and on visit found the injured person B.R. Shetty, is sufficient to corroborate that the incident took place on 03/10/2012 in the night and the injured after the incident was admitted to the Kokilaben Hospital.

25. Similarly PW.40 Vilas Jemu Rathod deposed that at around 9.40 p.m. he received a message that one person was fired, so he went to the Kokilaben Hospital at Andheri west and came to know that firing was done on Bailur Shetty. No doubt, in his evidence the date is mentioned at 4/10/2012, but actually it should be 3/10/2012.

26. It is argued by the ld. counsel for accused no.3 Advocate Mr.Santosh Deshpande and accused no.5 Advocate Mr.Rajput that if PW.28 B.R. Shetty left his office at 9.30 pm. and the incident occurred at about 9.40 pm. to 9.50 pm. then how PW.40 Vilas Rathod could receive the message of the incident at 9.40 pm. It has brought in the cross-examination of PW.28 itself that in the year 2012 his office was situated at Crystal Plaza, Lokhandwala and the Tanishq showroom is at distance of 300 meters from his office. Thus by car a person can easily achieve the distance of 300 meters within 5-7 minutes. This has gain confidence in the evidence of PW.28 B.R. Shetty that the incident occurred in between 9.40 to 9.50 pm.

27. Not only that PW.36 API Prakash Chandrakant Sawant recorded the statement of PW.28 Bailur R. Shetty on 03/10/2012 itself, wherein

as well he stated that he left the office to go to the house of his friend at 9.30 pm. It is material to point out here that on the basis of said statement of PW.28 B.R. Shetty, offence registered by PW.36 API Prakash Chandrakant Sawant at Police Station Amboli. In the FIR also the time of incident is mentioned as 21.40 hours to 21.50 hours on 03/10/2012, whereas the police station received the information on 03/10/2012 at 22.00 hours. Obviously for recording the statement of Bailur Shetty, PW.36 API Prakash Chandrakant Sawant must have spent some time and thereafter the FIR came to be registered. Ultimately, the contents of FIR corroborates the version of PW.28 B.R. Shetty about date and time of incident.

28. The prosecution has examined one of the witness PW.1 Jery Ebnezer Kairanna, who deposed that on 04/10/2012, at about 05.30 pm. police met her in Seven Hills Hospital, Marol, Mumbai and in her presence, took the mobile of B.R. Shetty having golden colour of Nokia company bearing no.9821580008. Police prepared seizure panchanama vide Exh.110. Her evidence also corroborates the fact that the injured B.R. Shetty on 04/10/2012 was admitted in the Seven Hills Hospital and his mobile came to be seized by Police. Further, the prosecution examined PW.4-Sanjay Vimalkumar Maheshwari about production of CCTV footage of the Tanishq showroom. He deposed that on 03/10/2012, he was on duty till about 09.00 pm. and after he left for his house, he received phone call that some firing had taken place in front of the showroom. It means that the firing took place after 9.00 pm. onwards. All these facts does and did indicate that the incident took place on 03/10/2012 in between 9.40 pm. to 9.50 pm.

PLACE OF OFFENCE

29. As per the theory propounded by prosecution the incident took place in the lane adjacent to Tanishq showroom, in between Tanishq showroom and Purvi Building. After the incident for the first, statement of the injured B.R. Shetty recorded at the Kokilaben Hospital by PW.36 API Prakash Sawant, he stated that from the signal before Tanishq showroom he took right turn in the lane on the left side of the Tanishq showroom and when he came in front of Purvi building, the incident occurred. Whereas PW.28 B.R. Shetty deposed that there was a traffic signal near the Tanishq showroom, he took a right turn from that signal, there was a speed breaker, he slowed his car at that time one motor cycle came on the right side of his car and they opened fire at him by firearm. Therefore in view of evidence of PW.28 the incident took place after taking right turn from the signal before Tanishq showroom and while proceeding in that lane in between Tanishq showroom and Purvi building. Apparently, on 03/10/2012 PW. 28 B.R. Shetty was taken to Kokilaben Hospital and then on 04/10/2012 he was admitted to Seven Hills Hospital and discharged on 17/10/2012. It means that from 03/10/2012 till 17/10/2012 he was not in a position to show the actual spot of incident to the police.

30. On 03/10/2012 itself PW.36 API Prakash Chandrakant Sawant alongwith PW.40 PI Vilas Jemu Rathod visited the spot of incident and prepared the spot panchnama Exh.325. It has come in the evidence of PW.40 PI Vilas Jemu Rathod that the spot of incident was behind Tanishq showroom in the lane between Tanishq showroom and Purvi Building. They took search at the spot of incident, but did not find anything. It reveals from the contents of the spot panchnama

(Exh.325) that the spot of incident is shown by one Dinesh Dwarakanath Bansal and it is situated on the road facing east west in between Tanishq showroom to Purvi Building. Thus from the spot panchanama and evidence of PW.28 B.R. Shetty, PW.36 API Prakash Chandrakant Sawant and PW.40 PI Vilas Jemu Rathod, the spot of incident is situated in the lane between Tanishq showroom to Purvi Building I.e. near Purvi building. This is in consonance with the version of PW.28 B.R.Shetty.

31. Much is argued by the defence about the change of spot of incident. It is argued by the Ld. Counsel for accused no.3 Adv. Mr.Santosh Deshpande that the prosecution has failed to prove the spot of incident. It is argued that as per the story of prosecution and evidence of prosecution witnesses there are three spots of incident. It is argued that as per FIR and statement of injured B.R. Shetty Exh.324, the incident took place in front of Purvi Building, another spot is in between Tanishq showroom to Purvi Building and as per the history stated by injured B.R. Shetty to PW.47 Dr. V. Satyaprasad, the incident took place near Lokhandwala which is far away from Tanishq showroom. Therefore it is argued that the prosecution has failed to prove spot of incident itself, which is fatal to the prosecution case. It is also argued that the prosecution did not examine the person i.e. Dinesh Bansal who showed the actual spot of incident nor even examined the independent panch witness. In fact it appears from record that summons was issued to the panch witness Giridhari Dayali Yadav on the Spot panchnama, but it could not be served and it is reported that said person is not residing at the given address. If the person himself is not traceable prosecution cannot be burdened or compel to examine such

person. It is obligatory for prosecution to take efforts to call such witness for adducing evidence, but for the aforesaid reason, prosecution cannot be blamed. Even otherwise it is PW.36 API Prakash Chandrakant Sawant who recorded the statement of injured PW.28 B.R. Shetty and got knowledge about the spot of incident. Not only that said Dinesh Bansal being a friend of PW.28 B.R. Shetty must have visited the hospital and got the knowledge about the spot of incident. Therefore, evidence of PW.36 API Prakash Sawant coupled with evidence of PW.40 PI Vilas Jemu Rathod is sufficient to prove contents of Spot Panchanama Exh. 325.

32. Apparently PW.47 Dr. V. Satyaprasad in his cross-examination admitted that history was taken from the patient and as per discharge summary incident occurred at 9.50 pm. at Lokhandwala Complex. In fact, while giving said suggestion the discharge summary was not referred to the witness. Ongoing through the discharge summary it is mentioned that patient was traveling in his car (on driving seat) near Lokhandwala Complex, Andheri (West). Moreso, this cannot be the first statement made about the spot of incident by the injured B.R. Shetty. Earlier to this on 03/10/2012 itself, in Kokilaben Hospital, statement of the injured came to be recorded and he stated about the lane passing in between Tanishq showroom to Purvi Building. From the discharge summary it could not be gathered who narrated the history.

33. The learned Advocate Mr.Deshpande and Adv. Mr.Rajput argued that the scene of offence itself is in dispute and not proved by the prosecution, which makes the entire case of the prosecution doubtful. It is pointed out that on one hand, it is the evidence of PW.28 B.R. Shetty

that the incident took place in the lane in between Tanishq Showroom to Purvi Building, whereas in his statement dated 03/10/2012, he stated that the incident took place near the Purvi building. Attention is brought towards cross-examination of PW.28, wherein he stated that he had not reached the Purvi building before firing. The defence has brought portion marked 'C' in the statement of PW.28 B.R. Shetty, which is duly proved through the evidence of PW.36 API Prakash Chandrakant Sawant vide Exh.324. Certainly, there is minor discrepancy in the evidence of PW.28 B.R. Shetty regarding the spot of incident near or in front of Purvi building. It is material to verify that whether the spot has been changed deliberately ? It cannot be expected that every person should have photographic memory. Apparently the statement of PW.28 B.R. Shetty came to be recorded in the hospital, when he was in injured condition. In his evidence, he specifically deposed that the incident took place in the lane in between Tanishq Showroom and Purvi Building. He denied all the suggestions given by the defence regarding the change of spot in his cross-examination. No doubt, there are certain discrepancies about the spot of incident, but it cannot be said that the prosecution has deliberately changed the spot.

34. The learned counsel for accused argued that the IO PW.44 Arvind Mahabadi and CBI IO PW.48 Richhpal Singh did not visit the spot. Needless to say that before taking investigation by IO PW.44 Arvind Mahabadi, the spot panchanama was already performed and nothing suspicious was found there. Till when PW.44 ACP Arvind Mahabadi and PW.48 Richhpal Singh received the investigation, nothing was remained to investigate about the spot of incident, as such, non visiting the spot by IO PW.44 Arvind Mahabadi and PW.48 Richhpal Singh will not

discard the other credible evidence of witnesses regarding scene of offence.

35. Attention is brought towards the cross-examination of PW.42 API Sanjeev Dhumal wherein he stated that the incident took place on the opposite side of the Link Road and Tanishq Showroom and he cannot give the exact location of the road. He also stated that he cannot state whether incident took place on the road which was behind the Tanishq Showroom. It is argued that the evidence of PW.42 API Sanjeev Dhumal about the spot of incident is totally different i.e. opposite side of Link Road and Tanishq Showroom. In fact, PW.42 API Sanjeev Dhumal made it clear that he cannot give the exact location of the road, but it may be on the left side of the road on which Tanishq Showroom is situated. As the incident is of the year 2012 and the evidence of PW.42 API Sanjeev Dhumal is recorded in September 2018, he may not have recollected the exact location, which is natural human tendency. Fact remains that he stated about the road on the left side of the Tanishq Showroom, which is in consonance with the evidence of PW.28 B.R. Shetty. This fact is also stated by PW.40 Vilas Rathod in the cross-examination that it was a lane having no name.

36. The learned counsel for accused pointed out that PW.28 B.R. Shetty stated in his evidence that there was a speed breaker on the spot of incidence, so he slowed down his car. It is argued that in spot panchnama Exh.325, there is no reference of any speed breaker. Attention is brought towards cross-examination of PW.40 Vilas Rathod, wherein he has admitted that in the panchanama Exh.325, there is no mention of speed breaker on the road. Even it is pointed out that the

deposition of PW.28 B.R. Shetty about the speed breaker is an omission to his statement. There may be some discrepancies in the evidence of the injured PW.28 B.R. Shetty, but those are not sufficient to discard the fact that the incident took place in the lane in between Tanishq Showroom and Purvi Building.

37. Obviously, the incident took place, when the car was in running condition. It is specific evidence of PW.28 B.R. Shetty that after taking a right turn from the signal of Tanishq Showroom, he was going in the lane towards Purvi Building and the incident occurred in between Tanishq Showroom and Purvi Building. When the car was in running condition, there cannot be a fixed spot. Moreover, as per the evidence of PW.28 B.R. Shetty, he did not stop the car and went to Oshiwara Police Station. In such circumstances, the evidence of PW.28 B.R. Shetty inspires confidence that the incidence took place in the lane near Tanishq Showroom and in between Tanishq Showroom and Purvi Building. By changing the spot different from where the incident took place, nothing could be achieved by the prosecution.

38. The learned Adv. Mr.Deshpande for accused no.3 relied on the judgement of Hon'ble Bombay High Court in the matter of **Shripati Kashinath Ambede & Ors. Vs. State of Maharashtra** reported in **1997 ALL MR (CRI) 377**, wherein it is held that, “in some cases the failure of the prosecution to prove the place of the incident may introduce a fatal infirmity in its case and certainly in one such case; especially because the defence has challenged the place of incident”. It seems that the above observations expressed by the Hon'ble Bombay High Court considering the situation that blood must have gushed out from the neck and chest of the deceased and there was heavy pelting of stone,

but no blood or stones found on the spot, therefore, discarded the spot of incident. Here in this case, the injured was fired, the bullet passes through the glass and the pieces of glass were found inside the car. Actually looking to the situation of the glass affixed to the car, there is less possibility of falling glass pieces outside of the car. Absence of the pieces of glass on the spot, will not discard the occurrence of incident and spot. Thus, the afore cited judgment is not made applicable to the facts and circumstances of the present case. The evidence of PW.28 B.R. Shetty coupled with spot panchanama Exh.325 leaves no room of doubt that incident took place in the lane in between Tanishq show room and Purvi building.

INSPECTION AND PANCHNAMA OF CAR

39. After visiting to the spot, PW.36 API Prakash Chandrakant Sawant and PW.40 PI Vilas Rathod went to Oshiwara Police Station where the vehicle of injured was kept. It has come in the evidence of PW.40 PI Vilas Rathod that three ballistic experts were present there. The vehicle was a Black Skoda Car having registration No.MH06-AS-6210. Ballistic experts examined the car. Some blood was found on the place near driver seat on right side. Blood was collected in the cotton swab. They also collected the broken pieces of glass. He further deposed that Ballistic experts found one hole on the front door of the left side of the car. When they opened the dash board and left side front door, found some bullets. They took measurement of the bullets. Two bullets were seized vide Article-17(Colly). They prepared the panchnama Exh.145 and photographs of the car were also taken. The evidence of PW.36 API Sawant about the inspection and panchanama of the car is in consonance with PW.40 PI Vilas Rathod.

40. In order to prove the contents of spot panchnama, the prosecution also examined panch witness PW.5 Sandhu Baccheshwar Mandal, who deposed that on 04/10/2012, he was called to Amboli Police Station. One Black colour Skoda car was parked in the police station. There were bullet stuck in the dash board of the car. Police recovered bullets and kept in Khaki envelope. Police took samples of glass from inside the car and the blood samples. The front side window glass of the car was broken. There was some blood found on the driver seat of the car and police collected the blood sample with the help of the cotton swab. The witness identified the contents of the panchnama Exh.135. The witness also identified the bullets Article-17 (Colly) and pieces of glass Article-19 (Colly). He also identified the photographs of the Black colour Skoda car Exh.136(Colly).

41. It is argued by the learned counsel for the accused that the inspection of the car and panchanama is doubtful. It is pointed out that as per evidence of PW.36 API Prakash Sawant and PW.40 PI Vilas Rathod, they inspected the car and carried panchanama in the intervening night of 03/10/2012 and 04/10/2012, whereas it is the evidence of PW.5 Sandhu Mandal that the panchanama was performed on 04/10/2012 at 10.30 pm., and he admitted in his cross-examination that he had gone to the police station at about 10.30 am. Therefore, it is argued that the spot panchanama Exh.135 is doubtful. It is also pointed out that as per evidence of PW.5 Sandhu Mandal, the car was parked at Amboli Police Station. Apparently, PW.5 Sandhu Mandal in his examination-in-chief stated that the police called him at Amboli Police Station at 10.30 am. on 04/10/2012. But he nowhere deposed that the car was parked in the Amboli Police Station. The spot panchanama was performed by the officers of Amboli Police Station and therefore, the

panch witness might be called at Amboli Police Station, that does not mean that the vehicle was lying at Amboli Police Station. PW.5 Sandhu Mandal nowhere admitted in his cross-examination that the vehicle was standing in Amboli Police Station and the panchanama was made at there. Even the defence smartly avoided to put such suggestion to the witness in cross-examination. No doubt his evidence is inconsistent as to the time of performing the panchanama, but it may be due to the fact that the panchanama was performed at night time. The panchanama was performed in the year 2012, whereas the evidence of PW.5 Sandhu Mandal came to be recorded in June 2017. Due to laps of time, there may be some loss of memory about the actual time of preparing the panchanama of the car, which is but natural. However, his evidence is very specific that it was a Black colour Skoda car, right side front window glass pieces were there on the front seat and some blood stains. His evidence is also credible about the seizure of two bullets in the car. Though several suggestions are given that no such panchanama was prepared, he denied the same. His evidence further inspires confidence, when he stated in his cross-examination that both holes were inside the car.

42. The learned counsel for accused pointed out towards photographs of the car at Exh.136-A to D and submitted that the photographs are taken in day hours, whereas the panchanama was shown to be prepared in the night time. Attention is brought towards cross-examination of PW.5 Sandhu Mandal who admit that the photographs of the Skoda car were taken in the police station in the morning of 04/10/2012. Certainly, ongoing through the photographs of the car, it do not seems to be snapped in the night time. Moreover, from the dust clotted over the car, it cannot be said that the photographs were taken in the

intervening night of 03/10/2012 to 04/10/2012. Merely because the photographs were taken in the day time, will not discard the execution of panchanama of the car in the intervening night of 03/10/2012 to 04/10/2012 by PW.40 PI Vilas Rathod.

43. What transpires from the aforesaid evidence is that on 03/10/2012 the injured PW.28 B.R. Shetty was going by his car towards the house of his friend Dinesh Bansal. From the panchanama Exh.135 and evidence of PW.28 B.R. Shetty, it is explicit that the car was a Black Colour Skoda car having No. MH06-AS-6210. Not even that from the panchanama of the car Exh.135, the situation that the right side window glass of the car was broken, two bullets holes were found in the dash board and left door of the car, unhesitatingly points out that firing was made on the car by the assailants.

REPORT/FIR

44. After the incident, the injured PW.28 B.R. Shetty was taken to the hospital. On receiving telephonic information, PW.36 API Prakash Sawant from Amboli Police Station visited the Kokilaben Dhirubhai Ambani Hospital and recorded the statement of injured PW.28 B.R. Shetty at about 22.00 hours. On the basis of said statement, PW.36 API Prakash Sawant registered the FIR No.214/2012 with their Amboli Police Station. He duly proved the FIR Exh.324 with the statement recorded of the injured PW.28 B.R. Shetty.

45. The learned Advocate Mr.Rajput for the accused No.5 vehemently argued that the FIR do not bears the signature of the informant B.R. Shetty which give rise to an inference that the FIR was not dictated by the informant, but was written by the police officer. The learned

Advocate Mr.Rajput relied on the judgment of Hon'ble Bombay High Court in the matter of **State of Maharashtra Vs. Ahmed Gulam Nabi Shaikh & Ors.** reported in **MANU/MH/0179/1996**, wherein, it is observed that,

“FIR was neither signed nor bears thumb impression of informant deceased as mandated by section 154(1)-failure of prosecution to show as to how thumb impression was not taken may give rise to inference that FIR was not dictated by informant but was written by police officer at behest of someone else.”

46. Certainly when the FIR do not bears the signature of informant, there is every possibility of drawing inference that the same was written by the police officer. Here in this case, it is the specific evidence of PW.36 API Prakash Sawant that he made enquiry with the injured and recorded his statement as per his say and on the basis of same, he registered the FIR. He identified the statement of B.R. Shetty and also the contents of FIR. On showing the statement of B.R. Shetty, he identified his signature and also the contents of it. Though it is argued that the statement do not bears the signature of the informant, but said statement is short of necessary information. In fact, the statement of the injured bears his signature adjacent to the signature of PW.36 API Prakash Sawant.

47. Learned Advocate Mr.Rajput also pointed out that it is nowhere brought in the evidence of PW.28 B.R. Shetty that his statement was recorded. Attention is brought towards the cross-examination of PW.28 B.R. Shetty, wherein he admits that he did not read his statement at that time and he had not read his statement till today. Therefore, it is argued that when the informant himself do not read his statement and

not whispered anything in his examination-in-chief, the same cannot be treated as a first information. In fact, in the cross-examination itself it is brought on record that his statement was recorded after about half an hour after he reached to the hospital. Thus, the lacuna which was kept by the prosecution in examination-in-chief is cured in cross-examination. No doubt the statement of injured dated 03/10/2012 is not referred to him in the examination-in-chief and his signature cannot be identified by him, but on this aspect the evidence of PW.36 API Prakash Sawant cannot be discarded. It is settled that FIR is not a substantive evidence and it can corroborate or contradict the evidence of the informant. Expeditious filing of FIR, rules out the possibility of deliberation, concoction and to falsely implicate anyone.

48. The learned counsel for accused strenuously argued that the injured at the first gave information about cognizable offence to the police official of Oshiwara Police Station. Attention is brought to the evidence of PW.28 B.R. Shetty, wherein he deposed that he told to police that the persons who shot at him were following him. It is also pointed out that PW.36 API Prakash Sawant had received the information from Kokilaben Hospital about the firing on B.R. Shetty and that must have to be treated as a first information regarding the cognizable offence. No doubt some information might have been given by the injured B.R. Shetty to the officers of Oshiwara Police Station, but it was there first priority to give treatment to the injured. It is settled that telephonic information which is cryptic cannot be regarded as first information. In fact, the intention to record the first information is to note about the happening of the incident which is a cognizable offence. Here there is no question of putting a different version by the injured

PW.28 B.R. Shetty. As such, non registration of the first information by Oshiwara Police Station will not make any change or fatal the case of prosecution.

NATURE OF INJURIES SUSTAINED BY THE INJURED

49. As per evidence of PW.28 B.R. Shetty, two persons came on motorcycle and the pillion rider fired at him. He deposed that in all four rounds were fired and he received one bullet injury on his right arm. After the incident the injured PW.28 B.R. Shetty was taken to the Kokilaben Dhirubai Ambani Hospital Andheri, whereat preliminary treatment was given to him. Then he discharged from the said hospital against medical advise. From the evidence of PW.46 Dr. Nandoliya, it is apparent that B.R. Shetty was admitted to their hospital on 03/10/2012 and discharged on 04/10/2012 against medical advise. The documents produced on record of the treatment of B.R. Shetty by PW.46 Nandoliya could not be read in evidence, as the prosecution has not examined the concern treating doctor nor prove the documents of treatment. Needless to say that a person cannot admitted in the hospital without there being any injury or ailment.

50. On this aspect the evidence of PW.47 Dr. V. Satyaprasad is material and crucial. He deposed that on 04/10/2012 at around 4 pm. one B.R. Shetty was brought to their hospital and he was having history of gun shot injury at the right hand arm which caused multiple fractures of humerus. PW.47 Dr. V. Satyaprasad produced on record the medical treatment papers of PW.28 B.R. Shetty at Exh.419 (Colly) wherein preliminary diagnosis is made as firearm injury fracture with right haemothorax. Even PW.47 Dr. V. Satyaprasad issued injury certificate Exh.420, 421, in which there is mentioned that B.R. Shetty was

admitted to their hospital with alleged history of gun shot injury and he sustained right humerus post firearm injury fracture with right haemothorax. Evidence of this witness coupled with the medical treatment papers and certificates issued by PW.47 Dr. V. Satyaprasad clearly establish that PW.28 B. R. Shetty received firearm injury to his right hand arm in the incident occurred on 03/10/2012.

51. It is argued by the learned Advocate Mr.Rajput for accused No.5 that the evidence of PW.47 Dr. V. Satyaprasad and certificate issued by him cannot be relied upon. It is argued that there is only one injury mentioned in the official record, on the contrary as per the evidence of PW.28 B.R.Shetty, the bullet struck to his hand and then went to the chest. In fact, it is brought in cross-examination that the bullet was passed through humerus and landed in the right hemi thorax. It is specific evidence of PW.47 Dr. V. Satyaprasad that the bullet hit in the humerus, deviate and then landed into the thorax. Therefore, he deposed that only one injury is mentioned.

52. It is further argued by learned Advocate Mr.Rajput that if any injury is caused to thorax there may be loss of blood which may result into failure of major organs. The learned counsel pointed towards the cross-examination of PW.47 Dr.V. Satyaprasad, wherein he admitted the fact of loss of blood. However, he volunteers that it depends upon the area of injury. It is admitted by PW.47 Dr. V. Satyaprasad that there used to be five liters of blood in the body but he cannot quantify the percentage of blood in the thorax. Though it was brought on record that due to loss of blood in the thorax, it may result into failure of major organs, but no suggestions are given that such is the situation happened

in case of the injured. Therefore, this defence raised by the accused is hypothetical. PW.47 Dr. V. Satyaprasad rightly admitted that there was no visible injury on thorax. Certainly, when the bullet struck to the humerus and then landed in right hemi thorax, there can be only one visible injury seen on the right arm. The injury on thorax is not visible. Actually, as the blood was clotted in the thorax, inter-costal drainage was put to remove the same.

53. The learned Advocate Mr.Pasbola argued that there was no glass injury. It is argued that if the bullet passes through the glass and the glass was broken, glass injury must have been caused to the injured. In fact, PW.47 Dr.V. Satyaprasad clearly admitted that there was no glass injury and he did not find any glass fragments, that does not mean that the glass injury must have been caused. It cannot be firmly said that as the glass was broken, glass injury must have been caused to the injured. It is further argued by Advocate Mr.Pasbola that PW.47 Dr.V. Satyaprasad was unable to state how many multiple fractures of humerus were there. On this, PW.47 made it clear that though he used word multiple, but it is compound fracture. He fairly admitted that he has not mentioned compound fracture in the injury certificate Exh.420. This is minor discrepancy brought in the evidence of PW.47, but insufficient to discard the injury certificate Exh.420.

54. Learned Advocate Mr.Rajput pointed out that despite of the injury to Thorax, the injured took full diet which creates doubt about the nature of injury sustained to the injured. In fact, PW.47 admitted that full diet was given to the patient B. R. Shetty after 07/10/2012 and he denied that diet was given to patient from 04/10/2012 to

06/10/2012. It indicates that full diet was not given to the patient from 04/10/2012 to 06/10/2012. This ground raised by the accused is not sufficient to create dent in the evidence of PW.47 and injury certificate Exh.420.

55. It is argued by the learned counsel for accused that there is no evidence placed on record that the bullet which was hit to the injured and landed in the thorax is still in his body. It is pointed out that the x-ray and CT Scan done at Kokolaben Dhirubai Ambani Hospital are not produced on record and for want of the same, it is difficult to ascertain that the bullet is still in the body of the injured. On this aspect, the evidence of PW.28 B.R. Shetty is candid enough. Even PW.47 Dr. V. Satyaprasad deposed that SC Scan and X-ray of right hand showed the presence of bullet or radio opaque shadow which they confirm as a bullet shot. They also found that minimum amount of blood clotted at right hemi thorax, so they decided to remove the humerus fracture and to put inter-costal drainage to remove the clotted blood. Accordingly, he put the inter-costal drainage. No doubt, the x-ray of right hand and CT Scan taken by the previous hospital is not proved/brought on record by the prosecution, but the evidence of PW.47 is cogent and reliable on this aspect. Not only that in the treatment papers also the fact of presence of bullet in right hemi thorax is clearly mentioned. There is no reason for PW.47 Dr.V. Satyaprasad to make false statement in the Court in this regard.

56. It is argued by the learned Advocate Mr.Rajput that the entire treatment papers of Seven Hills Hospital is not in the handwriting of the PW.47 Dr. V. Satyaprasad and therefore, he is not a treating doctor and

best person to comment upon the injury caused to the injured. In a question put to the PW.47, he admitted that treatment papers are not in his handwriting. PW.47 is a consultant cardiological surgeon and practicing since 1982, therefore, it is not expected that he should take notes in the treatment papers. It may be the fact that his juniors may have taken the notes. The fact that the treatment papers bears his signature and that of attending doctors obligate to believe the same. As such, there is no substance in this ground raised by the Advocate for accused No.5.

57. It is further argued by learned Advocate Mr.Rajput that the injury certificate is required to be given in specific format. On that PW.47 stated that if it is prescribed. As no specific format was given to the witness, it could not be expected that the injury certificate must be in the specific format. What is important is to mention about the nature of injuries caused and by what means. When it is the specific evidence of PW.47 that the injuries are gun shot injuries, what more nature of injuries are required to be stated. In this regard, certificate issued by PW.47 Exh.420 is clear and explicit.

58. It is also argued that in the certificate, age of injury is not mentioned, on which PW.47 volunteers that the date is material. Apparently, from the treatment papers Exh.419(colly) the patient B.R. Shetty is admitted in Seven Hills Hospital on 04.10.2012 at 4.26 am. as an emergency patient. In the history there is specific mention about gun shot injury. Even it is the evidence of PW.47 that previously the patient was treated at Kokilaben Hospital. The evidence of PW.28 B.R. Shetty is also specific that he received the bullet injury in between 9.40 to 9.50

pm. Not only that PW.36 API Prakash Chandrakant Sawant and PW.40 PI Vilas Jemu Rathod immediately visited to the Kokilaben Dhirubai Hospital. As such, there cannot be a dispute about the age of injury. The Ld. Advocate for accused no. 5 failed to brought anything suspicious on record to show that the age of injury is something different. In fact a suggestion is given to PW.28 B.R. Shetty that he got the firing done on himself. This suggestion does and did indicate that the firing was taken place on PW.28 B.R. Shetty.

WHETHER THE INJURY IS GUN SHOT/FIREARM INJURY?

59. It is specific evidence of PW.28 B.R. Shetty that on 03/10/2012 when he was moving towards the house of his friend by his car and after taking right turn from Tanishq showroom, two persons came on motorcycle on the right side of his car and the pillion rider opened fire at him. He specifically deposed that one of the bullet struck to his right hand arm. The evidence of PW.28 B.R. Shetty is also corroborated by PW.47 Dr. V. Satyaprasad that the patient was brought to their hospital having history of gunshot injury on his right arm. Even PW.47 Dr. V.Satyaprasad in his cross-examination clearly stated that the bullet was passed through humerous and landed in the right hemi thorax and the bullet did not exit out of the hand. As per evidence of PW.47 Dr.V. Satyaprasad and even PW.28 B.R. Shetty, the bullet is still in the body of B.R. Shetty. This fact leaves no room of doubt that injury sustained to PW.28 B.R. Shetty on the right hand arm and thorax is gunshot injury/bullet injury.

60. An attempt is made to show that the injured B.R.Shetty is having criminal past and such injury may have caused to him in the previous

incident. However, the defence failed to brought anything on record that previously firing was done on PW.28 B.R. Shetty and he was admitted to hospital for the treatment of such injury. This defence is without any foundation and a hollow attempt to create doubt.

61. It is pertinent to note here that when PW.28 B.R. Shetty was admitted in Kokilaben Hospital his clothes, blood samples etc. was seized by police. The prosecution examined PW.2 Jitendra Rajakant Zha in whose presence police collect blood sample, clothes etc. of the injured B.R. Shetty at Kokilaben Hospital, Andheri. PW.2 Jitendra Zha specifically deposed that the police seized towel (Art.4), white shirt stained with blood (Art.8), Khaki trouser (Art.11) and four cotton swabs (Art.14 colly). As per his evidence police prepared the Seizure Panchnama (Exh.122), which bears his signature. From the evidence of this witness police duly proved the seizure panchanama Exh.122 and identified the Articles. Nothing is brought in the cross-examination to discard the testimony of this witness. Though a Portion Mark is brought in the cross-examination that the contents of the Seizure Panchanama were narrated by police, is not sufficient to disbelieve this witness. In fact the Seizure Panchanama Exh.122 and seizure of the articles were made at the instance of PW.36 API Prakash Sawant, who also deposed in accordance with the PW.2 Jitendra Zha.

62. The Ld. Advocate Mr.Deshpande for accused no.3 argued that the panchanama Exh.122 is antedated, ante timed and fabricated document. Attention is drawn towards cross-examination of PW.2 Jitendra Zha wherein he admit that he had put his signatures wherever he has told by police. In fact ongoing through the contents of Spot

Panchanama Exh.122 it appears that it was started at 23.55 hrs. and completed at 00.40 hrs. at Kokilaben Dhirubhai Ambani Hospital. It is also specific evidence of PW.2 Jitendra Zha that police called him at the hospital in the Emergency Ward in between 11.30 to 11.45 pm. Therefore evidence of PW.2 Jitendra Zha is consistent with the Seizure Panchanama Exh.122. There is no inconsistency regarding the date and time of preparation of seizure panchanama. The evidence of PW.2 Jitendra Zha and PW.36 API Prakash Sawant are trustworthy and corroborate P.W.28 B.R. Shetty.

63. On verifying the Art.8 i.e. white shirt, there appears a hole on the right hand arm sleeve of shirt. The description given by the witness about the shirt and the trouser matches. The trouser appears to be stained with blood. There is reason to believe that the hole seen at the right hand arm sleeve occurred due to gun shot injury. This is also additional circumstance indicating that injury caused to PW.28 B.R. Shetty at the right hand arm is gunshot/bullet injury. The evidence of P.W.28 B.R. Shetty coupled with the evidence of P.W.47 Dr. V. Satyaprakash and the evidence of P.W.36 API Prakash Sawant, P.W.40 Vilas Rathod, P.W.2 Jitendra Zha led by the prosecution unequivocally goes to show that the injury sustained by PW.28 B.R. Shetty on his right arm hand is caused due to firearm/gun shot injury.

IDENTIFICATION OF ASSAILANTS

64. In his statement (Exh.324 colly.) dt.03/10/2012, injured PW.28 B.R. Shetty gave the description of the assailants as :

- (i) Motorcycle rider- age about 25 to 30 years, complexion- Wheatish (Nimgora), built-medium, wearing white shirt and black pant.

- (ii) Assailant who fired- age about 25 to 27 years, complexion- Blackish(Kala-Sawala), built-medium, brownish pant and dark colour shirt.

65. This description of the assailants is given by the injured just within one and half hour of the incident. From the description, it is clear that the assailants were the young persons. PW.40 PI Vilas Rathod conducted the initial investigation. During the investigation, he made an attempt to collect the CCTV footage of the Tanishq Showroom. On 04/10/2012, he called the Store Manager of the Tanishq Jeweler namely Sanjay Vimalkumar Maheshwari (PW.4). He requested PW.4 Sanjay to furnish the CCTV footage of the date of the incident. Accordingly, PW.4 Sanjay submitted the CD(Art.X-2) of the CCTV footage. PW.40 PI Vilas Rathod deposed that CCTV footage showed vehicle of the victim and a motorcycle next to it. He seized the said CD for the purpose of the investigation and prepared panchanama in presence of panchas vide Exh.352.

66. To prove the collection of the CCTV footage, the prosecution examined PW.4 Sanjay Vimalkumar Maheshwari who is the Store Manager of Tanishq Showroom, Andheri. It has come in his evidence that on 04/10/2012, he produced the CCTV footage of 03/10/2012 for the period and time demanded by police. The CCTV footage was of the front gate camera, side passage of entrance and left side entrance. Said CD was played before the Court during the evidence of PW.4 Sanjay Maheshwari and even PW.40 PI Vilas Rathod, but except it is of which gate, nothing is brought about the actual incident of firing. Even the photographs taken out from the CD are placed on record at Article-81(colly) of left side entrance of Tanishq Showroom. However those are

not duly proved by the prosecution and therefore, cannot be read in evidence.

67. The learned Advocate Mr.Rajput for accused No.5 argued that the prosecution failed to prove the contents of the CD, as no certificate u/s. 65(B) of Evidence Act is placed on record. The learned Advocate relied on the judgment of Hon'ble Supreme Court in the matter of **Anwar P.V. Vs. P.K. Bashir and Ors.** reported in **AIR 2015 SC 180**, wherein it is held that,

“Proof of electronic record is a special provision introduced under the Evidence Act. The very caption of section 65A of the Evidence Act, read with section 59 and 65(B) is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed u/s. 65(B) of the Evidence Act. This is a complete code in itself. Being a special law, the general law on secondary evidence u/s 63 and 65 has to yield. An electronic record by way of secondary evidence, therefore, shall not be admitted in evidence unless the requirements u/s. 65(B) are satisfied. Thus, in a case of CD, VCD, chip etc., the same shall be accompanied by the certificate in terms of section 65(B) obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible.”

68. Apparently, PW.4 Sanjay Maheshwari got the CCTV footage in a CD and produced it to the police, which is secondary evidence of the electronic record. No certificate u/s.65(B) of the Evidence Act is produced neither obtained by the police from PW.4 Sanjay Maheshwari. For want of the certificate u/s.65(B), the secondary evidence pertaining to the electronic record i.e. CD is inadmissible. In fact the aspect of producing the certificate u/s.65(B) of the Evidence Act is now relaxed to the extent that it can be produced during trial also, still prosecution failed.

69. It has come in the evidence of PW.28 Mr. B.R. Shetty that he tried to look in the right side mirror of the car to see who were behind him but he could not see anything. He also deposed that he saw in the rear view mirror and found those two persons behind car. It means that the injured PW.28 B.R. Shetty saw the assailants in the rear view mirror of his car. He also deposed that the persons who fired at him may followed him till Oshiwara Police Station. After incident he identified accused Talvinder and Dilip Upadhyay in the Test Identification Parade conducted in the Arthur Road Jail on 21/12/2012. He deposed that the pillion rider was accused Dilip who fired at him and at that time, accused Talvinder Singh was driving the motorcycle. PW.28 B.R. Shetty identified the accused Dilip and Talvinder Singh before the Court.

70. The learned Advocate Mr. Aniket Wagal for accused No.4 argued that there was no occasion for PW.28 B.R. Shetty to see the accused. It is submitted that the fact that he saw the assailants in the rear view mirror is an omission to his statement dated 03/10/2012, which is duly proved by PW.36 API Prakash Sawant. It is pertinent to note here that the supplementary statement of the injured came to be recorded on 06/10/2012, 22/10/2012 and also, on 22/12/2012. The statement dated 06/10/2012 and 22/10/2012 are earlier to the point of the arrest of the accused Dilip and Talvinder. Apparently, the accused Dilip and Talvinder came to be arrested on 26/11/2012 at Jalandhar Bus Stop Punjab. There is no such omission in the subsequent statement. It is but natural on the part of the injured PW.28 B.R. Shetty to see the assailants who fired at him.

71. The learned Advocate Mr. Wagal for the accused no.4 pointed out towards the cross-examination of PW.28 B.R. Shetty wherein he admit that there were street lights on the road and the incident happened in 10 to 20 seconds. It is argued that in 10 to 20 seconds, it is difficult to see somebody and remembered them and identified after two months and even, after six years at the time of recording of evidence. The learned Advocate Mr. S. G. Rajput relied on the judgment of Hon'ble Supreme Court in the matter of **Md. Sajjad v/s State of West Bengal**, reported in **AIR 2017 SC 642**, wherein, it is held that :-

“None of the witnesses had disclosed any features for identification which would lend some corroboration. The Identification Parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the Accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances such identification simpliciter cannot form the basis or be taken as the fulcrum for the entire case of prosecution.”

72. On this aspect, the learned Advocate further relied on the following judgments :-

- i) Hon'ble Supreme Court in the matter of **Wakil Singh and Ors., Vs. State of Bihar** reported in **AIR 1981 SC 1392**, wherein, it is held that, “when identification parade was done after three months it was not possible for human being to remember the features of Accused”.
- ii) Hon'ble Supreme Court in the case of **Muthuswami Vs. State of Madras**, reported in **AIR 1954 SC 4**, it is held that,

“The Appellant was identified by each of the three eye witnesses who have been called. We consider it would be unsafe to accept this identification two and half months after the event. It is true the murder was committed in the

middle of the day but it is equally true that the three witnesses saw the assailant for a very brief interval of the time even if the story about them walking by in single file ten minutes after the occurrence is true. It would be a remarkable feat for even one witness to do this but we find it impossible to believe that no less than three were able to do so. The fact that they did pick out the Appellant and his co-accused at the parade is of course beyond dispute but it seems evident to us that the suspect must have been pointed out to them before and that of course destroys the value of the investigation and once we get that for suspicion is at once cast on the genuineness of the confession.”

- iii) Hon'ble Bombay High Court in the matter of **State of Maharashtra Vs. Dashtrath Viswanath @ Aangrajya Pawar**, reported in **2017 DGLS (BOM) 409**. In this matter the Hon'ble Bombay High Court reproduced the guidelines laid down for test identification parade in 16 (2)(a) to (p) from chapter I of Criminal Manual and held that,
 “if the delay is inordinate and there is evidence probabalizing the possibility of the accused having been shown to the witness, the Court may not act on the basis of such evidence.”

73. Relying on the afore cited judgments it is argued that PW.28 B.R. Shetty could have seen the assailant for the period of 10 to 20 seconds only and therefore, it is not possible for any human being to remember the features of accused. It is also argued that it would be unsafe to accept this identification of the accused.

74. After the arrest of the accused Dilip and Talvinder and after they have been sent in JCR, the investigation officer arranged for the test identification parade of the accused Dilip and Talvinder. After making necessary communication, PW.37 Shirish Keshav Narkar, the Naib Tahasildar deputed for test identification parade. The prosecution

examined said PW.37 Shirish Keshav Narkar. In view of the provisions of section 291-A of Cr.P.C., the test identification parade conducted by PW.37 Shirish Narkar is directly marked as Exh.327. Ongoing through the Test Identification Parade panchanama Exh.327 it seems that it was prepared on 21/12/2012. The test identification parade was held at Arthur Road Jail from 10.45 am to 1.10 pm. The identification of the accused Dilip Upadhyay and Talvinder Singh was made by the injured PW.28 B.R. Shetty. They have arranged for 12 dummies and in between the dummies, PW.28 identified the accused Dilip and accused Talvinder Singh.

75. It is argued by the learned Advocate Mr. Rajput that the test identification parade and panchanama was not prepared as per the guidelines of the Hon'ble Bombay High Court. Attention is drawn towards the afore cited judgment in the matter of **State of Maharashtra Vs. Dashrath Pawar (Supra)**. The learned Advocate Mr.Rajput also relied on the judgment of Hon'ble Bombay High Court in the matter of **Ganesh Bhagwati Pandian Vs. State of Maharashtra**, reported in **1985 Cri. L.J. 191** in which it is held as follows:-

“If a suspect is to be identified in an identification parade, the most elementary precaution that should be taken is that persons similar in appearance, height, age, etc. to the accused should be made to stand as dummies in that parade. If the suspect according to witness, was having a clean shaven head and a shendi and ultimately in the identification parade only one person had a clean shaven head and a shendi (tuft), that is a farce of an identification parade.”

76. The learned Counsel further relied on the judgment of Hon'ble Bombay High Court in the matter of **Mohd. Iqbal Farookh Shaikh V/s. State of Maharashtra** reported in **2007 (Supp.1) BOM.C.R. 415**

wherein it is held that “around two months after incident- SEO not questioning witness to ascertain whether they have opportunity to see accused or their photographs beforehand- efficacy of T.I.P.- held material on record creates doubt about efficacy. Accused though identified in such a period will have to be given benefit of doubt”.

77. It is argued that since beginning the accused Talvinder Singh is wearing Turban and sporting beard. Attention drawn towards the cross-examination of PW.37 Shirish Narkar wherein he admits that none of the dummies were wearing turban and sporting beard. He also admits that the accused Talvinder Singh was having different identity than other dummies. It is also pointed out that no enquiry was made with the accused whether they have any problem with the dummies. No instruction was given to the identifying witness as to how to identify the accused. He also admits that from the memorandum it cannot be said that the dummies were looking similar to accused Talvinder Singh or accused Dilip Upadhyay. Certainly, there are some flaws in the identification parade of the accused.

78. It is settled that the test identification parade are meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeded on right direction/lines. It is also settled that the test identification parade is not a substantive evidence. The identification of the assailant by the injured before the court is relevant and material. The injured PW.28 B.R. Shetty identified before the Court that the accused Dilip fired at him and accused Talvinder was riding the motorcycle.

79. It is argued by the learned Advocate Mr. Rajput and Advocate Mr. Deshpande that the accused Talvinder Singh being of Sikh community and keeping beard and wearing turban, easy to identify. It is argued that surprisingly, though, PW.28 B.R. Shetty stated that he saw the assailants, but, in the description did not state that one of the assailant was wearing turban and keeping beard. It is significant to note here that as per the evidence of PW.28 B.R. Shetty he saw the assailants in the rear view mirror of his car. Apparently, it was the night time. Assuming that on that day, the accused Talvinder had worn a black colored turban then it is difficult to mark the same in the night time. Moreover, what is observed from the appearance of the accused Talvinder Singh is that he is not wearing a full turban which the majority of Sikh persons wore. Therefore, in the night time, it is difficult to see a person wearing black turban. Might be due to this reason, PW.28 B.R. Shetty may not able to gave description about wearing turban and keeping beard by accused Talvinder. Material is this that just within one and half hours of the incident he gave description of the assailants and later identified them before the Court.

80. It is argued by the learned Advocate Mr. Rajput that the accused Nityanand Nayak and Selvin Danial came to be arrested in October 2012 and thereafter, accused Dilip Upadhyay and Talvinder Singh shown to be arrested on 26/11/2012. Further, it is argued that in that time, PW.28 B.R. Shetty must have received knowledge about the assailants and therefore, he identified accused Dilip Upadhyay and Talvinder Singh. Attention is drawn towards portion marked 'A' brought in cross-examination of PW.28 B.R. Shetty that he did not state to police that he had come to know about the arrest of some of the accused in

this case through newspaper and T.V. It is argued that the said portion marked 'A' is duly proved from the evidence of PW.36 Prakash Sawant Exh.370. Assuming for the sake of moment that PW.28 B.R. Shetty received the information that the members of the Chhota Rajan Gang came to be arrested, however, it could not be gathered that the photographs of accused Dilip Upadhyay and accused Talvinder Singh were published in the newspaper or shown in the T.V. news. In fact, said portion marked 'A' is brought in the supplementary statement recorded on 22/10/2012 and thereafter on 26/11/2012 accused Dilip Upadhyay and Talvinder Singh came to be arrested. Thus, from the portion marked 'A' Exh.370, it is difficult to gather that PW.28 B.R. Shetty was knowing about the identification of accused Dilip Upadhyay and Talvinder Singh as on 22/10/2012. In the cross-examination, the defence has tried to brought on record that the injured PW.28 B.R. Shetty saw the accused Dilip Upadhyay and Talvinder Singh at the office of Anti Extortion Cell and even in the Court when they were produced for remand purpose, however, PW.28 B.R. Shetty denied all such suggestions. He also specifically denied that the photographs of the accused Dilip Upadhyay and Talvinder Singh was shown to him by Police. From this cross-examination, nothing could be extracted to gain confidence that PW.28 B.R. Shetty was having any occasion to previously see the accused Dilip Upadhyay and Talvinder Singh.

NO RECOVERY OF WEAPON

81. The evidence of PW.28 B.R. Shetty, nature of injury sustained to him and the opinion of the medical officer PW.47 Dr.V. Satyaprasad conjointly established that the injury caused to the informant B.R. Shetty was a gun shot/firearm injury. After arrest of the accused Dilip Upadhyay and Talvinder Singh, the prosecution has made an attempt

for the recovery of the weapon. Even, as per the disclosure made by the accused Talvinder Singh, search of weapon was made at Vashi creek. This fact is corroborated by PW.12 Shashi Ramdhan Pandey who was the panch witness on panchanama Exh.156. He specifically deposed that the panchanama was prepared at Vashi creek and the accused shown the spot where he threw the weapons, but, those could not be recovered. Considering the situation of the spot, the recovery of the weapon is quite impossible.

82. It is argued by the learned Counsel for the accused that as no weapons is seized, it cannot be said that the injuries caused to the injured B.R. Shetty are due to firearms. It is also argued that no attempt is made by the prosecution to get the opinion of the expert about the nature of weapon from which the recovered bullets can be fired. Obviously, there is no such investigation made by the IO. The fact that two bullets were recovered from the car of injured B.R. Shetty and one bullet is still present in the chest of the injured, leaves no room of doubt that, the injury was caused due to firearm. In this situation, non seizure/recovery of the weapon is not fatal to the prosecution case.

WHY TO BELIEVE PW.28 ?

83. It is argued by the learned Advocate for the accused that the evidence of PW.28 B.R. Shetty is not reliable and trustworthy. It is argued that there are material omissions and contradictions brought in the evidence of PW.28 B.R. Shetty by the defence, which makes his testimony unreliable. It is also argued that the injured PW.28 B.R. Shetty sold his Skoda car within 2 to 3 months of the incident that too without the permission of the Court. It is argued that he is not a person

to be trusted by law. It is pointed out that the injured PW.28 B.R. Shetty was having criminal background. Attention is brought towards his cross-examination, wherein he admits that he was in jail in a TADA case of Matunga Police Station for 8 months. He was the only person who was in jail in that case. He admit that in a robbery case of Ghatkopar Crime Branch he was in jail for 24 days. He was accused in robbery case of Canara Bank, Mulund. Therefore, it is argued that PW.28 B.R. Shetty is involved in illegal activities and his evidence is untrustworthy.

84. No doubt, PW.28 B.R. Shetty admit that he was involved in criminal cases and running dance bars, but, that is not sufficient to discard his testimony about the incident of firing occurred on him on 03/10/2012. His evidence was cogent and reliable as about the incident of firing took place on him in the lane in between Tanishq showroom and Purvi Building. His evidence about date, place and time of incident is well corroborated by the FIR and his statement Exh.324 colly. and the other evidence as discussed herein before. The injury sustained by him on his right hand arm can only be a gun shot/fire injury, which is duly corroborated by PW.47 Dr. V. Satyaprasad. Not only that the presence of a bullet in his chest i.e. right thorax and recovery of two bullets from his car clearly indicate that firing was made on him. It is settled that testimony of injured witness stands on a higher pedestal than other witness as the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence. **[Jodhan Vs. State of M.P. (2015 ALL SCR 2491)]**

85. The learned Counsel for accused vehemently argued that the injured PW.28 B.R. Shetty sold his Skoda car within 2 to 3 months of the incident without permission of the Court, which indicates that he

has no regard to law. Attention is drawn towards cross-examination of PW.28 B.R. Shetty, wherein, he admits that he sold his car after 2 to 3 months of the incident. He also admits that he has not sought any permission for sale of the vehicle. It is significant to note here that in the evidence of PW.5 Sandhu Baccheshwar Mandal, the photographs of the car (Exh.136 colly.) were exhibited. Not only that said four photographs were referred in the cross-examination of said witness and therefore, the further proof of the said photographs by the prosecution is dispensed with. Accordingly, the photographs were marked as Exh.136-A to 136-D. In such situation, the identification of the vehicle is proved by the prosecution, as such, physical verification of the vehicle is not required. No doubt, for sale of the car, PW.28 B.R. Shetty should have obtained permission of the Court, but, that by itself will not discard his testimony.

86. Attention is drawn towards the omissions and contradictions brought in the evidence of PW.28 B.R. Shetty and it is argued that the said omissions are fatal to the prosecution and goes to the root of the case. Proper discussion is made at the appropriate place about the omissions brought in the cross-examination of PW.28 B.R. Shetty. It is settled that the omissions are material when those are of such a nature which affects the core of the prosecution case. Here the omissions are not of such nature which affects the core of the prosecution case. As discussed earlier there are some contradictions about the scene of offence brought in the cross-examination of PW.28 B.R. Shetty, but, that is not sufficient to dislodge the fact of the incident and that the incident took place in the lane near the Tanishq showroom and in between Tanishq showroom to Purvi Building. On the basis of such

contradictions and omissions the evidence of PW.28 B.R. Shetty cannot be termed as unreliable and untrustworthy.

87. It is argued by learned Advocate Mr. Pasbola for the accused no.6 that the prosecution has not brought the best possible evidence on record. It is argued that the prosecution has not proved the CCTV footage of the Tanishq Showroom and even not brought the CCTV footage of the office of PW.28 B.R. Shetty i.e. Crystal Plaza and Purvi Building. The learned Advocate Mr.Pasbola relied on the reportable judgment of Hon'ble Supreme Court in the matter of **Tomaso Bruno and anr. Vs. State of UP in Criminal Appeal no.142 of 2015 dated 20/01/2015**, wherein, in para no.22 it is observed that “omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case.”

88. It is evident from the cross-examination of PW.28 B.R. Shetty that he do not know whether the CCTV footage are installed at Crystal Plaza. Even, PW.40 PI Vilas Jemu Rathod stated in cross-examination that he do not know whether CCTVs are installed in adjacent building. He did not search for CCTV footage from other buildings. In fact, he collected the CCTV footage from the Tanishq showroom in the CD (Article-X-2), but, the incident is not captured in it except the presence of the assailants on motorcycle and black colored car near to them. The prosecution has made an attempt to collect the best possible evidence, so failure to collect the CCTV footage from the other buildings would not make the case of the prosecution doubtful. In fact nothing is brought on record that CCTV cameras were installed on other buildings on said road. In sum and substance, evidence of PW.28 B.R. Shetty

inspires confidence and worthy of credit.

INDEPENDENT WITNESS

89. The learned Counsel for the accused tried to impress that the alleged spot of the incident is a crowded place and there is frequency of many vehicles, so also, there are other building situated on the said road, but, prosecution has not examined any independent witness. It is argued that if at all four rounds were fired by firearm, the adjoining residents must have heard the sound and approached to the spot. Logically, there is substance in this argument advanced by the defence, but, fact is that nobody come forward to state that they witnessed the incident. Normally, the independent persons are reluctant to come forward, more particularly to act as witness, for the reason of fear, threat, enmity etc. They do not dare to depose the truth before the Court, may be due to insecurity. Here, the incident is of firing in the public place, so, it is not expected that independent persons will come forward and dare to depose against the accused.

90. It is argued by the learned Counsel for the accused that the prosecution has failed to prove the intention of the accused to attempt to commit murder of injured B.R. Shetty. It is also argued that section 307 of the IPC is not made out against the accused, as there is no injury on the vital part. It is settled that intention can be gathered from the circumstances. The fact that assailants fired four rounds on the injured, itself is sufficient to gather that the intention of the assailant was to kill the injured. The use of the weapon firearm substantiate that the assailants i.e. accused nos.4 and 5 were having knowledge that they by that act caused death of the injured and they would have guilty of murder. Surprisingly, no suggestions are given to PW.47 Dr.V.

Satyaprasad in his cross-examination that the injuries are not sufficient to cause the death of the injured B.R. Shetty. The fact that the accused no.4 shoots at the injured, itself amounts to attempt to commit murder and is sufficient to attract the provisions of section 307 of IPC.

ARREST OF THE ACCUSED

91. It is necessary to point out here that looking to the nature of offence, the various branches of the Crime Branch helps in the investigation. During such attempt, on 20/10/2012 PW.38 PSI Laxmikant Narayanrao Salunkhe attached to Property Cell, DCB-CID arrested accused Nityanand Nayak when he was found moving suspiciously at Kalina. During his personal search, two mobile phones of Nokia Company, railway pass, card of SBI Bank, cash of Rs.480/- and Rs.30,000/- in a bag, a wallet came to be seized. The arrest and personal search panchanama (Exh.334) was accordingly prepared.

92. The accused Selvin Danial came to be arrested at Bangalore Airport on 23/10/2012 by the Anti Robbery Cell of DCB CID and he was given in the custody of Anti Extortion Cell. PW.42 Sanjeev Dattatraya Dhumal arrested accused Selvin Danial and conducted the arrest and personal search panchanama vide Exh.149. During personal search of accused Selvin Danial two mobile phones, two SIM cards and some money found with him. In support of the arrest panchanama (Exh.149), the prosecution also examined panch witness PW.10 Abbas Ismail Shaikh, who deposed accordingly.

93. The accused Dilip Upadhyay and Talvinder Singh came to be arrested by PW.39 API Nitin Pandurang Patil on 26/11/2012 at

Jalandhar Bus Stop. During personal search of accused Dilip one China Made mobile phone having two IMEI number one lather wallet having currency of Rs.250/- and Rs.10/-. One driving license having photograph of accused Dilip and name of one Arjun Singh Sumedh Singh was found.

94. During personal search of accused Talvinder Singh one mobile phone Samsung Company, another mobile of Nokia Company, one black wallet, PAN card, currency note of Rs.100/-, Voter ID Card having photo of Talvinder Singh but name of Jasveer Singh were found. Accordingly, arrest and seizure panchanama of the accused was prepared by PW.39 vide Exh.344.

95. It is argued by learned Advocate Mr. Rajput for accused no.5 that the IO has not followed the proper procedure for arrest of the accused. In this context, the learned Advocate relied on the judgment of Hon'ble Supreme Court in the matter of **D.K. Basu Vs. State of West Bengal** reported in **1997 Cri.L.J. 743**, and draw attention towards the preventive measure number 2,5 and 6 which are as follows :

- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which

shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

96. Apparently, accused Nityanand Nayak came to be arrested at Kalina and there is no possibility of presence of his relative at that time, so is the case of accused Selvin Danial, accused Dilip Upadhyay and Talvinder Singh. After arrest, the accused Dilip Upadhyay and Talvinder Singh brought to Mumbai. In support of the arrest of accused Selvin Danial, the prosecution has examined the panch witness. Much ado was made by the defence as to non examination of the independent panch witnesses in respect of the arrest and personal search of the accused Nityanand Nayak, Dilip Upadhyay and Talvinder Singh. The Court has to weigh the quality of evidence and not the quantity of the evidence. Therefore, when SPP found that his case can rest on the witnesses examined, it is his choice not to call any such further witness. It is the say of the SPP that they issued summons to the panch witness, but, they were not made available. The defence did not point out as to in what manner the prosecution is likely to gain advantage by not examining said witnesses. In fact, the accused Dilip Upadhyay and Talvinder Singh admitted in their written statements (Exh.447 & 439) that they were arrested by police. Therefore, this defence of the accused is of no relevance and for want of examining of the panch witnesses, the seizure and arrest panchanama of the accused Nityanand Nayak, Dilip Upadhyay and Talvinder Singh cannot be doubted. The other aspects about the recovery of the mobiles and CDR of the mobile collected by prosecution can be gone into the detail after discussion of the confessional statement of the accused.

CONFESSIONS

97. The mainstay of the prosecution is confessional statement recorded of the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh. The confessional statements of these accused came to be recorded as per section 18 of the MCOC Act and rules framed thereunder. For the sake convenience the provisions of section 18 of the MCOC Act and Rule 3 of Maharashtra Control of Organised Crime Rules 1999 are reproduced as follows :-

18. Certain confessions made to police officer to be taken into consideration.

- (1) Notwithstanding anything in the Code or in the Indian Evidence Act 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

- (2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.
- (3) The Police Officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and

time of the same.

- (4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.
- (5) The person whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.
- (6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

The Maharashtra Control of Organised Crime Rules, 1999.

3. Procedure for recording of confession under section 18 of the Act-

- (1) The Police Officer recording a confession under section 18 of the Act shall record it as provided in sub-rules (2) to (7) of this rule.
- (2) When the person whose confession is to be recorded is produced before such Police Officer, no Police Officer who has taken part in the investigation of the offence in connection with which the confession is being recorded, shall be allowed to remain present at the time of recording of the confession.
- (3) the Police Officer recording the confession shall explain to the person making the confession that he is not bound to make such confession and that if he does so, such confession

may be used as evidence against him.

- (4) After having been so explained and warned, if such person adheres to his intention and insists on making a confession, the concerned Police Officer, who is to record the confession shall give, not less than 24 hours time to the person making the confession for reconsideration of his decision to make confession.
- (5) After elapsing of the time given under sub-rule(4), when such person is again brought before such Police Officer, he shall once again ascertain from the person intending to make the confession whether he is still willing to make a confession. Upon such person reiterating his desire to make a confession, the concerned Police Officer shall record in writing the confession of such person in the same language and as narrated by the confessor.
- (6) The confession recorded under sub-rule (5) shall, if it is in writing, be signed by the person who has made such confession and by Police Officer, who has recorded the said confession. Such Police Officer shall, under his own hand, also make a memorandum at the end of the confession to the following effect :-

"I have explained to (name of the confessor) that he is not bound to make a confession and that, if he does so, any confession that he makes, may be used as evidence against him and I am satisfied that this confession has been made voluntarily. It has been made before me and in my hearing and has been recorded by me in the language in which it is made and as narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession/statement made by him".

- (7) Where the confession has been recorded on any mechanical device, the memorandum referred to in sub-rule (6) above, in so far as it is applicable, shall be incorporated in the form of a declaration made by the Police Officer recording the confession, by recording such declaration on the mechanical device at the end of the confession to the effect that the

confession recorded on the mechanical device has been correctly recorded in his presence and hearing and that the recorded statement/confession has been played back to the confessor and after hearing it, it has been admitted by him to be full, correct and without any technical faults in recording.

- (8) The Police Officer recording the confession shall, after forwarding the certified copy of the confession made or retraction, if any, thereof, to the Chief Magistrate or the Chief Judicial Magistrate as provided in sub-section (4) of section 18 of the Act and after ascertaining that the Chief Magistrate or the Chief Judicial Magistrate has, as provided in sub-section (6) of the said section 18, forwarded the confession to the Special Court for taking cognizance of the offence, supply a copy of the confession recorded by him to the Investigating Officer, who is concluding investigation into the offence in connection with which, or relating to which, such confession has been made, for the purpose of investigation.

98. The Hon'ble Bombay High Court in the citations relied on by the Advocate Mr.Rajput in the matter of **Ndukwe Onuobe Vs. Assistant Commissioner of Customs** reported in **MANU/MH/0224/1997** observed that,

“Confession is always acceptable to God; so also to Court, provided it comes out of a mind uninhibited and unfettered by any compulsion, duress, influence, or appeasement. It should emanate from free will of a person. Law of Evidence lays down different circumstances and situations when confession of an accused is inadmissible. Sections 24, 25, 26, 28, 29 and 30 of the Evidence Act lays down the situation and circumstance where a free mind can be vitiated.”

99. The principle behind acceptability of confessions is found in latin maxim “habemus optimum testem, confitentem reum”, means that

confessions of an accused is the best evidence against him. The rational behind this principle is that an ordinary, normal and sane person would not make the statement which would incriminate him unless urged by the promptings of truth and conscience.

100. The Hon'ble Supreme Court in the matter of **State (NCT of Delhi) V/s. Navjot Sandhu @ Afsan Guru** reported in **2005 Supreme Court Cases (Cri) 1715** held that,

“Before acting upon a confession the Court must be satisfied that it was freely and voluntarily made. Section 24 of the Evidence Act lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a Criminal Proceeding. The expression “appears” connotes that the Court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the Court will refrain from acting on such confession, even if, it be a confession made to a Magistrate or a person other than a Police Officer. Further, the confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the Court should eschew the confession from consideration. Recognizing the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in Police Custody the Evidence Act has excluded the admissibility of a confession made to the Police Officer.

Para-36 : The twin tests to be applied to evaluate the confession are: (1) whether the confession was perfectly voluntary, and (2) if so, whether it is true and trustworthy. If the first test is not satisfied the question of applying the second test does not arise. One broad method by which a confession can be evaluated is that the Court should carefully examine the confession and

compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances it may be taken to have satisfied the second test.

101. In view of the above pronouncement, before accepting any statement of the accused as confession, it has to pass following tests :-

- (i) Whether the statement to have been made by the accused is confession ? and whether such confession is voluntarily ?
- (ii) Whether the confession is truthful ?
- (iii) What is the value of the confession as against the maker and the co-accused ?

102. As per section 18 of the MCOC Act, the confessions made before Police Officers are admissible in the trial of such person or co-accused or abettor or conspirator. It is settled position of law that the confession of the accused can be fully acted upon on the facts and circumstances of each case. Therefore, it is now necessary to ascertain whether in the facts and circumstances of the present case, the confession of accused could be acted upon or not.

103. In the present case, the confessional statement of the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh are recorded by the Police officers of the rank of Deputy Commissioner of Police. As per section 18 of the MCOC Act, the Police Officer must not be below the rank of the Superintendent of the Police. Apparently here in this case, the confessional statements of the accused are recorded by the Deputy Commissioner of Police who are of the rank of

Superintendent of Police. Therefore, the basic condition of recording of confessional statement by the Police Officer not below the rank of Superintendent of Police is complied with.

104. As per evidence of PW.44 ACP Mahabadi, PW.42 IO Dhumal found involvement of Chhota Rajan Gang in the offence. Accordingly, he made recommendation to Joint CP (Crime) for applying the provisions of MCOC Act and on 05/11/2012 Joint CP accorded prior approval under section 23(1) of MCOC Act. Accordingly, sections of MCOC Act came to be added in the crime. He also gave letter to MCOC Special Court on 06/11/2012 for applying the provisions of MCOC Act in the offence. He produced the accused nos.2 and 3 for remand before MCOC Special Court and got their Police Custody. He deposed that on 07/11/2012, accused nos.1 Nityanand and accused no.2 Selvin Danial voluntarily agreed to confess. Accordingly, he made proposal to Joint CP (Crime) to record confessional statement of accused no.1 Nityanand and accused no.2 Selvin Danial. On 08/11/2012, Joint CP Crime deputed DCP Port Zone to record statement of the accused Nityanand Nayak and DCP Zone-IV to record statement of accused Selvin Danial. It has further come in his evidence that DCP Port Zone issued letter Exh.380 to produce accused-Nityanand Nayak before them on 08/11/2012. Accordingly, accused Nityanand Nayak was produced before them along with letter Exh.381. He received custody of the accused Nityanand Nayak on 10/11/2012.

105. ACP Mahabadi further deposed that on 08/11/2012 itself he send accused Selvin Danial before DCP Zone-IV and received his custody on 10/11/2012. After arrest of the accused Dilip Upadhyay and accused

Talvinder Singh Baxi on 26/11/2012, they were produced before him on 29/11/2012. He deposed that on 08/12/2012, accused no.4 Dilip Upadhyay and accused no.5 Talvinder Singh voluntarily agreed to confess. Accordingly, he sent proposal to Joint CP Crime for deputing the officer of DCP rank for recording confessional statement of the accused nos.4 and 5. Accordingly, on 10/12/2012, Joint CP Crime deputed DCP Zone-V to record confessional statement of accused Dilip Upadhyay and DCP Zone-I to record confessional statement of accused Talvinder Singh. On 10/12/2012, itself DCP Zone-V and DCP Zone-I issued letter to him to produce the accused before them on 11/12/2012. On 11/12/2012, he produced the accused Dilip Upadhyay and Talvinder Singh before DCP Zone-V and DCP Zone-I respectively. He deposed that he retained the custody of the accused Dilip Updhyay and Talvinder Singh on 12/12/2012. In regard to the confessional statement of the accused, I prefer to discuss about them as per the sequence of their arrest.

106. In regard to the confessional statement of the accused Nityanand, it is necessary to go through the evidence of PW.33-DCP Tanaji Balaku Ghadge. He deposed that in 2012, he was working as DCP, Port Zone. The then Joint Commissioner (Crime) Late Himanshu Roy, by letter dated 08/11/2012 addressed to record confessional statement of the accused Nityanand involved in C.R. no.104/2012 of DCB CID. IO of the said case was ACP Mahabadi. He issued letter to ACP Mahabadi directing him to produce accused Nityanand before him at 6:00 pm on 08/11/2012. He issued letter (Exh.301) to Yellow Gate Police Station to lodge accused Nityanand in their lockup. He directed Sr.PI, Sewree Police Station vide letter Exh.302 to send one officer along with two

guards to Yellow Gate Police Station on 09/11/2012 at 09:00 am. As per his directions, ACP Mahabadi forwarded the accused Nityanand with API Dalvi and the staff of Anti Extortion Cell. API Dalvi briefed him about the case and told that PCR of accused was to expire on 12/11/2012. Then he asked API Dalvi and other to left his chamber. He called PSI Nayak for typing. He directed PC Lade to stand outside the chamber. He informed to the accused that he was in his custody and not in the custody of the IO. He also told to the accused that he has not associated with the investigating agency. He asked the accused whether he was pressurized or coerced or somebody had promised him anything or any allurement was given to him to make confession. The accused replied in the negative. He also asked the accused that whether he was assaulted during his Police custody. He informed to the accused that if he made confession it could be used against him and he could be punished. The accused replied that he is ready to make the confession. On being asked, why he wanted to confess, the accused told him that he wanted to repent and have peace of mind. He informed the accused that he is giving him a period of 24 hours to consider his decision to make confession and during that period he will be lodged in the lock up of Yellow Gate Police Station. Accordingly, confession statement part I (Exh.303) came to be recorded. It was read over to the accused. The accused confirmed the correctness of the same and put his signature over it.

107. It has further come in his evidence that thereafter, the custody of the accused was handed over to PSI Jadhav of Yellow Gate Police Station. He was directed to get the accused medically examined and to act upon in accordance with the instructions which were given by him

to the Senior PI of Yellow Gate Police Station. He issued letter in the name of Medical Officer, Saint George Hospital for medical examination of the accused. Accordingly, medical examination of the accused was performed and copy of it was forwarded to him. He also directed PSI Jadhav to produce accused in his office on 10/11/2012 at 11:00 am.

108. It has further come in his evidence that on 10/11/2012, the accused was produced before him after he was first brought for medical examination. The accused was produced before him at 09:00 pm, by PSI Smt. Kandalkar and her staff. He started recording confession of the accused. He asked the accused whether anybody had met him while he was in custody of Yellow Gate Police station and whether anybody tried to give any allurement to him. The accused replied in the negative. He again remind him that if he made the confessional statement, it could be used against him. He asked the accused whether still he wanted to make confession on which the accused replied that he is ready to make the confession. Thereafter, what has been narrated by the accused about the incident and facts and circumstances of the case is recorded by the officer. The statement so made by the accused was read over to him. He was also made to understand the same in Hindi. On satisfaction of the accused that it was correctly recorded, the proceedings of confession part-II were completed at around 11:00 pm. The accused put his signature on the confession part-II (Exh.303-A). He prepared the certificate in accordance with the proceedings which were conducted and signed the same vide Exh.303-D. He prepared two letters, one addressed to PSI Bhosale directing him to produce the accused before the Chief Metropolitan Magistrate along with his confessional statement and thereafter to hand over the custody of the accused to the

Investigating officer. He addressed the second letter to Chief Metropolitan Magistrate. He also furnished the copy of confessional statement to the IO as demanded by him. For the sake convenience the confessional statement part-II (Exh.303-A) of the accused Nityanand Nayak in Hindi language is reproduced as follows :-

“मेरा नाम नित्यानंद नारायण नायक है। मैं मेरी पत्नी और बच्चों के साथ रु.क्र. १३, प्लॉट क्र.३, एनसीसी कंपाउंड गेट क्र.७, मालवणी, मालाड, (प), मुंबई-९५ में रहता हूँ। मेरे पास दो मोबाईल है उनके नंबर ९८२२२०७६९६ और ९८९२८६७६४५ ऐसे है।

मेरी १२ वी कक्षा तक सेट अन्थोनी हायस्कूल और कमलादेवी गुरुदत्त मितल कॉलेज में पढाई हुई। उसके बाद मैंने हार्डवेयर कॉम्प्युटर में डिप्लोमा किया, उसके बाद मैंने बहुत सारी मल्टी नेशनल कंपनीयो में मार्केटिंग का जॉब किया है। सन २०१० में मैंने प्रॉपर्टी का काम शुरू किया था उस दौरान मेरी सेल्वीन डॅनियल के साथ पहचान हो गयी। सेल्वीन के कालीना के राज राजेश्वरी कंस्ट्रक्शन और क्रेडिट सोसायटी में लिगल कन्सल्टन्सी और कलेक्शन का काम करता हूँ ।

फरवरी २०१२ में मेरी पहचान गुरदीप सिंग उर्फ बाँबी नाम के सरदार से हुई। वह भी प्रॉपर्टी का काम करता है और रहने के लिए सायन कोळीवाडा, मुंबई में है। हम काफी बार मिलते थे बाँबी का मोबाईल नंबर ९८६७१७१६९९ है। एक बार बाँबी ने मुझे बी आर शेट्टी नाम के हॉटेलवाले को जानते हो क्या? पुछा। मैं बी आर शेट्टी को मेरे पहचानवाले श्रीधर पुजारी के साथ उनके अंधेरी के ऑफिस में ३/४ बार मिल चुका था तो मैंने बाँबी को हा बोल दिया। बाँबी की पहचान सेल्वीन डॅनीयल के साथ भी थी इसलिए वह हमारे कालिना के ऑफिस में भी हमेशा आता था। एक बार सेल्वीनने मुझे बाँबी का बी आर शेट्टी के बारे में जो काम है वह देख लेना ऐसा कहा था।

एक बार सेल्वीन के कहने पर मैंने नोकीया कंपनी के २ मोबाईल फोन सोनी कलेक्शन, कलीना-कुर्ला रोड, सांताक्रुझ पूर्व मुंबई से खरीदकर सेल्वीन को दिये थे। उसमे से एक मोबाईल फोन सेल्वीन वापर रहा था। सेल्वीन ने कही बार उसमे रिफील करने को कहा था तब मैंने क्रेडिट सोसायटी के पीछे के दुकान से उसमे रिचार्ज करवाया था। उस फोन पर सेल्वीन जेल में बंद गॅंगस्टर सतिश काल्या के साथ बात करता था यह मुझे मालुम है। सतिश काल्या सेल्वीन का रिशेतेदार है यह भी मुझे पता है।

२२ सप्टेंबर, २०१२ रोजी बाँबीने मेरे मोबाईल पे फोन किया और शाम को ०५.३० से ०६.३० के बीच सांताक्रुझ हायवे के पास मिलने को बुलाया। मैं वहा गया तब बाँबी पहले से वहा मौजूद था और उसके साथ उसका दोस्त था जिसकी पहचान तलविंदर उर्फ सोनू ऐसे करके दी। सोनू का

मोबाईल फोन ९८९२२७७५३ ऐसा था। बॉबीने सोनू भी सायन कोलीवाडा में रहता है ऐसा बताया था। उस वक्त बॉबीने मुझे बी आर शेट्टी के बारे में डिटेल निकालने को कहा था। फिर २५ सप्टेंबर को बॉबीने मुझे फोन किया और शामके वक्त इन्फिनीटी मॉल, अंधेरी लिंक रोड के यहाँ मिलने को बुलाया। मैं मिलने गया तब बॉबी के साथ सोनू भी था। उस वक्त मैंने इन्फिनीटी मॉल के सामने से क्रिस्टल प्लाज़ा बिल्डींग के पहले माले पर एस्केप क्लब नाम का बी आर शेट्टी का ऑफिस बॉबी को दिखाया और बी आर शेट्टी के स्कोडा गाड़ी का नंबर ६२१० भी बताया था। तभी बॉबीने मुझे बताया के बी आर शेट्टी को जान से मारने के लिए बड़ा शेठने मतलब छोटा राजन ने बोला है। उसके बाद ३ तारीख को बॉबीने मुझे फोन किया और शाम को इन्फिनीटी मॉल, अंधेरी लिंक रोड पर आने के लिए कहा। मैं वहा गया तो वहा पर बॉबी के साथ सोनू और उनका और एक दोस्त मौजूद था, जिसकी पहचान बॉबीने दिलीप उपाध्याय ऐसे करके दिया। वह तीनों दो बाइक लेके आये थे बॉबीने मुझे उस वक्त बी आर शेट्टी का गेम करने का है ऐसे कहा और उसके ऑफिसके नजदीक रुक कर बी आर शेट्टी के स्कोडा गाड़ी पर वाँच रखने को मुझे कहा। बॉबी ने हम सबको एक दुसरे के कॉन्टैक्ट में रहने को कहा। काम होने के बाद बॉबी मुझे एक नोट का तुकड़ा और एक नंबर **SMS** करनेवाला था। उस नंबरपर फोन करके विचार जाकर किसी आदमी से वह नोट का तुकड़ा दिखाके पैसा लेने कहा था। उस काम के लिए मुझे २ लाख रुपये मिलनेवाले थे। मैं बी आर शेट्टी के ऑफिस के नजदिक रुककर देख रहा था। उस दौरान मैंने ३-४ बार बॉबी को फोन किया रात को तकरीबन १०:०० बजे बॉबीने मुझे फोन किया और कहा के बी आर शेट्टी के उपर फायरिंग हो गया लेकिन वह बच गया मुझे वहासे निकलने को और मोबाईल बंद करने को कहा। बाद में बॉबीने मुझे कहा के उसके पिताजी की तबियत ठिक नहीं है इसलिए वो जम्मू जा रहा है।

उसके बाद १४ ऑक्टोबर को मैं ऑफिस में था तब गजा नामका एक लडका आया और उसने सतीश काल्याने पैसा भेजा है करके बोला। मैंने सेल्वीन को फोन किया तो उसने पैसे लेके सांताक्रुज़ ईस्ट स्टेशन के पास आने को बोला। मैं सेल्वीन को मिलके पैसा दिया उस वक्त वह ३ लाख रुपया था करके मुझे पता चला।

३-४ दिन के बाद सेल्वीनने मुझे **ICICI** बैंक का अकौन्ट नंबर ०७४ ००१००११०६ देके उसमें ४९००० हजार रुपये भरने को दिया। मैंने पैसा जमा किया। उसके बाद वापस सेल्वीन ने मुझे ३००००/- रुपये दिया और उसी अकौन्ट में भरने को बोला। मैंने पैसा जमा किया।

फिर एक दिन वक्त बॉबीका मेरे मोबाईल पे फोन आया और पुछताछ की। बॉबीने उसके पिताजी के दवाई के लिए कुछ पैसा देने बोला। तभी सेल्वीन ने भी मुझे बताया के उसको बॉबी का भाई राजेंद्र ने फोन करके पैसे

के बारे में पुछा था। तब मैं और सेल्विन मिलकर किकाभाई हॉस्पिटल, माटुंगा में जाके राजेंद्र को १० हजार रुपये दिये और दुसरे दिन फिर एक बार २० हजार रुपये दिए। दिनांक २०/१०/१२ को दत्तमंदिर के पास, वाकोला में पुलिस ने मुझे पकड़ा।

उपर लिखा जबाब मुझे हिंदी में पढ़कर सुनाया और समझाया गया है। यह जबाब मेरे कहने के मुताबिक बंदर परिमंडल के पोलीस उपायुक्त श्री तानाजी घाडगे ने टंकलिखित करवाया है। यह मेरे कहने के मुताबिक सही और बराबर है। इसलिये मैं जबाब पर मेरी दस्तखत कर रहा हूँ।

यह कबुली जबाब दिनांक ०९/११/२०१२ को २१.०५ बजे शुरू करके २३.०० बजे समाप्त किया गया।

तानाजी घाडगे

नित्यानंद नारायण नायक के हस्ताक्षर

पुलिस उपायुक्त

बंदर परिमंडल, मुंबई.”

109. In order to corroborate the fact that the accused Nityanand Nayak was lodged at Yellow Gate Police Station, the prosecution examined PW.26-PSI Amit Anant Bhosale attached to Sewree Police Station. He deposed that on 09/11/2012, he was assigned the lock up duty and directed to ensure that nobody met the accused without the orders of the superior officer. Accordingly, he complied with the directions. He further deposed that on 10/11/2012, he was directed by DCP to produce the accused before Chief Metropolitan Magistrate for recording his statement and after the statement was recorded, to produce the accused before the Assistant Commissioner of Police. After receipt of the letter he took the accused for medical examination to Saint George Hospital. He produced the accused before Chief Metropolitan Magistrate and also produced two sealed envelopes which were given to him by DCP before CMM. The accused was taken into custody by Court and he was directed to stand outside the Court until further orders. He

waited outside the Court. After about half an hour he was called inside the Court and the custody of the accused was handed over to him. Thereafter, he took the accused to the office of ACP Mahabadi and handed over the custody of accused to him. He got the acknowledgement in that regard. During the evidence of this witness the medical examination report of accused Nityanand Nayak dated 10/11/2012 proved by prosecution by Exh.254, so also, the station diary of Yellow Gate Police Station vide Exh.255. From the evidence of this witness and the documents produced on record it is made clear that on 10/11/2012, the accused Nityanand Nayak was lodged in the lock up of Yellow Gate Police Station and was then produced before the CMM Court.

110. The confessional statement of the accused Nityanand Nayak came to be recorded at the first in point of time, so it is necessary to ascertain the sequence of events, which are as follows :-

- * In the year 2010, he had started the work of property dealer and get acquainted with the accused Selvin Danial.
- * In February 2012, he acquainted with Gurdeep Singh @ Bobby. He was also doing the business of the property. They were meeting each other.
- * At once, Bablu asked him whether he knew a hotelier by name B.R. Shetty. He told Bablu that he had gone to the office of B.R. Shetty on many occasions with Shridhar Poojari.
- * Bobby was known to Selvin Danial and he was offently coming to their Kalina Office.
- * At once, Selvin told him to see the work of Bobby about B.R. Shetty.
- * He purchased two mobile of Nokia company as per say of Selvin and gave it to him. Selvin used to tell him to recharge in one of the mobile.
- * Selvin used to talk on phone with Gangster Satish

Kalya who was in jail.

- * On 22/09/2012, Bobby made phone call to him and called him at 5.30 to 6.30 pm near Santacruz Highway. When he went there Talvinder Singh was with Bobby. That time, Bobby asked him to take out details of B.R. Shetty.
- * On 25/09/2012, Bobby made call to him and called him at Infinity Mall, Andheri Link Road in the evening for meeting. He went to meet him, that time Sonu was also with Bobby.
- * That he showed the office of B.R. Shetty on the first floor of the Crystal Plaza Building by name Escape Club in front of Infinity Mall and told that the vehicle number of Skoda car of B.R. Shetty is 6210.
- * At that time, Bobby told him that Bada Sheth means Chhota Rajan told them to kill B.R. Shetty.
- * On third date, Bobby made phone call to him and called him at infinity Mall in the evening.
- * He went there, that time, Sonu and his friend by name Dilip Upadhyay were present along with Bobby. They were come on bike.
- * At that time, Bobby told him to do the game of B.R. Shetty and told him to keep watch on Skoda car by standing near the office of B.R. Shetty.
- * Bobby told them to keep in contact with each other. After work, Bobby was to give a piece of currency and send the SMS. Bobby told him to make phone on the same number and by going to Virar and showing the piece of note took money.
- * He was keeping watch by staying near the office of B.R. Shetty. In that time, he made 3 to 4 calls to Bobby.
- * At 10:00 pm, Bobby made phone call to him and told that firing done on B.R. Shetty, but, he saved and asked him to go from there and switched off the mobile.
- * Thereafter, Bobby told him that his father is ill and he is going to Jammu.
- * On 14th October, when he was in office one boy by name Gaja came to him and told that Satish Kalya send money. He made phone call to Selvin, on which, Selvin asked him to come near Santacruz East Station

with money. He handed over money to Selvin, it were Rs.3,00,000/-.

- * After 3 to 4 days, Selvin give him ICICI Bank account number and asked to deposit Rs.49,000/- in the said account. He deposited said amount.
- * Then Selvin told him to deposit Rs.30,000/- in said account. He deposited the same.
- * On one day, Bobby made phone call to him and demanded some money for the treatment of his father.
- * Selvin also told that brother of the Bobby namely Rajendra asked him about money.
- * He and Selvin went to Kikabhai Hospital, Matunga and paid Rs.10.000/- Rajendra.
- * After two days, again, they paid Rs.20,000/- to him.
- * On 20/10/2012, Police caught him near Dutta Mandir, Vakola.

111. The learned Advcoate for the accused attacked on the validity of the confessional statement of the accused Nityanand Nayak and argued that the same is not voluntary and truthful. In place of dealing with the defences/objections raised by the learned Counsel about the confessional statements of the accused separately, I found it proper and appropriate to go through confessional statement of the other accused in sequence and then to consider the defences of the accused which are more or near about common in respect of all the confessional statement of the accused.

112. Similar to the evidence of PW.33 Tanaji Balku Ghadge, the prosecution also examined PW.43 Dattatraya Rajaram Karale, DCP Zone-IV who recorded the confessional statement of accused Selvin Danial. It is the evidence of the PW.43 that he received a letter from the Joint Commissioner of Police Late Himanshu Roy for recording the confessional statement of an accused Selvin Danial on 08/11/2012. He directed the Investigating Officer to produce the said accused in his

office on the same date at 04:00 pm. Accordingly, at 04:00 pm, PI Mer from the Anti Extortion Cell along with his team produced the said accused before him in veil. He directed PI Mer and his team to go outside. He also get ensured from the Head Constable Salvi that nobody come inside of his chamber and not to transfer any phone call to the chamber. He called computer operator Mr. Tatkare in his chamber to type the proceeding. He put preliminary questions to the accused about the language. He also introduced himself to the accused and told that he had no connection whatsoever with this case. The accused was asked whether he had any complaint against any officer of the crime branch or anybody else. He asked the accused whether he wanted to make confession voluntarily and whether he was threatened, coerced or given any assurance for making the confession. The accused replied in the negative and told that he is making the confession voluntarily. The accused was also told that the confession made by him could be used against him or others, on which, he told that he was aware about this. On being asked, why he wanted to confess, the accused told that he was repenting and that he had done the crime due to the influence of his friend and for money. PW.43 gave him 28 hours time to reconsider his decision and directed API Bhor of Matunga Police Station to produce the accused on next date at 10:30 pm. He also instructed them not to permit anybody to meet the accused and that the accused should lodge in separate lock up. Accordingly, the confession part I Exh.365 came to recorded. After reading the same, accused put his signature over it.

113. It has further come in his evidence that on 09/11/2012, the accused was produced before him by API Mr.Bhor at 10:30 pm. He again called the computer operator Mr.Tatkare in his chamber and instructed Head Constable Salvi to ensure that nobody enters in

chamber and not to transfer any calls. He asked about the health and physical and mental condition of the accused, he replied that he is good and fit. He asked him whether he wanted further time to reconsider his decision, on which, the accused told that he do not want further time and he is ready to make the confession as he is repenting. He again asked the accused whether he was threatened or assured or promised to make the confession, he replied in the negative. Again after asking necessary question the accused started narration in Hindi and whatever he was saying, was being recorded in vernacular. After completion of the recording, print out of the same was taken out and read over to the accused and also given for reading to him. The accused confirmed the correctness of the same and signed over it. PW.43 prepared certificate below the record in his own handwriting about the correctness and put his signature. The confession part-II is at Exh.265-A and the certificate is marked as Exh.364-B. For the sake of convenience the confession part-II is reproduced in the same language as follows :-

मेरी पढाई गांव में ८ वी कक्षा तक हुई है । मैंने साल १९८४ में स्कूल छोड़ा और बॉम्बे काम के लिए आ गया । मुंबई आने के बाद मैं गैरेज में काम करता था । साल २००४ में मुझे खंडणी के केस में मेरे मामा का लडका साजी जोसेफ के साथ पकड़ा था । उस केस में सतिश काल्या उर्फ सतिश जोसेफ वॉन्टेड था । उस केस में से छुटने के बाद साल २००६ से मैं इस्टेट एजेंट और प्रॉपर्टी के काम करने लगा । सन २००८ में मेरा दोस्त सुंदर नायडू के सायन के ऑफिस में मेरी पहचान अन्टॉपहिल में रहनेवाले बॉबी नाम के सरदार के साथ हुई । अब बॉबी मेरा अच्छा दोस्त है । सन २०१० में मैंने कलिना में पतपेढी बँक का ऑफिस चालू किया । उसी पतपेढी में नित्यानंद नायक नाम का मेरा दोस्त मेरे साथ काम करता है ।

लगभग २०१२ के मई महिने में सतिश की बीवी मिना और बॉबी को लेके मैं सतिश को मिलने किल्ला कोर्ट में गया था । उस वक्त मैंने बॉबीकी पहचान सतिश के साथ करके दी थी । उसके बाद बॉबी हमेशा सतिश को उसके तारीख पे मिलने कोर्ट जाता था और उससे खर्च के लिए पैसे भी लेता था ये मुझे उसने बताया था । सन २०१२ के जूलई महिने में बॉबी मेरे कलीना वाले ऑफिस में आया और उसने मुझे बताया के सतिश को छोटा राजनने बी. आर.शेट्टी को मारने का काम दिया है और उसके लिए सतिशने मुझे बी.

आर.शेट्टी के बारे में पुरी जानकारी निकालने के लिए बोला है ।

सप्टेंबर २०१२ में बॉबी मेरे ऑफिस में आया और सतिशने मुझे वापरने के लिए एक सिम कार्ड भेजा है ऐसा बताया और सतिशने दिया हुआ सिमकार्ड मुझे दे दिया और उसे नये मोबाईल हंडसेट में डालके वापरने को बोला । उस सिमकार्ड का नंबर ८२९११०७७६० ऐसा है । मुझे मिला हुआ नया सिमकार्ड मैंने नोकीया कंपनी के मोबाईल में डालकर इस्तेमाल किया था । और मेरे पास पहिले से जो सिमकार्ड था उसे मैं ब्लैकबेरी फोन में इस्तेमाल कर रहा था । उसका नंबर ९८३३२२२०२८ ऐसा है । मुझे दिये गये नये मोबाईल नंबर पे सतिश जेल से फोन करता था । सतिशने मुझे अगर बॉबी को कभी पैसे की जरूरत लगी तो पैसे देने के लिए कहा था और दुसरा कोई काम बोला तो वो भी करने को कहा था । सतिश हमेशा ८२९१७१४८२१ यह नंबर से फोन करता था ।

उसके कुछ दिनो बाद बॉबी फिरसे मेरे ऑफिस में आया और मुझे पुछने लगा क्या सतिशभाई ने कुछ मेसेज भेजा था क्या? उस समय मैंने बॉबी को बताया के अगर तुमको कुछ पैसे जरूरत लगी तो देने के लिए बोला है । उसके बाद वापस चार या पाच दिन के बाद बॉबी मेरे ऑफिस में आया और मुझे बोलने लगा के बी.आर.शेट्टी के बारे में कोई भी जानकारी मिल नहीं रहीं है । और उसके लिए मेरे साथ काम करने वाला नित्यांनद नायक को मदद करने के लिए बोला । उस हिसाब से मैंने नित्यांनद को बोला के “बॉबी का कुछ काम है । वो देख लेना ।” उसके दो दिन बाद मैंने बॉबी को फोन करके पुछा “भाई क्या हो गया है” उस पर बॉबीने बोला “अभी तक कुछ नहीं हुआ है, आपको बताता हूँ । आप पैसे का बंदोबस्त करके रखो । सतिशभाई आपको पैसे भेजने वाला है ।

उसके बाद ३ ऑक्टोबर २०१२ में रात को १०.३० बजे मुझे बॉबीने फोन किया और पुछा “टि.व्ही. देखा क्या?” मुझे अभी आपको अर्जेंट मिलना है आप किधर हो “उसपर मैंने टि.व्ही.नहीं देखा और मैं कुलाबा में हूँ ऐसा जबाब दिया।” उसपर बॉबीने मुझे बांद्रा म्हाडा ऑफिस के पास मिलने को कहा । मैं म्हाडा ऑफिस जाने के लिए निकलने के समय मेरा दोस्त सुरेश कुट्टी को टि. व्ही.पर न्युज देखने के लिए बोला तो सुरेश कुट्टी ने मुझे बी.आर.शेट्टी पर हुए फायरींग के न्युज के बारे में बताया । मैं म्हाडा ऑफिस पहुंचने के बाद बॉबी को फोन किया तो उसने मुझे ५ नंबर गेट के पास आने के लिए बोला । मैं वहाँ पर पहुंचने के बाद बॉबी मेरे गाडी में आके बैठा और मुझे बोलने लगा की उसने बी. आर.शेट्टी पर अंधेरी में फायरींग कि है । और उसे १ लाख रूपये चाहीये । मैंने उसे १ लाख रूपये निकाल कर दे दिए । उसके बाद मैंने बॉबी को मेरी गाडीसे सायन हॉस्पिटल के पास छोडा उस समय रात के ११.०० बजे थे ।

तारीख ०४/१०/२०१२ की रात को सतिशने मुझे मेरे ८२९११०७७६० नंबर पर फोन किया और वो हस रहा था । तो मैंने उसे पुछा “क्या बात है” तो उसने बोला के “पेपर पढा क्या? बी.आर.शेट्टी का काम हो गया ।

उसके बाद १४ ऑक्टोबर २०१२ रविवार के दिन मैं घर पर था उस समय नित्यांनदने मुझे फोन कर के बोला की सतिश काल्याने भेजा हुआ गज्या

नाम का आदमी ३ लाख रूपया लेके आया है । तब मैंने नित्यानंद को पैसे लेके सांताक्रुझ पुर्व रेल्वे स्टेशन के पास आने को बोला । वहाँपर मैंने उससे पैसे ले लिए । उसी दिन मुझे सतिश काल्या का फोन आया और उसने मुझे ‘‘पैसा मिला क्या’’ ऐसा पुछा तो मैंने हा बोलके जबाब दिया । सतिश ने मुझे कहा के अगर बॉबी का फोन आता है तो उसे पैसे दे देना ।

उसके दोन दिन बाद मेरे ब्लॉकबेरी मोबाईल नंबर ९८३३२२२०२८ पर बॉबीने एस.एम.एस करके उसका बैंक अकाउंट नंबर दिया । वह नंबर एक कागज पर लिखकर मैंने नित्यानंद को दिया ओर उसपर भेजने के लिए ४९ हजार रूपये दिया । फिर दुसरे दिन वापस नित्यानंद को ३० हजार रूपये उस अकाउंट में भरने दिया । उसके बाद बॉबी का भाई राजींदरने मुझे फोन करके पैसे के बारे में पुछा । मैं और नित्यानंद राजेंदर को किकाबाई हॉस्पिटल, माटुंगा के पास जा के मिले और उसे उसके पिताजी के दवा के लिए १० हजार रूपये दिये और दुसरे दिन फिर एक बार २० हजार रूपये दिए ।

उसके बाद १८ या १९ ऑक्टोबर को सतिशने मुझे फोन करके बॉबी के बारे, में पुछताछ किया । सतिशने वो और पैसा भेज रहा है ऐसा बोला और उसने दिया हुआ सिमकार्ड मोबाईल के साथ तोड के फेकने को बोला । उसके कहने के मुताबिक मैंने मोबाईल फोन को तोडकर सांताक्रुझ मिलन सबवे कलिना के बिच मे कीधर तो भी फेक दिया ।

उसके बाद नित्यानंद को पुलिस ने पकडा है ऐसा मुझे मालूम पडा तो मैं घबर गया । इसलिए मैं तारीख २०/१०/२०१२ को मेरे दोस्त सुरेश कुट्टी और राकेश जैन के साथ वैष्णवी देवी गया । तारीख २१/१०/१२ की रात वापस मुंबई आया । मुंबई आने के दुसरे दिन मैं मेरे गाँव त्रिवेंद्रम जाने के लिए सांताक्रुझ एअरपोर्ट से निकल गया लेकिन मैं तारीख २३/१०/२०१२ को त्रिवेंद्रम जाने वाले प्लेन का इंतजार बेंगलोर एअरपोर्ट पर कर रहा था तभी मुंबई पुलिसने मुझे बेंगलोर एअरपोर्ट पर पकडा लिया ।

उपर लिखा जबाब मुझे हिंदी में पढकर सुनाया और समझाया गया है । यह जबाब मेरे कहने के मुताबिक टाईप किया गया है । यह मेरे कहने के मुताबिक सही और बराबर है । इसलिये मैं जबाब पर मेरी दस्तखस्त कर रहा हूँ ।

यह कबुली जबाब दिनांक ०९/११/२०१२ को २२.३० बजे शुरू करके १०/११/२०१२ के ०१.१५ बजे समाप्त किया गया ।

114. In order to corroborate the fact that the accused-Selvin Danial for the purpose of reflection was lodged in the lock up of Matunga Police Station, the prosecution examined PW.30 API Mr.Suresh Bhor of Matunga Police Station. He deposed that on 08/11/2012, as per directions of PI he went to the office of DCP, Zone-IV at 04:00 pm with

PSI Patil and two constables. The custody of the accused Selvin Danial was given to him by DCP Zone-IV and directed to lodge the accused in the lock up Matunga Police Station. He was also directed to keep him in separate lock up and to perform medical examination. Accordingly, he kept the accused in separate lock up of Matunga Police Station and took the station diary entry Exh.268 colly. The entry of keeping the accused in separate lock up is also at Exh.269. The medical examination report of accused is at Exh.271. He also proved station diary entry Exh.272 colly. He further deposed that on 09/11/2012, at 10:00 pm the accused taken out of lock up and produced before DCP Zone IV. He again received the custody of the accused at 01:20 am with a direction of DCP to produce him on 10/11/2012 before CMM. He was given two sealed envelop and one letter in the name of CMM. He lodged the accused in a room in the lock up and on 10/11/2012 at 10:30 am, produced him before the Court of CMM and after completion of the work handed over the custody of the accused to ACP Mahabadi.

115. PW.34 DCP Dhananjay Kulkarni recorded the confessional statement of the accused Dilip Upadhyay, therefore, his evidence is required to be scrutinized. In December 2012, he was working as the DCP Zone-5, Mumbai. The police stations Dadar, Shivaji Park, Mahim, Dharavi, Shahu Nagar, Kurla and Vinoba Bhave Nagar are under the jurisdiction of DCP Zone-5. On 10.12.2012, he received directions from the Jt. Commissioner of Police (Crime) for recording confession of accused-Dilip Atmaram Upadhyay, who was arrested in connection with a case registered with the crime branch. Thereafter, he wrote a letter Exh.309 to the Sr. PI, Mahim police station for providing escort party for the security of the accused-Dilip Atmaram Upadhyay. He had also

issued a letter Exh.310 to the ACP D-1 for producing the accused before him.

116. On 11.12.2012, at around 10:30 am., the accused was produced before him by API Mr. Dhumal of crime branch. At that time, API Mr. Dhumal also briefed him about the incident and handed over a letter issued by ACP D-1 regarding production of accused. Thereafter, he directed API Mr. Dhumal and the staff to go after he had taken the custody of the accused. He called orderly Mr. Pawar and directed him to stand outside chamber and not to permit anybody to come inside. He also called stenographer Ms. Nanda Dalvi. Thereafter, he made inquiry with the accused. He inquired with him about his health. He informed the accused that it was not mandatory for him to make the confession, that he is not concerned with the investigation of this case, that if he gives the confession it could be used against him. He also informed him that he would be given a period of 24 Hrs to reconsider his decision to make the confession and during that period nobody from the crime branch would meet him, that during this period he would be in his custody. Accordingly, he prepared the confession part I Exh.311. The contents were read over to the accused, he affirmed the correctness of the same and put his signature. After the proceedings of confession part-I were completed he called PSI Mr. Chaudhar and his staff from Mahim Police Station. He directed them to get the accused medically examined and to ensure that while the accused was lodged in the Mahim Police Station nobody from crime branch could meet him. He also directed them to lodge the accused in solitary confinement.

117. On 12/12/2012, the accused again produced before him at 11.00 am. He directed escort party to go outside. Called orderly and

stenographer. Instructed the orderly not to permit anybody to come in his chamber. He made inquiry with accused in Hindi and asked him about his health. He asked the accused whether anybody met him in the custody, on which accused replied in the negative. He found that the accused was mentally fit. He asked the accused whether the period of 24 hours given to reflect is sufficient, the accused replied as sufficient. He remind the accused that it was not mandatory to make confession and asked why he want to confess? The accused informed that he is repenting on what he had done. Then accused narrated the facts in Hindi. He further deposed that what is stated by the accused is simultaneously typed by the stenographer. Accordingly, confessional statement part II Exh.311-A came to be recorded. It was read over to the accused, and he affirms the contents of it to be true and signed on it. Then he wrote the certificate Exh.311-B below confession part II. Then he called PSI Chaudhar gave custody of accused to him and directed him to conduct medical examination of the accused. He also sealed the confession part I and part II in an envelope and handed over it to PSI Chaudhar alongwith forwarding letter Exh.312 to CMM. On demand of IO, he also provided the copy of confessional statement to him. For the sake of convenience, the confessional statement of accused Dilip Upadhyay is reproduced as under :

मैं दिलीप आत्माराम उपाध्याय, मेरी उम्र २७ साल है । मैंने ७ वी कक्षा तक हिंदी में पढ़ाई कि है । मैं टैक्सीवालों को ग्राहक सप्लाय करनेका काम दादर टी.टी. में करता हूँ । मेरा मोबाईल नंबर ८३८३९२९८८९ जो मेरे नाम पे है और मोबाईल नंबर ८४२७०६०४४४ मेरा दोस्त परविंदर उर्फ पम्मा के नाम पे है । मैं सायन कोलीवाडा में मेरे फॅमिली के साथ रहता हूँ । मेरी माँ बल्लापूर रोही जिल्हा भदोई (युपी) रहेती है साल १९९९ में मैं चोरी के केस में, तथा सन २००२ में अँन्टॉप हिल पुलिस ने मुझे रॉबरी के जुल्म में गिरफ्तार किया था और WTT पुलिस थाने में मेरे खिलाफ मारपीट का अपराध २०११ में दर्ज है ।

मैं बचपनसे सायन, अँन्टॉप हिल एरिया में रहता हूँ और टैक्सीवालो को ग्राहक सप्लाय करनेका काम करता था इसलिए मेरी काफी टैक्सीवालों से पहचान

है । उसी तरह मेरी तलविंदर सिंग बक्षी उर्फ तल्ली उर्फ सोनु से एक साल से पहचान है । उसके दो मोबाईल नंबर ९८९२२७७७५३ और ९८७०३३७०३३ है । कुछ महिनो से मुझे पैसो कि सख्त जरूरत थी तभी मैंने तलविंदर से पैसे मांगे थे । उस वक्त तलविंदर ने कहा था कि सतिश काल्या नाम के गॅगस्टरको जिसे बॉबी अच्छी तरहसे जानता है, उसने बॉबीको बी.आर.शेट्टी नामके हॉटेलवाले को ठोकाने काम दिया है । काम होने के बाद ५/७ पेटी मिलनेवाले है । मुझे पैसोंकी सख्त जरूरत थी इसलिए मैं काम करने को तैयार हो गया । उसके बाद तलविंदरने मुझे गुरदिप उर्फ बॉबी से मिलाया। वो वही एरीया का है और मैं उसको जानता था । बॉबी को मोबाईल नंबर ९८६७१७१६९९ था । तलविंदर ने मुझे काम के लिए पुरानी बाइक ढुंडने के लिए बोला । तभी तलविंदर ने मुझे उसको बॉबी ने दिये हुये १५ हजार रुपये दिये । मैंने मेरा अँन्यॉपहिल के दोस्त मुका के जरीये १३ हजार रुपये देके एक काले रंग कि पुरानी बजाज डिस्कव्हर बाईक खरीदी उसका नंबर **MH-03-AB 8938** था । बाकी २ हजार रूपया मैंने रख लिया । बाईक तलविंदर ने अपने पास रखी थी और वो चलाता था ।

फिर कुछ दिन बाद तलविंदर और मैं वह बाइक से अंधेरी मे इन्फीनिटी मॉल के पास चले गये । वहा पर मौजूद एक आदमी से तलविंदरने उसकी पहचान नित्यानंद नाम से करके दी । नित्यानंद ने हमे इन्फीनिटी मॉल के सामने वाले क्रिस्टल प्लाझा बिल्डींग के पहले माले वाला एस्केप हॉटेल स्थित बी.आर. शेट्टी का ऑफिस दिखाया और उसकी काले रंग की स्कोडा गाडी नंबर ६२१० भी बताया । बाद मैं और तलविंदर वहा से बाइक से निकल गये । उसके बाद एक दिन तलविंदर मुझे बाइक से सायन धारावी एरीया मे ले के गया वहा बॉबी और नित्यानंद मौजूद थे वहा होर्डिंग पर लगा एक फोटो दिखाया था और उसका नाम बी.आर.शेट्टी बताके उसके उपर फायरींग करने के लिये बोला । फायरिंग करने के लिए बॉबी ने तलविंदर के पास कारतुस भरे रिक्वाँल्वर और पिस्तुल एक काले रंग के शोल्डर बॅग मे दिये थे और वह तलविंदर उर्फ सोनु ने मेरे पास दिये थे । मुझे बाइक चलाने नही आती थी, इसलिए तलविंदर बाइक चलायेगा और फायरींग मैं करेगा ऐसा हमारे बिच तया हुआ । हम दोनो बाइक से ५-६ बार अंधेरी इन्फीनिटी मॉल के सामने वाले क्रिस्टल प्लाझा बिल्डींग के पास हत्यार वाले बॅग के साथ बाइक पर गये थे । लेकिन टारगेट वहा नही दिखने की वजह से काम हुआ नही । उस हर वक्त नित्यानंद और बॉबी भी उधर आते थे ।

तारीख ३ अक्टूबर २०१२ के दिन वापस बॉबीने हमको काम करने के लिए अंधेरी मे इन्फीनिटी मॉल के पास बुलाया । तभी मैं और तलविंदर बाइक लेके अंधेरी गये । जाते वक्त मैंने हथियार का बॅग भी साथ में ले लिया था । वहा हम दोपहर १२.०० बजे पहुचे तो वहा पर बॉबी हाजीर था । हम लोगो ने दोपहार २.०० बजे तक बी.आर.शेट्टी को इंतजार किया लेकिन वह आया नही इसलिए हम लोग खाना खाने के लिए अंधेरी स्टेशन चले गये । फिर शामको ४.

०० ४.३० बजे मैं और सोनू बी.आर. शेट्टी के ऑफिस के कम्पाउन्ड में जाकर रुके। नित्यानंद भी वहां नजदिक पर खड़ा था। रात ८.३० बजे के दरम्यान मैं और सोनू बिल्डींग के बाहर गेट के पास खड़े रहे। नित्यानंद थोड़ी दूरी पर खड़ा था। रात ९.३० बजे के दरम्यान नित्यानंद ने हमें बी.आर.शेट्टी उसके कारसे निकला है ऐसे बताया। मैंने और तलविंदरने बाइक से बी.आर.शेट्टी के गाड़ी का पिछा करना शुरू किया। बी.आर.शेट्टी ने उसकी कार ले के तनिष्क शोरूम के बाजुवाले रोड से जाने लगे, हम लोग उसका पिछा कर रहे थे। जैसे ही वहां के स्पीड ब्रेकर की वजह से बी.आर.शेट्टी ने गाड़ी का स्पीड कम किया तो तलविंदर ने हमारी बाइक उसके गाड़ी के दाहिने बाजु लिया उसका फायदा लेते हुये तब मैंने मेरे पास वाले गन से बी.आर.शेट्टी पर चार राउंड फायर किया। मैंने देखा की बी.आर.शेट्टी घायल हो गया है और उसी हालत में उसने कार स्पीड से भगाई। तो तलविंदरने बाइक आगे लेफ्ट की तरफ मोड़ा तो वहां पर मैं बाइक से निचे उतरा और वहां से भागा। वहां से मैं रिकशासे अंधेरी स्टेशन आया और ट्रेन से किंगजसर्कल स्टेशन पहुंचा तो उसी ट्रेनसे तलविंदर भी उधर आया था। तलविंदर ने उधर मुझे बताया कि, उसने अंधेरी स्पोर्ट्स कॉम्प्लेक्स के पास बाइक खड़ी किया है। हम लोग वहां से चल के एरीया में गये और वहां से अपने अपने घर पर चले गये। घर जाते वक्त मेरे पास वाली बॅग मैंने वहां के पहचानवाले वैष्णव ढाबे में रखी थी।

फायरिंग के दरम्यान मेरा मोबाईल फोन डिस्चार्ज हुआ था। घर में फोन मैंने चार्जिंग के लिये रखा था। तलविंदर ने मुझे फोन करके जीटीबी नगरमें २० नं. बिल्डींग के पास बुलाया वहां बाॅबी ओर तलविंदर दोनों आये थे, तभी तलविंदर ने मुझे बाॅबी ने दिये हुये पैसों में से २५ हजार दिये। तलविंदर ने तभी बाॅबी को अंधेरीमें रखे हुए बाइक की चाबी और पेपर्स दिया और वह बाइक लाने चला गया। बाद में तलविंदर ने हॉटेल हरदिप पंजाब से दो बियर लाया वो हमने पिया। उधर तलविंदर ने हथियार वाली बॅग लाने को बोला तो मैंने ढाबे से ला के उसको दिया। तलविंदर उस के अक्कीवा बाइक से बॅग फेंकने के लिये वाशी ब्रिज पर गया और मुझे उधरही रूकने को कहा वो वापस उधर आया तभी रात के करीब देढ़ बजे थे। बाॅबी भी वहां आया था उसने हमें सुबह ०४.०० बजे सांताकुझ एअरपोर्ट पर बुलाया और वो सोने के लिये बहन के घर वाशी चला गया।

हम अपने अपने घर गये लेकिन घर में मैं सो नहीं पाया मेरी बिवी मुझे पुछ रही थी, बाद में जल्दी मैं और तलविंदर टैक्सी से सुबह ४ बजे एअरपोर्ट पर गये। जाते वक्त मेरा मोबाईल फोन क्र.८३८३९२९८८९ घर पर छोड़ा था। एयरपोर्ट पर बाॅबी आया हुआ था, उसको जम्मु जाने के लिए ०८.४५ बजे की इंडीगो फ्लाईट की सिर्फ एक ही टिकट मिली थी, इसलिए हमको दिल्ली का टिकीट निकालने को उसने कहाँ और वहां से जम्मु आने को कहा। मैंने और तलविंदर ने ०५.५५ के जेट विमान का दिल्ली के लिये टिकीट निकाला। दिल्ली से मैं और तलविंदर बस से बाॅबी को मिलने जम्मु गये। वहां बाॅबी मिलने के बाद बस अड्डे के बाजु में एक हॉटेल में हमारे रहने का इंतजाम किया उस वक्त

कहा कि काम की बाकी रक्कम दो दिने में मिल जायेगी ओर वो अपने गाव रहता था । लेकिन वहा हमको लेके नही गया । वहा दो दिन हॉटेल मे रुकने के बाद मै और तलविंदर मेरे बलापुर रोही, ता. गयानपुर, जि.भदोई राज्य उत्तरप्रदेश ये गाव चले गये । वहा मेरी माँ अनारदेवी व छोटा भाई जानेंदर उपाध्याय रहते है । वहा ४-५ दिनके बाद तलविंदर अपने अंबाला गांव, पंजाब चला गया । फिर तलविंदर ने मुझे फोन करके सहारनपुर बुला लिया । वहा मुझे बाँबी और तलविंदर दोनो मिले । हम तीनों फिर लुधीयाना, पंजाब मे बाँबी के रिश्तेदार के किराये के घर मे करीब देढ महीने तक रहे थे । हमारे पास के पैसे खत्म होने को आये तभी बाँबी ने कहा की, वो जम्मु बिवी से पैसा लाने के लिये जा रहा है । लेकिन ५-६ दिन तक बाँबी का कोई फोन या खबर आयी नही तभी हमको शक होने लेगा, इसलिये हम वो मकान छोडकर मेरा दोस्त परविंदर उर्फ पम्मा ने उसकी गाडी से हमे अमृतसर जाने के लिये जालंधर बस अड्डे पर छोडा । तारीख २६ नोव्हेंबर को उधर हमे बम्बई पुलिस ने हम दोनो को बी. आर.शेट्टी वाले फायरिंग केस पकडा और जालंधर के कोर्ट मे पेशी किया । उसके बाद हमको बंबई लेकर आये ।

उपर लिखा जबाब मुझे हिंदी मे पढकर सुनाया और समझाया गया है । यह जबाब मेरे कहने के मुताबिक परिमंडल ५ के पोलीस उपायुक्त श्री धनंजय कुलकर्णी इन्होने लिखा है । यह मेरे कहने के मुताबिक सही और बराबर लिखा है । इसलिए मै जबाब पर मेरी दस्तखत कर रहा हू।

यह कबुली जबाब दिनांक १२/१२/२०१२ को ११.०० बजे शुरू करके १२.१० बजे समाप्त किया गया ।

118. In order to corroborate the fact that for the purpose of giving reflection period to the accused, he was kept in the lock up of Mahim Police Station, prosecution examined PW.31 PSI Gorakh Chaudhar attached to Mahim Police Station. He deposed that Sr.PI directed him to go to the office of DCP Zone-V on 11/12/2012, at 09.00 am. Accordingly, he reached to the office of DCP Zone-V, Worli at 09.00 am along with guard. DCP Zone-V, directed him to take custody of accused Dilip Upadhyay and get him medically examined and then, to lodge him in the Mahim General Lock up. He was also directed to ensure that the relatives of accused or the Police does not meet him. He took the accused to Bhabha Hospital Bandra and get him medically examined. Then, he lodged the accused in the Mahim General Lock up. He

instructed the guard to ensure that the accused was lodged in a separate room in the General Lock up and not to permit anybody to meet him. On 12/12/2012, the accused was removed from the lock up in the morning. He got him medically examined and produced him before DCP Zone V, Worli. He was directed to go outside the chamber. They wait outside for about one and half to two hours. Then, DCP Zone V called him in and gave him two sealed envelopes and directed him to produce the accused before the Esplanade Court. He was directed to hand over the custody of the accused to ACP Mahabadi after the Court proceeding was over. He was also given a letter. Accordingly, he took the accused to the Esplanade Court, handed over the letter and two sealed envelopes. Then, he went outside the Court. Thereafter, again, custody of the accused was given to him. Then, he went to the office of DCB CID and handed over the custody of the accused to the concerned officer along with letter. He identified the accused in the Court. He produced the station diary extract Exh.287 colly. and the medical reports of the accused at Article-X-49.

119. The confessional statement of the accused Talvinder Singh recorded by PW.32 DCP Ravindra Shisave. It has come in his evidence that on 10/12/2012, he received order of Joint DCP to record confessional statement of the accused Talvinder. He directed ACP Mahabadi to produce accused Talvinder before him and also directed Sr.PI Azad Nagar Police Station to send the officer. On 11/12/2012, at 12:00 hrs. API Jagdale produced accused Talvinder before him. API Jagdale briefed him about the offence. He called his orderly PC Salunkhe and directed him not to permit anybody to come inside his chamber and also directed his clerk not to transfer any phone inside the

chamber. He called the clerk Shivaji Patil in his chamber for typing. He ensure that nobody from outside can see or hear what is happening inside. On being asked the accused, he told that he could understand English little bit but comfortable with Hindi. He asked him whether he was ill-treated in Police Custody and there was any threat or intimidation or allurements given to him by anybody for making the confession, the accused replied in the negative. He told the accused that he is not bound to make confession and if he did so it could be used against him, on which, accused replied that he is aware about the same. He also told the accused that he has no connection with the investigation. He also informed the accused that he is not bound to make any confessional statement and gave him 24 hours for thinking over to make confession and that during these 24 hours, no police officers from the investigating team would be allowed to meet him. The question and answers were simultaneously noted down. After finishing printout of the same was taken out. Accordingly confession part I (Exh.295) of the accused came to be recorded. The accused confirmed that the contents of it are correct, signed on the same. Thereafter, he called PSI Nayak of Azad Nagar Police Station and handed over custody of the accused to him. He also directed him to ensure that no Police Officer from the investigating team meets the accused while in custody and that the accused should be produced before him on next date i.e. 12/12/2012.

120. On 12/12/2012, the accused was produced before him at around 2:15 pm by PSI Bhat of Azad Nagar Police Station. He directed to PSI Bhat to go outside. After some conversation with the accused, he felt that the accused was comfortable. He called clerk Shivaji Patil for

noting down the proceeding. He asked the accused that it was not binding on him to give the confession, the accused replied that he was aware about it. On putting questions to the accused, he was satisfied that the accused was making confession willingly. The accused told him that he was ready and willing to give confession voluntarily. Accordingly, confession Part II (Exh.295-A & 295-B) of accused came to be recorded. The accused found the contents of it to be correct and signed on the same. PW.32 also put the certificate below the confession Part II vide Exh.295-C. Then, he handed over the custody of the accused along with two sealed envelopes to PSI Bhat of Azad Maidan Police Station. He also issued letter to CMM. He handed over the letter and sealed envelopes to PSI Bhat and directed him to produce the accused before CMM. For the sake of convenience the confessional statement of the accused Talvindersingh recorded in vernacular reproduced as follows :-

मेरी पढाई १२वी कक्षा तक गुरुनानक कॉलेज, सायन कोलीवाडा में हुई है । मैं मेरी मातृभाषा के अलावा हिंदी और अंग्रेजी समझ सकता हूँ । मैं २००५ से भाडे पर टैक्सी चलाता था । मेरी औरत घरसे ही ब्युटी पार्लर चलाती है । मेरे मोबाईल का नंबर ९८९२२७७७५३ ये मेरे नाम पर है और मेरा दुसरा मोबाईल नंबर ९८७०३३८०३३ मेरा दोस्त गौरव उर्फ गोल्डी के नाम पे है । मुझे अफिम का नशा करने की आदत है ।

मेरे एरिया मे रहनेवाला गुरुदिपसिंग उर्फ बॉबी को मैं बचपन से जानता हूँ। बॉबी भी टैक्सी चलाता है । बॉबी का मोबाईल नंबर ९८६७१७१६९९ है । मैं और बॉबी १० साल पहले एक केस मे गिरफ्तार हो चुके थे । गणपती के कुछ दिन पहले बॉबी ने मुझे कहा की, गॅंगस्टर सतिश काल्या जो जेल में है उसने अंधेरी के एक हॉटेल मालीक बी. आर. शेट्टी के उपर फायरिंग करने के लिये बोला है । फायरिंग के बाद सतिश काल्या ५/७ लाख रूपये देने को तैयार है । बॉबी सतिश काल्या को जानता है और उसे मिलने कोर्ट में जाता है यह बात मुझे मालुम थी । सतिश काल्या का नाम मैंने सुना था । बॉबी ने मुझे ये भी कहा था के सतिश काल्या ने उसे सिम कार्ड दिया है जिस पर वो सतिश काल्या से बात करता है । वो मोबाईल से बाद मे उसने मेरे से भी बात कि है तभी उसका नंबर ८२९१७२०३८७ ये मुझे मालुन पडा । मैं भी काफी पैसा मिलेगा इस उम्मीद पर काम करने के लिए राजी हो गया । इस काम के लिए और एक

आदमी की जरूरत थी इसलिए मैंने मेरे पहचान का और मेरे एरिया में रहनेवाले दिलीप उपाध्याय को पुछा तो वो काम करने के लिए तैयार हुआ । दिलीप उपाध्याय का मोबाईल नंबर ८३८३९२९८८९ है । फिर मैंने एक दिन दिलीप की बाँबी से पहचान करके दी ।

फिर एक दिन बाँबी ने मुझे अंधेरी में इन्फ़ीनिटी मॉल के पास बुलाया । मैं दिलीप को साथ लेके गया वहा पर बाँबी ने मेरी और दिलीप की पहचान एक नित्यानंद नाम के आदमी के साथ करवा के दी । बाँबी ने मुझे कहा के जिस आदमी पर फायरिंग करना है उसको नित्यानंद जानता है इसलिये वो उसको दिखायेगा और इसलिए नित्यानंद कभी फोन करेगा तो चले जाना । नित्यानंदने तभी हमको नित्यानंद ने इन्फ़ीनिटी मॉल के सामने वाले क्रिस्टल प्लाज़ा वाले बिल्डींग स्थित एस्केप हॉटेल दिखाया था । नित्यानंद ने मुझे उसका मोबाईल नंबर ९८९२२०७६९६ दिया था । उसके बाद एक दिन बाँबी मुझे वाकोला में एक क्रेडीट सोसायटीके ऑफिस में लेके गया वहा पर मेरी पहचान सेल्विन उर्फ अन्ना नाम के साउथ इंडियन आदमी के साथ करवा के दि और कहा के वो सतिश काल्या का रिश्तेदार है। उसके बाद एक दिन बाँबी मुझे किल्ला कोर्टमें सतीश काल्यासे मिलवाने लेके गया वहा पर कॅन्टीन के पास उसने मुझे सतीश काल्यासे मिलवाया और उसे कहा के मैं काम करने के लिए तैयार हूँ । तभी सतीश काल्याने मुझे कहा के काम करो कोई प्रॉब्लेम नहीं और कुछ भी प्रॉब्लेम आता है तो बाँबी को बोल दो । पैसों का और बाकी के चिजों का इंतजाम बाँबी करेगा । बादमें बाँबी के कहने पर उन्होंने दिये हुये १५ हजार रूपयों मे दिलीप के माध्यम से एक पुरानी बजाज डिस्कवर मोटर साईकल क्रं. MH 03 AB 8938 खरीदी थी । वो मैं चलाता था।

उसके बाद बाँबी और नित्यानंद के कहने पर मैं ओर दिलीप चार—पाच बार अंधेरी इन्फ़ीनिटी मॉल के पास बाईक लेके गये थे लेकिन जिस पर फायरिंग करना था वह आदमी नहीं आया इसलिए हम लोग वापस चले गये । मेरे पास फायरिंग करने के लिए बाँबी ने दो रिवॉल्वर, एक पिस्तूल कारतूस भर के एक काले रंग कि शोल्डर बैग के साथ दी थी । गणपती के त्योहार के दरम्यान बाँबी मुझे सायन धारवी एरिया में लेके गया । वहा पर लगे होर्डिंग पर लगा एक फोटो दिखाया और कहा के इसका नाम बी.आर.शेट्टी है और इसको मारने का है । तभी बाँबी ने दिलीप को भी वो फोटो दिखाने के लिये बोला इसलिए मैंने दिलीप को मोटार सायकल से लेके आया । तभी वहा नित्यानंद भी पहुंचा था । सबके सामने बाँबीने दिलीप को भी होर्डिंग पर लगा वो फोटो दिखाया था ।

उसके बाद ३ अक्टूबर २०१२ के दिन वापस बाँबीने काम करने के लिए अंधेरी में इन्फ़ीनिटी मॉल के पास बुलाया । तभी मैं और दिलीप हमारे पासवाले बजाज डिस्कवर बाइक से करीब १२.०० बजे अंधेरी गये । तभी हत्यारभी हमारे पास थे । वहा पर बाँबीभी मौजूद था । हम लोगोने १४.०० बजे तक बी. आर.शेट्टीका इंतजार किया लेकिन वो आया नहीं इसलिये हम लोग खाना खाने चले गये । फिर ५.०० बजे मैं और दिलीप बी.आर.शेट्टीका ऑफिस जहापर है उस क्रिस्टल प्लाज़ा बिल्डींगके कम्पाउन्डमें जाकर रुके । वहा पर हमारे नजदिक

नित्यानंद भी खड़ा था । रात २०.३० बजे के दरम्यान सभी ऑफिस बंद होने लगे तो मैं और दिलीप बहार जाके बिल्डिंग के गेट के पास खड़े रहे । वहा से नजदिक के दूरी पर नित्यानंद भी खड़ा था । रात २१.३० बजे के दरम्यान बी. आर. शेट्टी उसका काले रंग की स्कोडा गाडी नंबर एमएच ०६ एस ६२१० लेके बाहर आया तो नित्यानंद ने मुझे बाँबी ने उसको दिये हुऐ मोबाईल नंबर ८२९१७२०३८७ से तुरंत इशारा किया । मैंने और दिलीप ने बाईक से बी. आर. शेट्टी के गाडी का पिछा करना शुरू किया बी. आर. शेट्टी ने उसकी कार ले के तनिष्क शोरूम के बाजुवाले रोड से जाने लगे, हम लोग उन को पिछा कर रहे थे । जैसे ही वहाँ के स्पिड ब्रेकर की वजह से बी. आर. शेट्टी ने गाडी का स्पिड कम किया तो मैंने बाइक उसके गाडी के दाहीने बाजु लिया तब दिलीप ने उसके पास वाले गन से बी. आर. शेट्टी पर फायरिंग करना चालू किया । मैंने देखा के बी. आर. शेट्टी घायल हो गया है औ ऐसी हालत मे उसने कार स्पिड से भगाई । तो मैंने बाइक आगे लेफ्ट की तरफ मोडा तो वहा पर दिलीप बाईक से निचे उतरा और भाग गया । मैंने बाईक अंधेरी स्पोर्ट्स कॉम्पलेक्स के पास खडी कर दी और मै भी रिक्शा से अंधेरी स्टेशन चला गया । तभी मैंने बाँबी को उसके माबाईल ९८६७१७१६९९ पे काम हो गया करके फोन किया । बाँबी ने मुझे मेरे घर के पास बुलाया । मै रिक्शा से अंधेरी गया और फिर ट्रेन से किंग्सकॉल गया वहा स्टेशन पर मुझे दिलीप मिला । मै और दिलीप दोनो आपने घर गये बाँबी मेरे घर के पास मिला तभी हम दोनो मेरे घर से थोडे दुरी पर चलके गये तो वहा व्हाईट मर्सिडीज गाडी से सेल्विन आया था। बाँबी और मै गाडी में बैठे तो बाँबीने मुझे ९० हजार रुपये दिये । और बाकी रक्कम दो तीन दिन में मिल जायेगा ऐसे बोला । वहा से हम दिलीप को मिले तभी मैंने दिलीप को २५ हजार दिये । बाँबी ने मेरे पास से अंधेरी में रखे हुऐ बाइक की चाबी और पेपर्स लिया और वह बाइक लाने गया । बाद मे मैंने मेरी अक्टीव्हा बाइक लेके आया और दिलीप के पास का सामान रखा हुआ बॅग लेके वाशी ब्रिज पर गया । वहा पर बॅग मे रखे दो रिवॉल्वर और एक पिस्तल पानी मे फेक दिया और थोडा आगे जाकर के बॅग भी पानी मे फेक दिया और उरीया मे दिलीप को वापस मिला । तभी रात के करीब ०१.३० बजे थे । फिर मैं घर पे जाकर सो गया । बाँबी ने हम दोनो को सवेरे जल्दी एअरपोर्ट पर बुलाया था उस हिसाब से मैं और दिलीप टैक्सी से सुबह ४ बजे एअरपोर्ट पर गये । वहा बाँबी ने कहा के जम्मू के लिए एक ही टिकट मिली है, इसलिए हमको दिल्ली का टिकीट निकालने को और वहा से जम्मू आने को कहा । बाँबी जम्मू चला गया और मैंने और दिलीप ने दिल्ली का टिकिट निकाला । दिल्ली से मैं और दिलीप बस से जालंदर चले गये । वहा से हम दोनो बाँबी को मिलने जम्मू गये । वहा बाँबी ने कहा के काम की बाकी रक्कम दो दिने में मिल जायेगी । तभी बाँबी आपने जम्मू वाले गाव मे रहता था । लेकिन वहा हमको लेके नही गया । वहा दो दिन हॉटेल मे रुकने के बाद मै और दिलीप के भदोई, उत्तर प्रदेश गावे मे चले गये । वहा ४-५ दिन के बाद मैं मेरे गाव अंबाला, पंजाब चला गया और दिलीप उसके गाव भदोई, उत्तर प्रदेश मे था । १६ अक्टूबर को मैं बाँम्बे जाने के लिए निकला तब बाँबीने

फोन करके कहा के पुलिस उन्हे ढुँढ रही है इसीलिए बॉम्बे मत जावो । फिर बॉबी मुझे अंबाला में मिला और दिलीप को फोन करके उसे सहारनपुर बुला लिया । वहा से हम तीनों मिलकर लुधीयाना, पंजाब मे उसके रिश्तेदार के किराये के घर मे करीब देढ महिने तक रहे थे । हमारे पास के पैसे खत्म होने को आये तभी बॉबी ने कहा के वो जम्मू से उसके बीवी के पास से पैसा लेके आयेगा । और वहा मुझे और दिलीप को लुधीयाना छोड के चला गया । उसके बाद वो हमे मिला नही और उसने फोन भी नही किया । तभी हम लोगों को शक होने लगा, इसलिए हम वो मकान छोडकर अमृतसर जाने के लिये जालंधर बस अड्डे पर २६ नवंबर को आये बम्बई पुलिस ने हम दोनो को बी. आर. शेट्टी वाले फायरिंग केस मे उधर ताबे मे लिया और जालंधर लोकल कोर्ट मे पेश किया । उसके बाद हमको बंबई लेकर आये ।

उपर लिखा जबाब मुझे हिंदी में पढकर सुनाया और समझाया गया है । यह जबाब परिमंडल १ के पुलिस उपायुक्त श्री रविंद्र शिसवे इन्होने पुछा और उनके कर्लकने टाईप किया है । मेरा बयान मुझे पढकर सुनाया गया । यह मेरे कहने के मुताबिक सही और बराबर है । इसलिये मैं जबाब पर मेरी दस्तखत कर रहा हूँ ।

यह कबुली जबाब तारीख १२/१२/२०१२ दोपहार १४:१५ बजे शुरू करके १६:४५ बजे समाप्त किया गया ।

121. In order to corroborate the fact that the accused Talvinder Singh had given reflection period by PW.32 Ravindra Shisave, the prosecution examined PW.24 PSI Sabaji Nayak and PW.25 PSI Sunil Bhat of Azad Maidan Police Station. It has come in the evidence of PW.24 PSI Sabaji Nayak that he was directed to go to the office of DCP Zone-I. Accordingly, at 12:00 noon, he went to the DCP office. At 2:15 pm, DCP called him inside the chamber and handed over the custody of accused Talvinder Singh. He was instructed not to permit anybody to meet accused Talvinder Singh and he should be kept in separate lock up and to produce him on the next date before him at 01:00 pm. Accordingly he took the custody of the accused Talvinder Singh and get his medical examination done at G.T. Hospital. Thereafter, he put him in the lock up of Azad Maidan Police Station. He took the necessary entries in the station diary vide Exh.242, Exh.243 colly.

122. In his evidence PW.25 PSI Sunil Bhat deposed that on 12/12/2012, he was on duty. PSI Nayak told him that as per the instructions of DCP Zone I he should not permit anybody to meet the accused who was lodged in the lock up. On 12/12/2012, at about 1.45 pm, he took the accused from the lock up and produced him before DCP Zone I. At 5.30 pm, DCP Zone I called him inside the chamber and given custody of the accused Talvinder Singh. He was given a letter and two sealed envelopes and directed to produce the accused before CMM. Accordingly, he produced the accused before CMM and handed over the letter and the sealed envelopes. They were directed to stand outside the Court. At around 19:20 hours, they were called inside the Court and custody of the accused was given to them. Then he took the accused to IO Mr.Mahabadi and handed over the custody to him.

WHETHER CONESSIONS ARE VOLUNTARY ?

123. The legal position regarding admissibility as well as evidential value of the confessional statement is now well settled. Now the question is on whom the burden lies to prove whether the confessional statement is voluntary or not ? While dealing with the provision of section 15 of the TADA Act which is pari materia to section 18 of the MCOC Act, the Hon'ble Supreme Court in **Gurdeep Singh's case (AIR 1999 Supreme Court 3646)** held that,

“Para no.25: Whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for that it has to prove that all requirements under section 15 and Rule 15 under TADA Act and Rules are been complied with. Once this is done, prosecution discharges its initial burden and then, the burden shifts on the accused persons. Then, it is for him to prove through facts that the confessional statement was not made voluntarily. If such fact was pleaded and brought on record during trial the Court must test its

veracity, whether such fact constitutes to be such as to make his confessional statement not voluntarily made.”

124. In view of this pronouncement, the initial burden is on the prosecution to prove that all requirements under section 18 and Rule 3 under MCOC Act are complied with and then, the burden shifts on the accused. Consequently, it is necessary to verify whether the prosecution prove all the requirements of section 18 and Rule 3 under MCOC Act. As per section 18(1) of the MCOC Act, the confessional statement of the accused came to be recorded by the officer of the rank of Superintendent of Police. The said position is not disputed.

125. As per section 18(2), the confession shall be recorded in free atmosphere and in the same language in which the person is examined and as narrated by him. It appears that the confessions of accused came to be recorded at the chamber of the DCP PW.32 to 34 and PW.43. The defence nowhere disputed that there was no free atmosphere while recording the statement of the accused. It reveals that before recording the confessional statement of the accused necessary inquiry was made by the concerned DCP to verify whether the accused were giving confessional statement voluntarily and only after being satisfied that the accused was giving the confessional statement voluntarily, the same are recorded. The concerned DCP asked the accused about the language which is suitable to them. All the accused stated that Hindi is the suitable language to them and accordingly, the confessional statement came to be recorded in Hindi language.

126. As per section 18(3) of the MCOC Act, it is necessary for the Police Officer recording the confession to explain to the person making

it that he is not bound to make the confession and that if he does so, it may be used as evidence against him. Ongoing through the confession Part-I and Part-II of these accused, every DCP recording the confessional statement of the accused informed them that they are not bound to make confession and if they do so, it will be used as against them and even the co-accused. The accused replied to it and stated that they are aware about it. Therefore, the accused were properly informed by the concerned DCPs about the consequences of giving confessional statement.

127. In view of section 18(3) of the MCOC Act, it is mandatory for the concerned Police Officer recording the confessional statement to certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same. On perusal of the confession part-II every DCP recording the confessional statement certified below part-II about their personal satisfaction of the voluntary character of the confession and also put their signature with date.

128. The learned Advocate Mr.Pasbola and Advocate Mr.Rajput for accused pointed out towards the certificate (Exh.295-C) given by PW.32 DCP Ravindra Shisave, wherein, the word 'willingly' is mentioned in the context that he is satisfied that the confession has been made willingly. Similarly, attention is drawn towards the certificate (Exh.303-B) issued by PW.33 Tanaji Ghadge, wherein, two certificates are endorsed. In the initial certificate, the word willingly is mentioned and then in another certificate the word 'voluntarily' is inserted. So also, in the certificate issued by PW.34 Dhananjay Kulkarni and PW.43 Dattatraya Rajaram Karale the word 'willingly' is mentioned. The learned Advocate

Mr.Rajput relied on the judgment of Hon'ble Bombay High Court in the matter of **Mohd. Iqbal Farookh Shaikh Vs. State of Maharashtra** reported in **2007 (Supp.1) BOM.C.R. 415**, wherein it is held that- “competent authority is obliged to certify in writing below confession about his personal satisfaction of voluntary character of such confession putting date and time.” It is also held that “absence of certificate and memorandum prepared or noted at the end of confession by competent authority will be of no avail and such confession are to be discarded”. Here it is not the case that the police officer recording the confession has not issued the certificate. Only objectionable thing is regarding the word 'willingly' used about the satisfaction of the officer that the confession is made willingly. In fact, PW.33 DCP Tanaji Ghadge rectified this defect by issuing another certificate Exh.303-B, as such the same cannot be faulted with. At the same time, in his cross-examination, PW.43 DCP Dattatraya Rajaram Karale though admitted that in the certificate the word 'willingly' is used and not the word 'voluntarily', but further stated that it conveys the same meaning.

129. The Hon'ble Supreme Court in the matter of **Bharatbhai Vs. State of Gujarat** reported in **(2012) 8 SCC 447** held that,

“writing certificate at the bottom and making the memorandum under the rules is mandatory. Though the language of the certificate and memorandum is not mandatory, it is held that in case of the certificate and memorandum is not prepared, but, the contemporaneous record shows that there is substantial compliance with what is required to be contained therein the discrepancy can be cured, if there is oral evidence of the recording officer based on such contemporaneous record.”

130. Certainly, though the word 'willingly' is mentioned in the certificate issued by PW.32 Ravindra Shisave, PW.34 Dhananjay

Kulkarni and PW.43 DCP Dattatraya Karale, but, it is made clear that it conveys the same meaning as 'voluntarily'. Even they specifically deposed that on being questioned the accused, they satisfied that the accused wants to confess voluntarily. Satisfaction of the recording officer about the voluntariness of the confession is must and that is reflected from the certificate and their evidence. On the basis of the said wrong use of the word 'willingly' in place of 'voluntarily', the certificate issued under confessional statement Part-II cannot be doubted and discarded.

131. In view of the judgment **Mohd. Iqbal Farookh Shaikh Vs. State of Maharashtra** cited supra by Advocate Mr.Rajput, the competent authority while issuing the certificate must put date and time. The defence has raised objection that no date and time is mentioned by PW.33 DCP Tanaji Ghadge below his signature on the certificate, whereas, the other DCPs has not mentioned the time. Ongoing through the certificate issued by the PW.33 DCP Tanaji Ghadge, no date and time below the signature is mentioned, however, at the end of the confession part-II specific date 09/11/2012 along with time 21:05 hrs. to 23:00 hrs. is mentioned. Same is the case in respect of the other confessional statement recorded by the DCP. Therefore, non mentioning of the time below the signature will not discard the fact of recording confession.

132. The learned Advocate Mr.Pasbola vehemently argued that as per section 18 of the MCOC Act, the confession statement can be recorded on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced. It is argued that in these

days such mechanical devices are easily available to record the confession, but, the recording police officer intentionally avoided in order to give a subtle incriminating colour to the statement. Needless to mention here that as per section 18 of the MCOC Act the confessional statement can be recorded by the Police Officer either in writing or on any mechanical devices. Therefore, the option is with the officer recording the confessional statement. Herein this case, the recording police officer choose or found it suitable to record the confessional statement of the accused in writing. Merely, because the confessional statement of the accused are not recorded on any mechanical devices like cassettes, tapes etc., it cannot be said that those are involuntary.

133. It is argued that the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh had at the earlier stage made applications to the concerned Court where they placed for remand and stated that they do not wish to make any confessional statement to the competent authority. Attention is drawn towards cross-examination of PW.44 Arvind Mahabadi, wherein, he admit that on 06/11/2012, accused nos. 1 and 2 and on 29/11/2012 accused nos. 4 and 5 made applications before the remand court that they do not wish to make any confessional statement before any competent authority and that the concerned IO is pressuring them to sign on the blank papers. It is argued by the learned Advocate Mr.Rajput that once the accused told the remand Court that the IO is pressurizing, the accused should not have been remanded to the Police custody. It is pertinent to note here that unless and until there are any complaints about the ill-treatment, the accused cannot be granted judicial custody and IO cannot be deprived to ask for the police custody of the accused.

134. Basically the applications made to the remand court that they do not wish to make any confessional statement are under legal advise. The possibility that due to invocation of the provisions of MCOC Act and during police custody, the accused may have repented on their acts can not be overruled. When the accused were asked by the DCPs that as to why they want to confess, they stated that they were repenting on their acts. Therefore, even though the accused moved application before the remand court that they do not want to confess cannot be accepted and believed.

135. It is argued by the learned Counsel for the accused that the sections of MCOC Act are added in the crime only with a view to seek confessional statement of the accused. It is pointed out that there was absolutely no evidence before invoking the provisions of MCOC Act in the offence. The learned Counsel for the accused pointed out towards cross-examination of PW.42 PI Sanjeev Dattatraya Dhumal, wherein, he admits that during his investigation, none of the three accused expressed their desire to make the confession. On being asked whether any of the accused told him that they wanted to make confess, he replied in negative. In fact, in the cross-examination itself a question was asked to this witness that did you ask the accused whether they wanted to confess?, he replied in the negative. It indicates that PW.42 Sanjeev Dhumal did not ask the accused at any point of time during his investigation whether they want to make confession. The possible reason is that after invoking of the provisions of MCOC Act, the accused must have felt to repent.

136. It is strenuously argued by the learned Counsel for the accused that the author of all the confessional statements are common, which shows that the confessions are prepared by the IO ACP Mahabadi and only signatures of the DCPs were obtained. It is pointed out that all the confessional statements including Part-I and Part-II are typed on the same computer, the font and size of the letter are also the same. Not only that the mistakes are also common. The learned Advocate for accused pointed out several mistakes which are common in all confessional statement part I & II. It is tried to canvass that the confessional statements are identical, prepared by the same author and not made voluntarily.

137. The learned Advocates for the accused draw attention towards cross-examination of PW.32 Ravindra Shisave wherein he admit that the question no.8,10 recorded in confession(Exh.299 part-1) of accused Nityanand are identical to the question nos.8,10 recorded in confession(Exh.295). He further admit that 17 questions asked to accused Nityanand are identical and in same sequence are found in confession(Exh.295). He was unable to say why there is similarity in the questions put to the accused Talvindar, Dilip Upadhyay and Selvin Danial.

138. Further attention is drawn towards cross-examination of PW.33 Tanaji Ghadge, wherein he admitted that the record of confession part-1 (Exh.303) and confession (Exh.295) are similar. He also admitted that confession part II (Exh.303-A) and confession (Exh.295-A) are also similar. He could not assign any reason why the confessions recorded in this case are identical.

139. Further attention is drawn towards cross-examination of PW.34 Dhananjay Kulkarni, wherein he admit that the question nos.8 and 9 in the confession part-1 (Exh.311) are identical to the questions at Sr. Nos.8 and 9 in the confession part-1 (Exh.295). He could not assign any reason as to why the contents of the record of confession part-1 (Exh.295) and the confession part-1 (Exh.311) are identical (except for the name of the accused, date of arrest and the name of the officers). He further could not assign any reason as to why the contents of the record of confession part-2 (Exh.295-A) and the confession part-2 (Exh.311-A) are identical (except for the name of the accused and the name of the officers).

140. Further attention is drawn towards cross-examination PW.43 Dattatraya Karale, wherein he admit that the question nos.1 and 4 in the confession (Exh.303) and the question nos.1 and 6 in confession part-1 (Exh.365) are identical. He further admit that question no.5 in confession part-1 (Exh.365) and question no.3 in confession (Exh.303) are identical. He further admitted that answer to the question no.15 in confession part-1 (Exh.365) and answer to the question no.3 in confession (Exh.303) are identical. So also of confession part-2 (Exh.365-A) and the confession part-2 (Exh.303-A) contain same questions.

141. The attempt of the defence in pointing out the aforesaid mistakes, repetitions in the confessional statement recorded of the accused is to show that the author of the said confessional statement is common and therefore, the confessional statements are not voluntary. No doubt there might be some similarity in putting the questions to the accused, but it

can not be said that the author of all the confessions are the same. The recording officer of the confessions are higher official of the police department and unconnected with the investigation of the case. There is no reason for them to falsely record the confessional statements of the accused. They specifically denied that the confessional statements were already prepared by the investigating agency.

142. It is necessary to point out here that after recording of the confessional statements of accused and in view of the compliance of section 18(5) of MCOC Act, the accused were produced before the CMM, Esplanade Court, Mumbai and except accused Talvinder Singh, the other accused Nityanand Nayak, Selvin Danial and Dilip Upadhyay admitted that the confessional statement recorded are as narrated by them and they gave the statement voluntarily. They specifically stated that the Police Officer has not shown any inducement while recording their statements. Even accused Talvinder Singh also stated that no threat or inducement is shown by police to him and he had no complaint against the Police. Even in his written statement (Exh.439), he admitted that he was produced before DCP on 11/12/2012, kept in Yellowgate Police Station and again produce before DCP on 12/12/2012. This itself shows that no inducement, threat or any sort of promises was offered or given to the accused.

143. Production of the accused before Chief Metropolitan Magistrate along with the confessional statement is the important provision on the basis of which the provisions of section 18 of the MCOC Act were held to be valid. This is in conformity with guarantee that the accused would be dealt with by the judiciary immediately after recording of such

confession and the accused got an opportunity to disclose or made complaint if any, on the basis of which the confession could be examined. The statement made by the accused before the Ld. CMM assured that the confessional statement was recorded in free atmosphere and in language as narrated by the accused. Further it also give certainty that the accused were, well aware as to why they were produced before the DCPs. It has given an additional conformity with guarantee to the version of the prosecution that the confessional statements are voluntary.

REFLECTION PERIOD

144. It is argued by Ld. Advocate Rajput that the proper reflection period was not given to the accused by the concerned DCP's. It is argued that the period required for conducting the medical examination of the accused and taking them out of the lock up to be produced before the concerned DCP's cannot be computed. It is argued that the actual period of 24 hours must have been given to the accused for reflection and in that time he should be kept aloof. Ongoing through the evidence of P.W.33 DCP Tanaji Ghadge he has given the period of 24 hours to accused Nityanand Nayak to reconsider his decision to make confession. The accused Nityanand Nayak was initially produced before him on 08/11/2012 at 18.00 hours and the confessional statement part I Exh.303 came to be recorded at 18.45hrs. Thereafter, the accused was kept in a lock up of Yellogate Police Station and again produced before the P.W.33 on 09/11/2012 at 21.05hrs. and the confessional statement Part II came to be recorded till 23.00hrs. Thus, the actual period of reflection given is more than 24hrs.

145. The accused Selvin Danial produced before PW.43 DCP D.R. Karale on 08/11/2012 at 14.15hrs. and his confessional statement Part-I Exh.365 came to be recorded and completed at 17.45hrs. Thereafter, accused Selvin Danial was again produced before him on 09/11/2012 at 22.30hrs. and his confessional statement Part-II Exh.365A came to be recorded and completed at 01.15hrs. Thus the period for reflection was given for more than 24hrs.

146. The accused Dilip Upadhyay produced before P.W.34 DCP Dhananjay Kulkarni on 11/12/2012 at 10.30hrs. and his confessional statement Part I Exh.311 came to be recorded and completed at 11.00hrs. Thereafter, accused Dilip Upadhyay was again produced before him on 12/12/2012 at 11.00hrs. and his confessional statement Part II Exh.311-A came to be recorded and completed at 12.10hrs. Thus the period for reflection of 24hrs was actually given.

147. The Hon'ble Apex Court in the matter of **State(NCT) Vs. Navjot Sandhu** (cited supra) held that,

“there is no hard and fast rule regarding grant of time for reflection before recording a confession and the rules and guidelines applicable to a confession u/s.164 Cr.P.C. do not govern, but in the present case, the time of 5 or 10 minutes is, by all standards, utterly inadequate. Granting reasonable time for reflection before recording a confession is one way of ensuring that the person concerned gets the opportunity to deliberate and introspect once again when he is brought before the prescribed authority for recording the confession. That is one of the relevant consideration in assessing the voluntariness of the confession.”

148. In view of the above findings of the Hon'ble Apex Court, there is no hard and fast rule regarding grant of time for reflection, but it is

expected that reasonable time to be given to ensure that the persons concerned gets the opportunity to deliberate and introspect once again. As per rule 3(4) of The Maharashtra Control of Organised Crime Rules, 1999, the period not less than 24 hours to be given to the person for reconsideration of his decision. Here the concerned DCP's have given the reflection period of 24 hrs and more to the accused, which is reasonable and sufficient to deliberate and introspect once again. In fact, the concerned DCP's asked the accused whether the period given to them to rethink was adequate or not or whether any further time is required, but the accused replied that sufficient time was given to them and they are ready to confess. In this view, the objection raised by the defence that sufficient time for reflection was not given to the accused, do not holds any substance. On the contrary, the reflection time given by the concerned DCP's of 24hrs and more is one of the relevant consideration for assessing the voluntariness of the confessions given by the accused.

WHETHER CONFESSIONS ARE TRUTHFUL ?

149. In view of the judgment of Hon'ble Apex Court in **State (NCT of Delhi) Vs. Navjot Sandhu** (cited supra), if the first test of voluntariness is not satisfied, the question of applying the second test does not arise. Here in this case, the test that the confession of the accused are voluntary is satisfied, therefore, it is necessary to evaluate the second test i.e. whether the confessions are true and trustworthy. The Hon'ble Apex Court enumerated a broad method by which a confession can be evaluated is that the Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. Relying on the same method, let's now examine the confessions of the accused and compare

it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. For the sake of convenience, herein before the sequence of events in the confessional statement of the accused Nityanand are taken out. The statement of the accused Nityanand the fact that he acquainted with the accused Selvin Danial and used to work in his Rajrajeshwari Construction and Credit Society as legal consultant, is also expressed by accused Selvin Danial in his confessional statement. It suggest that accused Nityanand Nayak and accused Selvin Danial were knowing each other. Further they specifically stated about the deposit of money in the account of wanted accused Gurdeep Singh, which is in consonance with the evidence of PW.3 Sujit Rewale and the ICICI Bank officers and inspires more confidence.

150. The evidence of PW.28 B.R.Shetty that incident of firing took place on 03/12/2012 in between 09.40 to 09.50 pm by means of firearms is in consonance with confessional statement of accused Talvinder Singh and Dilip Upadhyay. It leaves no room of doubt that the incident of firing on B.R. Shetty took place on 03/10/2012 in between 09.40 to 09.50 pm in lane adjacent to Tanishq showroom and in between Tanishq showroom to Purvi building.

151. The evidence of PW.28 B.R. Shetty that in all four rounds were fired at him, one of the bullet hit him and he became injured is also stated by accused Talvinder Singh and Dilip Upadhyay. Thus, the fact that PW.28 B.R. Shetty injured due to firearm also get sufficient corroboration.

152. The confessional statement of the accused Talvinder Singh and

Dilip Upadhyay that they chased PW.28 B.R. Shetty on motorcycle and accused Talvinder Singh was driving the motorcycle and accused Dilip Upadhyay fired at PW.28 B.R. Shetty, supported evidence of PW.28 B.R. Shetty. Moreso, the fact that the accused Dilip Updhyay purchased Bajaj Discover motorcycle no.MH-03-AB-8938 is also substantiated by the evidence of PW.11 Mariyappan Devendra Kuppuswami. It is also clear from the confessional statement of the accused Dilip Upadhyay and Nityanand Nayak that PW.28 B.R. Shetty at the relevant time of the incident was driving black color Skoda car No.MH-06-AS-6210.

153. The fact that the accused Tavinder Singh after the incident thrown the weapons and bag in Vashi Creek gets further corroboration from the evidence of panch witness. From the evidence of PW.12-Shashi Ramdhani Pandey that the accused Talvinder Singh shown the spot near the Vashi creek and accordingly, panchanama Exh.156 was performed.

154. It is necessary to point out here that in their confessional statement, accused Dilip Upadhyay and Talvinder Singh specifically stated that absconding accused Bobby called them to show the photograph of B.R. Shetty affixed on a hoarding in Sion-Dharavi area. Ongoing there, Nityanand was also present there and Bobby shown the photograph of B.R. Shetty and told to kill him. The fact of visiting by the accused at Sion-Dharavi area is exclusively within the special knowledge of the accused, which is disclosed by themselves in the confessional statement. The learned Advocate Mr.Deshpande pointed out that though it is mentioned in the confessional statement of the accused Talvinder Singh and Dilip Upadhyay that accused Nityanand

Nayak was present there, but, the accused Nityanand nowhere stated about the same. Certainly, there is no such mention in the confessional statement of the accused Nityanand Nayak. But fact remains that if the target is not identified to accused Talvinder Singh and Dilip, how they can chase and fired on some unknown person. One thing is also got assurance by this that if at all the confessional statements were procured or manipulated by the Police Officers, they must have mentioned such fact in the confessional statement of the accused Nityanand Nayak. This has strengthened the fact that the confessional statement are voluntary and recorded as per the narration of the accused.

155. On careful examination of the confessional statements of the accused and comparing it with the evidence adduced by the prosecution, the confessions appears to be probable catalog of events and naturally fits in with the rest of the evidence and the surrounding circumstances. It has satisfied the second test of truth and trustworthiness of the confession. Hence, there is no hesitation to come to the conclusion that the confessions of the accused Nityanand Nayak, Selvin Danial, Talvinder Singh and Dilip Upadhyay are truthful.

RETRACTED CONFESSION :

156. The learned Counsel for the accused vehemently argued that the accused Nityanand Nayak, Selvin Danial, Talvinder Singh, Dilip Upadhyay retracted the confession. It is pointed out that before the Remand Court itself, on 06/11/2012 accused nos.1 and 2, whereas, on 29/11/2012 accused nos.4 and 5 made application that they do not wish to make confession. Further, it is pointed out that the accused

Nityanand and Selvin Danial on 12/11/2012, after producing them before the Remand Court, made specific application in R.A. No.165/2012 that “the concerned IO has obtained signature of them on already prepared document and they had pressurized to sign on the paper. They have not made any confession before any authority”. As well, the accused Dilip Upadhyay and Talvinder Singh filed application on 15/12/2012 in R.A. No.182/2012, stating that “ Police machinery extracted confessions from them. They were unaware of the contents of the alleged statements/confessions extracted from them. Their signatures were obtained on the blank papers by the Police under coercion.” Therefore, it is argued that the accused retracted the confession on the date when they were produced before the Remand Court just after recording their confessions. It is necessary to mention here that this statement of the accused Talvinder is contrary to his statement before Ld. CMM, wherein, he stated that his signatures were obtained by stating that he has to sign on a document as a panch witness and it is nothing but panchanama. Therefore, accused Talvinder Singh is not firmed whether his signature were taken on some written document or blank papers. Not only that before Ld. CMM accused Talvinder Singh specifically stated that no threat or inducement were shown by the Police to him and he had no complaint against the Police. This is also contrary to the statement that his signatures were obtained on blank papers under coercion.

157. In the light of the objection of retracted confessions raised by the accused, at the first, it would be expedient to discuss briefly the legal principles governing appreciation of evidence pertaining to retracted confession. The learned Advocate Mr.Rajput relied on the judgment of

Hon'ble Supreme Court in the matter of **Puran Vs. Sate of Punjab** reported in **MANU/SC/0090/1952**, wherein, it is held that,

“Para no.9 : It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.”

158. The learned Advocate Mr.Rajput further relied on the judgment of Hon'ble Orissa High Court in the matter of **Govind Chandra Chinera Vs. State of Orissa** reported in **MANU/OR/0402/2001** in Para 10 of said judgment it is held that,

“Coming to the second ground of challenge it is clear from the materials on record that there is absolutely no corroborative evidence in support of confessional statement. There is no dispute that the judicial confession said to have been made before the Ld. Magistrate has been retracted by the Appellant in his examination u/s. 313 of Cr.P.C. Law is well settled that a conviction can be based only on judicial confession if it is found to be voluntary and true but in case of retracted judicial confession as a matter of prudence the Courts ordinarily look into corroborations from other sources”.

159. The Hon'ble Supreme Court in **Parmananda Pegu Vs. State of Assam (2004) 7 SCC 779** has held that “retracted confession cannot be made solely basis of conviction unless the same is corroborated and it is enough that there is broad corroboration in conformity with the general trend of the confession. Confession though voluntarily made by accused may not be wholly or partly true and truth of confession should be tested by the Court though voluntary confession can be regarded as presumptive evidence of its truth”. The Hon'ble Court further held that “before acting on the confession, the court must be satisfied that the procedural requirements laid down in sub sections (2) to (4) of Section

164 Cr.P.C. are complied with as these are salutary safeguards to ensure that confession is made voluntarily by the accused after being apprised of the implications of making such confession.

160. The Hon'ble Apex Court in **State of Bihar Vs. Basvantsingh (AIR 1958 S.C.500)** held that “in the matter of assessment of the value of evidence and the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down. All that is required is that there must be some additional evidence rendering it probable that the story of the prosecution is true and that is reasonably safe to act upon it. The corroboration need not be by direct evidence that the accused committed the crime. It is sufficient with corroboration is merely circumstantial of the connection of the accused with the crime.”

161. Further, the Hon'ble Supreme Court in **Aloke Nath Dutta Vs. State of West Bengal (2007) 12 SCC 230**, culled out the law regarding evidential value of confession retracted by the accused, as under:-

- (i) In case of retracted confession, the courts should evidently be a little slow in accepting the confession, although the accused may not be able to fully justify the reasons for his retraction.
- (ii) In a case of retracted confession, the courts while arriving at a finding of guilt would not ordinarily rely solely thereupon and would look forward for corroboration on material particulars and such corroboration must be independent and conclusive in nature.
- (iii) A retracted confession of a co-accused cannot be relied upon for the purpose of finding corroboration for the retracted confession of an accused (AIR 1949 Privy Council 257 relied).

- (iv) The value of retracted confession is now well known. The court must be satisfied that the confession at the first instance is true and voluntary (AIR 1958 SC 66 relied).
- (v) If retracted confession is found to be corroborative in material particulars, it may be the basis of conviction (AIR 1957 SC 216 relied).
- (vi) In 1950 and 1960, corroborative evidence in material particulars was the rule. A distinctiveness was made in later years in favour of 'general corroboration' or 'broad corroboration' (2004 (4) RC (Criminal) 955 (SC) relied).
- (vii) No judgment of conviction shall be passed on uncorroborated retracted confession. Conviction of accused on the basis of a retracted confession is permissible but only if it is found that retraction made by the accused was wholly on a false premise.
- (viii) Although retracted confession is admissible, the same should be looked with some amount of suspicion. A strong suspicion than that which is attached to the confession of an approver who leads evidence to the court.

162. In view of the afore cited pronouncement, in case of retracted confession, it is prudent to look for corroboration in material particulars. Moreover, the rule of prudence namely requiring corroboration does not mean that each and every circumstance mentioned in the confession with regard to the participation of the accused in the crime must be separately and independently corroborated. It is sufficient if there is corroboration of the important incidents. Therefore, it is now necessary to ascertain if there is any corroboration to the confessional statement of the accused.

163. It is the evidence of PW.28 B.R. Shetty that the incident of firing took place on 3.10.2012 at about 9.40 to 9.50 pm. He left the office at Crystal plaza at 09.30 pm and proceeded towards the house of his friend in his Skoda car. Accused Talvinder Singh in his confessional statement Exh.295-B specifically stated that at 20.30 hours, he and accused Dilip were standing near the gate of Crystal Plaza Building and accused Nityanand was standing at some distance. He further stated that at about 21.30 hours B.R. Shetty came out in his Black Colour Skoda car no.MH-06-AS-6210 and they started to chase said vehicle. Same is the statement of the accused Nityanand Nayak that on third date he was called by the Bobby and called him in the evening in the Infinity Mall. When he reached there Bobby, Sonu and Dilip were present there. As per direction of Bobby he started keeping watch on the Skoda car of Shetty by standing near his office. Not only that accused Dilip Upadhyay stated that on 3.10.2012 at 8.30 pm he and Sonu were standing near the gate of the building and Nityanand was standing at some distance at 9.30 pm. Nityanand told them that B.R. Shetty has left in his car accordingly they stated to chase the said car. This statement of the accused Talvinder Singh, Dilip Upadhyay and Nityanand Nayak clearly receive corroboration from the evidence of the PW.28.

164. PW.28 B.R. Shetty in his evidence deposed that the incident took place near Purvi building in the lane adjacent to Tanishq showroom. In this regard accused Talvinder Singh stated in his confessional statement that B.R. Shetty took his car to the road adjacent to the Tanishq showroom and he slow down the speed of his car because of the speed breaker. Even accused Dilip Upadhyay stated that B.R. Shetty took his

car by the road adjacent to the Tanishq Showroom and due to speed breaker he slowed down the speed of his car. This statement of the accused Talvinder Singh and Dilip Upadhyay finds material corroboration from the evidence of the PW.28 B.R. Shetty and compels to accept that the confessional statement of these accused are voluntary and exalting truth.

165. It is stated by accused Dilip Upadhyay in his confessional statement that when the injured PW.28 B.R. Shetty slowed down the speed of his car, accused Talvinder Singh took the motor cycle by the right side of the car, then he took out the gun and fired four rounds. He saw that B.R. Shetty was injured and in that condition he continued to drove the car. Even it is the statement of accused Talvinder Singh that as soon as the speed of the car of B.R. Shetty was slowed down, he took the motor cycle on the right side of the car and then Dilip started firing on B.R. Shetty from the gun possessed by him. He saw that B.R. Shetty was injured and he drove his car in such condition. This statement of accused Talvinder Singh and Dilip Upadhyay gets corroboration from the evidence of PW.28 B.R. Shetty. This fact also corroborates from the panchanama of the Skoda car (Exh.135) that two bullets were found in the car, so also that the injured PW.28 B.R. Shetty sustained bullet injury on his left hand.

166. The Ld. Advocate Mr.Deshpande for accused No.3 argued that though it has come in the evidence of PW.28 B.R. Shetty and the statement of accused Talvinder Singh and Dilip Upadhyay that four rounds are fired, but in fact only three bullets i.e. two in the car and one in the right hand arm of the injured were found. It is also argued that there is no investigation regarding the fourth round fired. In fact PW.36

API Prakash Sawant and PW.40 API Vilas Rathod conducted the spot panchanama (Exh.325), but the fourth bullet cannot be traced out. Even during the panchanama of the car (Exh.135) the fourth bullet is not found. It may be possible that one of the round may have been misfired. Non recovery of the fourth bullet, did not bring the story of the prosecution of firing made on PW.28 B.R. Shetty under shadow of doubt.

167. It is stated by accused Talvinder Singh that he went to Vashi bridge by Activa bike and thrown two revolvers and a pistol kept in a bag in the water. Similarly it is stated by accused Dilip Upadhyay that Talvinder went on Activa bike to throw the weapon bag at Vashi bridge. In this regard PW.42 API Sanjeev Dhumal, deposed that the accused Talvinder had made a statement that he had thrown the weapon in the Vashi creek. They went there and searched for the weapon in presence of two pancha witnesses, but did not find the weapon. He prepared panchanama Exh.156. Even PW.12 Shashi Ramdhani Pandey deposed that on 30/11/2012 in the afternoon at about 2.30 pm., he was called at Chembur crime branch where the police officer told him that two persons were going to disclose something and they should hear. He identified the accused Dilip Upadhyay and Talvinder Singh to be the same person. Accused Talvinder Singh told that the weapon used in the crime was kept in a bag and that bag was thrown in the creek. Police called the fisherman. The fisherman told the police that the creek was deep and was difficult to find anything. Accordingly, police prepared panchanama (Exh.156). The evidence of this witness is challenged by the defence on the ground that he admitted in his cross-examination that he worked as pancha witness in many cases which are registered with the crime branch. The panchanama (Exh.156) bears the signature

of pancha witness. There is no reason to disbelieve this witness. Fact remains that there is no discovery in regard to the statement made by the accused Talvinder Singh. In fact the panchanama (Exh.156) do not appears in the form of the discovery panchanama recorded u/s.27 of the Indian Evidence Act. Considering the situation that the spot where the weapons are thrown is a creek, it is difficult for the prosecution to recover the weapon used in the crime. It is settled that the prosecution cannot be compelled to prove the impossible things. In spite of the fact that there is no recovery of the weapon, however the knowledge of the place where the weapons were thrown was within the knowledge of the accused Talvinder Singh and therefore it becomes a relevant fact u/s.3 of Evidence Act. It gives further corroboration to the confessional statement of accused Talvinder Singh and Dilip Upadhyay.

168. The accused Talvinder Singh confessed that through Dilip they purchased an old Bajaj Discover Motorcycle No.MH-03-AB-8938 for Rs.15,000/-. This fact is also stated by accused Dilip Upadhyay that he purchased an old Bajaj Discover bike No. MH-03-AB-8938. He further stated that he paid Rs.13,000/- and kept Rs.2,000/- with him. In this regard it has come in the evidence of PW.42 API Dhumal that as disclosed by accused Dilip Upadhyay, the motorcycle was searched at Antop Hill and seized one Bajaj Discover motorcycle on 05/12/2012 vide seizure panchanama (Exh.361). In this context, prosecution examined PW.11 Maniappam Kuppuswamy, who deposed that in the year 2012 at the time of Ganpati festival Pintu Ambalal Bhatt was in need of money, therefore, he sold his vehicle motorcycle to Dilip Upadhyay for Rs.15,000/-, out of which Rs.13,000/- was paid by Dilip Upadhyay and Rs.2,000/- was balanced. As the balance amount of Rs. 2,000/- was not paid, motorcycle was not transferred in the name of

Dilip Upadhyay. He identified the accused Dilip Upadhyay in the court. In the cross-examination he admitted that Dilip Upadhyay is his friend. Except this nothing material brought in the cross-examination of this witness to discard the fact that Pintu Ambalal Bhatt did not sell his motorcycle to Dilip Upadhyay. The evidence of this witness clearly corroborate the fact that accused Dilip Upadhyay purchased motorcycle for consideration of Rs.15,000/-, out of which he paid Rs.13,000/- and Rs.2,000/- was balanced or kept by him.

169. In order to corroborate the statement of accused Nityanand Nayak, the prosecution has made an attempt to examine PW.9 Madhu Kuttappan Kottiyal, but he has not supported to the prosecution. As such his evidence is of no help to the prosecution, to show that the accused Nityanand had been to his office on 03/10/2012.

170. Further to corroborate the statement of accused Nityanand that he met B.R. Shetty for 3-4 times at his Andheri office alongwith Shridhar Poojari, the prosecution examined said PW.14 Shridhar Deunna Poojari, but he has not supported to the prosecution. As such his evidence is of no help to the prosecution.

171. Further to corroborate the statement of accused Nityanand that he deposited Rs.30,000/- in ICICI Bank Account No. 074001001106, prosecution examined PW.3 Sujit Rewale, who know accused Nityanand Nayak and Selvin Danial. He deposed that he was talking with Nityanand Nayak daily on his mobile phone. He further deposed that on 9th or 10th October 2012 he had gone to ICICI Bank, Air India Colony Branch with accused Nityanand Nayak. One account number was given to him by accused Nityanand Nayak of a Punjabi man and told him to

deposit amount in that account. Accordingly he deposited Rs.30,000/- in that account, the receipt of which Article X-2 given by him to accused Nityanand Nayak. He deposed that accused Nityanand Nayak gave him the account number on a piece of paper and after depositing the amount he threw that piece of paper. From the evidence of this witness it is clear that on 9th or 10th October 2012 he went alongwith accused Nityanand Nayak to ICICI Bank, Air India Colony Branch and deposited Rs.30,000/- in the account of a Punjabi man. This evidence of PW.3 Sujit Rewale is in consonance with the statement of the accused Nityanand Nayak that he deposited Rs.30,000/- in the account of ICICI Bank.

172. The ld. Advocate Mr.Kazi for accused no.1 argued that the accused Nityanand Nayak in his confessional statement nowhere stated that he gave the amount of Rs.30,000/- to be deposited in the account through PW.3 Sujit Rewale. It is argued that PW.3 Sujit Rewale is the crop up witness. In the entire cross-examination of this witness nothing is brought on record the reason why he is deposing false against the accused Nityanand Nayak. The mere suggestion that he is deposing false is not sufficient to discredit the evidence of PW.3 Sujit Rewale. It may be the fact that due to fear of implicating the name of PW.3 Sujit Rewale in the offence, the accused Nityanand Nayak may have avoided to state the name of PW.3 Sujit Rewale in his statement.

173. The prosecution further examined PW.22 Miss Komalpreet Osham, who was the Branch Manager of the ICICI Bank, Sion Branch in December 2012. She has brought on record the account statement of the bank account number 074001001106 for the period from 01/09/2011 to 30/12/2012 (Exh.234) and also, the certificate

(Exh.235) under section 2A(B) and (C) of the Banker's Book Evidence Act. On verifying deposit slip dated 08/10/2012, she stated that on that day, amount of Rs.49,000/- was deposited in the account no.074001001106 in the Sion Branch of the ICICI branch. She further deposed that the account was in operation from October 2012 to December 2012.

174. The prosecution also examined PW.23 Bhalchandra Shantaram Gawade, the Branch Manager of ICICI Bank, Kalina Branch. This witness has produced on record the original cash deposit slip of Rs.30,000/- dated 12/10/2012 in the account no.074001001106 (Exh.237). He also produced the original statement of the account for the period from 01/09/2012 to 30/11/2012 of the said account standing in the name of one Gurudeep Singh Raina vide Exh.238 and the certificate Exh.239 under the Banker's Book Evidence Act. From the evidence of both, PW.22 Komalpreet and PW.23 Bhalchandra, it is abundantly proved that the account no.074001001106 stands in the name of the absconding accused Gurudeep Singh Raina and that on 08/10/2012 an amount of Rs.49,000/- and on 12/10/2012 an amount of Rs.30,000/- was deposited in the said account. Thus, the evidence of PW.22 Komalpreet and PW.23 Bhalchandra coupled with the statement of Bank account (Exh.234) and (Exh.238) so also the cash deposit slip (Exh.237) clearly corroborates the statement of accused Nityanand Nayak that an amount of Rs.49,000/- and Rs.30,000/- were deposited by him in the account of Gurudeep Singh Raina with ICICI Bank, Sion branch. This has also corroborates with the confessional statement of accused Selvin Danial that he gave Rs.49,000/- to accused Nityanand and again, Rs.30,000/- to be deposited in the account of absconding accused Bobby.

175. As it has come in the confessional statement of accused Dilip Upadhyay and Talvinder Singh that they went to Jammu to meet absconding accused Bobby, who arranged their stay in one Hotel of Jammu, the prosecution examined PW.45 Shankar Singh S/o. Ranjit Singh. He deposed that in the year 2012, he was working at Hotel Verma's near Jewel Cinema at Jammu, which was having facility of lodging. He deposed that in December 2012, Mumbai Police visited their hotel for enquiry in respect of the customer and to check the hotel register. He deposed that the Hotel register of dated 06/10/2012 and 08/10/2012 and the receipts of the payments of bills were destroyed. As per the request of learned SPP, the receipts and copies of entries in the register (Article-X-57 colly.) were marked as Exh.410 (colly.) and Exh.411 (colly.) in view of section 63 of the Evidence Act. The objection raised by the Advocate for the accused was kept open, however, during final argument no further submissions were made. In fact, this witness specifically deposed that the originals of the said documents are destroyed, but he identified the copies. Even these documents bears his signature on the back page, which indicates that the copies of the documents were obtained by Police from the custody of this witness. Consequently, there is no legal hurdle to exhibit the same.

176. Ongoing through the receipts (Exh.410 colly.) and the copies of the register (Exh.411 colly.) it is in the name of accused Talvinder Singh and his mobile number is also mentioned as 9892277753. It is also made clear that they stayed at the said hotel Verma's from 08/10/2012 to 09/10/2012. These documents and the evidence of PW.45 Shankar Singh corroborates the confessional statement of accused Dilip Upadhyay and Talvinder Singh that they went to Jammu,

stayed there in the hotel Verma's. Not only that, the mobile number 9892277753 given by accused Talvinder Singh during his confessional statement also corroborated by the receipts Exh.410, wherein, same number is mentioned.

AS REGARDS MOBILE

177. In his confessional statement Exh.295B, the accused Talvinder Singh stated that in the year 2012 he was using the mobile No.9892277753 which was in his name and another mobile No.9870338033 which was in the name of his friend Gaurav @ Goldy. At the time of arrest of the accused and as per evidence of P.W.39 API Nitin Patil the mobile No.9870337033 came to be seized from him vide personal search and seizure panchanama Exh.344. No doubt, while stating the mobile number in place of the number 7 at digit No.7, he told the number as '8'. Such mistake is minor and cannot be given much importance. Facts remains that the mobile number stated by accused Talvinder Singh at the time of recording his confession was come to be seized from him on 26/11/2010 itself vide panchanama Exh.344. The evidence of P.W.39 API Nitin Patil and arrest and personal search panchanama Exh.344 corroborates this fact.

178. While recording confessional statement accused Dilip Upadhyay stated his mobile number as 8383929889 which is in his name and another mobile No.8427060444 in the name of his friend Parvinder @ Pamma. During personal search and arrest panchanama of accused Dilip, the mobile having mobile No.8427060444 came to be seized from him. No doubt, the mobile stands in the name of some other person, but the accused himself made this fact clear in his confessional statement. The fact of seizure of said mobile vide panchama Exh.344 and evidence

of PW.39 API Nitin Patil corroborates this fact.

179. In his confessional statement accused Nityandand Nayak stated that he is having mobile no. 9822207696 and 9892867645. During the personal search of accused Naityanand Nayak by PW.30 Lakhmikanth Narayan vide Exh.334, the mobile of Nokia company having SIM card of Airtel company No. 9892207696 and another mobile of Nokia company having SIM card of Airtel company 9892867645 came to be seized. No doubt, the digit no.3 stated by accused Nityanand Nayak in mobile no. 9822207696 is wrongly mentioned as '9' in the arrest and personal search panchanama Exh.334, but facts remains that IMEI number of the said mobiles can never be changed and said IMEI number are specifically mention in Exh. 334 and even the same can be deduced from the Nokia mobile phone Art-44 and 48. The Ld. Advocate Mr.Kazi pointed out that there is change in last two digits of the IMEI numbers of mobile phone Art-48. It is pointed out that in the panchanama Exh. 344 the last two digits of IMEI number of the same phone are recorded as '0'7. This fact is also admitted by PW.38, however he has stated that it is a typing mistake, which is apparent. Therefore much weightage cannot be given to the said mistake.

180. In his confessional statement Exh. 365-A, accused Salvine Denial stated that he is having the mobile no. 829110760 and also another no. 9833222028. The prosecution has proved the personal search and arrest panchanama Exh. 149 of the accused Selvin Denial through PW.10 Abbas Ismile Shaikh. Ongoing through the said panchanama it reveals that one Blackberry company mobile phone having no. 9833222028 and Nokia company mobile having no. 9967000848 came to be seized from the accused. The mobile no. 9833222028 stated by

the accused is in consonance with the arrest panchanama Exh.149. This has corroborated the version of accused in the confessional statement.

CALL DETAIL RECORDS

181. In confessional statements of the accused a reference of following mobile numbers are made.

Accused – Nityanand Nayak

- (i) Nityanand : 9822207696 and 9892867645.
- (ii) Bobby : 9867171699
- (iii) Sonu @ Talvinder Singh : 9892277753

Accused : Selvin Danial

- (i) Selvin Danial : 8291107760 (Nokia mobile) & 9833222028 (Blackberry).
- (ii) Satish Kalya : 8291714821

Accused : Dilip Upadhyay

- (i) Dilip Upadhyay : 8383929889
- (ii) Parvinder @ Parma : 8427060444
- (iii) Talvinder Singh : 9892277753 and 9870337033
- (iv) Bobby : 9867171699

Accused : Talvinder Singh

- (i) Talvinder Singh : 9892277753 and 9870338033
- (ii) Bobby : 8291720387
- (iii) Dilip Upadhyay : 8383929889
- (iv) Nityanand : 9892207696.

182. The learned SPP Mr. Gharat harping on the CDR details of the mobile numbers of the accused and argued that at the time of the incident they are located in the Andheri area. It is also pointed out that the accused Selvin Danial and Satish Kalya were in contact with each other on mobile phone and some calls received from the number +400.

183. In order to prove the CDR details of the mobile number 9870337033 and 9821172276, prosecution examined PW.18 Rakesh

Chandra Rambhuj Prajapati, Nodal Officer of Loop Mobile India Limited in November 2012. He deposed that the said mobile numbers are of the Loop Mobile. He produced the CDR details of mobile number 9870337033 vide Exh.183, along with the certificate under section 65-B Exh.182-A. He has given details about all the 17 columns of the CDR. The CDR details Exh.183 are for the period from 31/08/2012 till 03/10/2012. It reveals from the CDR Exh.183 that on 03/10/2012 since the time 12:13:16 the said mobile number was having location at Andheri West and several calls at different times were made and received from mobile number 8291720387 and few calls were made and received from the mobile number 8383929889. Till the time 21:04:19, the location of the said mobile was shown in Andheri West area and at different towers. PW.18 placed on record the customer application form of the mobile no.9870337033 which is in the name of one Mazhar Khan. During arrest of the accused Talvinder Singh said mobile was found in his possession, therefore, accused has to explain as to how the mobile number in the name of Mazhar Khan came to his possession. However, no such explanation offered by accused. Evidence of PW.18 coupled with the CDR details (Exh.183) goes to show that the mobile number 9870337033 was in the area of Andheri West since 12:13 hours to 21:04 hrs. This is in confirmation with the story of the prosecution that the location of accused Talvinder Singh at the relevant date, time and place of the incident was in Andheri West. The evidence of PW.18 and the CDR details Exh.183 corroborates the confessional statement of accused Talvinder.

184. In order to prove the CDR details of mobile no.8383929889 and 8291714821, the prosecution examined PW.20 Amit Raghunath Karkera, Nodal Officer of Uninor Wireless Pvt. Ltd. in the year 2009 to

2013. He deposed that he received the letter (Exh.393) of ACP Mahabadi seeking information about said mobile. He provided the printouts of the said mobile number for the period from 01/05/2012 to 31/05/2012. He produced on record the CDRs of mobile number 8383929889 and 8291714821 vide Exh.210 and 211. He also submitted certificate (Exh.207) under section 65-B of the Evidence Act and Customer Application Form of both the mobiles vide Exh.208 and 209, so also, the documents submitted along with CAFs.

185. An information was also sought from him regarding the mobile number 8291720387 and 8291107760 vide letter Exh.394. He provided the information vide letter Exh.213 dated 14/12/2012. The CDRs of said mobiles are at Exh.217 and 218 respectively, so also, the certificate Exh.214 issued under section 65-B of the Evidence Act. He also identified the customer application form (Exh.215 and 216 respectively). Ongoing through the CDRs of mobile number 8383929889, it is in the name of the accused Dilip Upadhyay. For the period from 07/08/2012 to 03/10/2012, it was in contact with the mobile no.9867171699 and 9870337033 (Talvinder Singh). On 03/10/2012, the said mobile number was in contact with 9870337033 from 12:38:49 till 20:56:36.

186. Besides this prosecution also brought on record the CDR details of the mobile number 9796843418 and 9833222028 from the evidence of PW.21 Vikas Naryan Phulkar, then Alternate Nodal Officer of Vodafone India Ltd. for the period from 01/05/2012 to 31/10/2012. Moreover, CDR details of mobile number 9892207696, 9892867645, 9892867804, 9967000848, 9867171699, 9892277753 and 9892776750 for the period from 01/05/2012 to 30/10/2012 brought in

the evidence of PW.19 Yogesh Shrikrushna Rajapurkar, Nodal Officer of Bharti Airtel. The details of all the mobile numbers, along with other particulars are tried to compass in following format/chart :

MOBILE NUMBER	IN WHOSE NAME	IN WHOSE POSSESSION	CDRS EXH.	PERIOD CDR	IN WHOSE CONTACT	TIME AND DURATION	PHYSICAL LOCATION
9892207696	VIPUL P. DERUNNA, R/O. MALVANI AREA	NITYANAND NAYAK	190 COLLY.	01/05/12 TO 30/10/12	9833222028 (SELVIN DANIAL), 9870337033 (TALVINDER SINGH), 9867171699, 9796843418 (GURUDEEP SINGH @ BOBBY)	01/07/12 TO 12/10/12	ON 03/10/12 ANDHERI (WEST)
9892867645	Mrs.KAMALA PAPPULAL GUPTA	NITYANAND NAYAK	190 COLLY.	01/05/12 TO 30/10/12	9796843418	13/10/12 TO 18/10/12	–
9892867804	UMEDIPRASAD MAHADEV GAUD	NITYANAND NAYAK	190 COLLY.	01/05/12 TO 30/10/12	NOT IN CONTACT WITH ANY ACCUSED.	–	–
9833222028	GURUDEEP SINGH PREMSINGH RAINA	SELVIN DANIAL	223	01/05/12 TO 31/10/12	9892207696 (NITYANAND), 9867171699, 9796843418 (GURUDEEP SINGH)	01/07/12 TO 19/10/12	–
8291107760	VELARAM RAMLALJI MALI	SELVIN DANIAL	218	01/05/12 TO 31/10/12	8291714821, 9821172276 (SATISH KALYA)	02/05/12 TO 19/10/12	
9967000848	SUMANDEVI CHANDRADEV JAISWAR	SELVIN DANIAL	190 COLLY.	01/05/12 TO 30/10/12	NOT IN CONTACT WITH ANY ACCUSED.	–	–
8291714821	SUBHOD KUMAR M. SHARMA	SATISH KALYA	211	01/05/12 TO 31/10/12	8291107760, 9892776750 (SELVIN DANIAL)	03/07/12 TO 25/10/12	–
8383929889	DILIP UPADHYAY	DILIP UPADHYAY	210	01/05/12 TO 31/10/12	9867171699 (GURUDEEP SINGH @ BOBBY) 9870337033 (TALVINDER SINGH)	03/07/12 TO 25/07/12	–
8427060444	PARMJEET SINGH JASWANT SINGH	DILIP UPADHYAY	190 COLLY.	01/05/12 TO 30/10/12	NOT IN CONTACT WITH ANY ACCUSED.	–	–
9870337033	MAZHAR ALI	TALVINDER	183	01/05/12	8383929889	31/08/12	--

	KHAN	SINGH		TO 30/10/12	(DILIP UPADHYAY) 8291720387 ((GURDEEP SINGH @ BOBBY))	TO 03/10/12	
9892277753	TALVINDER SINGH	TALVINDER SINGH	190 COLLY.	01/05/12 TO 30/10/12	9892207696 (NITYANAND) 9833222028 (SELVIN DANIAL) 8383929889 (DILIP UPADHYAY) 9867171699, 9796843418, 8291720387 (GURDEEP SINGH @ BOBBY)	11/08/12 TO 04/10/12	–
9867171699	GURUDEEP SINGH@ BOBBY)	GURUDEEP SINGH@ BOBBY)	190 COLLY.	01/05/12 TO 30/10/12	9892207696 (NITYANAND) 9833222028 (SELVIN DANIAL) 9870337033 (TALVINDER SINGH)	25/08/12 TO 30/10/12	–
8291720387	ANTYA LALYA TELAGU	GURUDEEP SINGH@ BOBBY)	217	01/05/12 TO 31/10/12	9870337033 (TALVINDER SIGH)	22/08/12 TO 03/10/12	–
9796843418	JAGTARSINGH GURUCHARAN SINGH	GURUDEEP SINGH@ BOBBY)	ART-X- 19	01/05/12 TO 31/10/12	9822207696 (NITYANAND), 9833222028 (SELVIN DANIAL) 9892277753 (TALVINDER SINGH)	29/07/12 TO 12/08/12	–
9892776750	SATYVAN BACCHANSI NGH	MAHENDRA @ GAJA DHURI	190 COLLY.	01/05/12 TO 30/10/12	9821172276, 8291714821 (SATISH KALYA)	20/06/12 TO 25/10/12	--

187. From the documents placed on record by PW.19 Yogesh Rajapurkar, the mobile nos. 9822207696 and 9892867645 were in the name of Vipul P. Derunna and Mrs. Kamal Pappulal Gupta. In fact these mobile numbers were found in possession of accused Nityanand Nayak. Prosecution examined PW.13 Smt. Kamala Devi Gupta, who depose that

the mobile number 9892867645 do not belong to her. This indicates that the identity proof documents of PW.13 were misused to purchase the SIM card. Same is the situation in respect of the mobile number 8291720387 which is though shown in the name of one Antya L. Telagu, but it was in the possession of wanted accused Gurdeep Singh Raina.

188. On one hand it is the say of accused Selvin Danial that he do not know the wanted accused Gurdeep Singh Raina, but one of the mobile number 9833222028 which was in his possession, is in the name of the wanted accused Gurdeep Singh Raina.

189. From the CDR details Exh. 210 of CDR of mobile number 8383929889(Dilip Upadhyay), it was shown continuously in contact with the mobile number 9870337033(Talvinder Singh). More particularly on 3/10/2012 it was in continuous contact with the mobile no. 9870337033 from 12:38:49 till 20:56:36. This shows that on 3/10/2012 the accused Dilip Upadhyay and Talvinder Singh were in contact with each other. It is significant to note here that the accused Dilip Upadhyay stated in his written statement Exh. 447 that he might have visited office of PW.28 for the purpose of job as a security guard and his visits were recent to date of attack on PW.28. It means that the accused Dilip Upadhyay is not disputing that he visited the office of PW.28 recent to date of attack on him. The details of CDR of the mobile nos. 8383929889 of accused Dilip Upadhyay and his written statement clearly corroborates his confessional statement.

190. PW.19 Yogesh Rajapurkar placed on record the Cell ID number location Exh.199 pertaining to mobile nos. 9892207696(Nityanand),

9892867645(Nityanand), 9867171699(Gurdeep Singh), 9892277753 (Talvinder Singh), where in on 3/10/2012, the physical locations are shown within the area of Andheri (West). This fact also materially corroborates the confessional statement of accused Nityanand and Talvinder Singh.

191. The CDR Exh.223 of the mobile no. 9833222028 (Selvin Danial) shows that it was in contact with mobile no. 9892207696(Nityanand) and mobile no. 9867171699, 9796843418(Gurdeep Singh Raina). It also shows that on 3/10/2012 said mobile number was in contact with 9867171699(Bobby) in between 21:48:52 to 23:23:26. This in consonance with the statement of accused Selvin Danial that accused wanted accused Gurdeep Singh inform him about the incident and called at MHADA Office.

192. The CDR of mobile no. 829110760(Selvin Danial) shows that it was in contact with 8291714821, 9821172276(both Satish Kalya) from 2/5/2012 to 19/10/2012. This has corroborated the confessional statement of accused Selvin Danial that he used to contact with accused Satish Kalya on said mobile number. Even from the CDR of the mobile no. 8291714821 (Satish Kalya), it is made clear that same was in contact with mobile no. 8291107760, 9892776750(both Selvin Danial). The CDR of said mobile number also corroborates the statement of accused Selvin Danial. It is stunning that how the accused Satish Kalya was permitted to use mobile in the jail. There is no investigation made by CBI as well in this regard.

193. It is significant to note here that in the CDRs Exh.183 issued by PW.18 Rakesh Prajapati of the mobile number 9870337033 (Talvinder

Singh) specific cell ID (address) of the tower where the call is received/ initiated and the physical address of the said ID in column nos.6 and 7 were given. As per confessional statement of the accused Nityanand on 25/09/2012 Bobby made phone call to him and called him at Infinity Mall in the evening for meeting, that time, Sonu (Talvinder Singh) was also with Bobby. On going through the CDR (Exh.183) of the mobile No.9870337033, at 16:02:34 the location was at Andheri West. This fact corroborates the confessional statement of accused Nityanand Nayak, Talvinder Singh that they had been to the Infinity Mall prior to the incident.

194. The prosecution gave details of the IMEI number of the mobile handsets which were found in possession of the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh. Due to insufficient space, those could not be mentioned in the above prepared chart, but those are specifically mentioned in the arrest cum seizure panchanamas. Needless to say that the IMEI numbers are unique and can not be changed. Said IMEI numbers are additional circumstances to corroborate the confessional statements of accused.

195. Though, PW.7 Mohan Dashrath Dhuri did not support to the prosecution on the ground that accused Satish Kalya used to give him money and he went to visit him in the Court, the prosecution produced on record the CDR of mobile no.9892776750 which was in the use of said Mohan @ Gaja Dhuri for the period 01/05/2012 to 30/10/2012. It reveals from the CDR that since 20/06/2012 to 25/10/2012, calls were made and received on the said mobile numbers from the mobile number 9821172276 and 8291714821 (accused Satish Kalya).

196. It is argued by the learned Counsel for the accused that Andheri West is the big area and it cannot be said that the accused on the relevant date and time were present in front of the office of PW.28 B.R. Shetty. There is no substance in this argument, as no explanation is offered why the accused went in the Andheri West area at the relevant date and time. It is also argued that the CDRs, cell ID locations and other documents are manipulated by the investigating officer. The concerned witness totally denied this fact. Rather nothing brought in their cross-examination to substantiate that the CDRs are manipulated.

197. Thus the evidence produced by the prosecution in the form of CDRs of the mobile number of the accused clearly corroborates the confessional statement of the accused. This has rendered it probable that the story of prosecution is true and that is reasonably safe to act upon it.

CONSPIRACY

Section 120(A) IPC defines criminal conspiracy, as

"120A. Definition of criminal conspiracy. When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

198. The ingredient of the offence of criminal conspiracy are : (i) An agreement between two or more persons ; (ii) The agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

199. Section 120(B) prescribes the punishment to be imposed on a party to a criminal conspiracy. The Hon'ble Supreme Court in the matter of **Major E.G. Barsay Vs. State of Bombay** reported in **AIR 1961 SC 1762** held that,

“the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though, the illegal act agreed to be done has not been done. So, too it is not an ingredient of the offence that all the parties should agreed to do a single illegal act. It may comprise the commission or for number of acts.”

200. Further the Hon'ble Apex Court in the matter of **State Vs. Nalini** reported in **1999 SCC (Cri) 691** held that, “the meeting of the minds of two or more persons for doing an illegal act or an act by illegal means is sine quo non of the criminal conspiracy.” Even, it is held that the agreement amongst the conspirator can be inferred by necessary implication. The agreement may be expressed or implied or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made and the offence continues to be committed so long as the combination persists that is until the conspirational agreement terminated by completion of its performance or by abandonment or frustration or however, it may be. It is also settled that conspiracies are secretly planned and direct evidence is therefore, difficult to produce.

201. Herein this case, as per the confessional statement of the accused

Nityanand Nayak and Selvin Danial, the origin and venue of the conspiracy is at Killa Court, where the accused Bobby used to meet accused Satish Kalya. It has come in the confessional statement of the accused Selvin Danial that in May 2012, he introduced absconding accused Bobby with Satish Kalya in Killa Court. In July-2012, absconding accused Bobby came to his Kalina Office and told him that Chhota Rajan assigned the work to kill B.R. Shetty to Satish and Satish told him to obtain detail information of B.R. Shetty. Even, Satish made phone call from mobile number 8291714821 on his mobile phone number 9833222028 and told to give money to Bobby if he needed and to do his any other work. Bobby even told him that Satishbhai will send money to him.

202. Even, accused Nityanand Nayak stated that on 25th September, absconding accused Bobby told him that Bada Seth means Chhota Rajan told to kill B.R. Shetty. Not even that, it is stated by accused Talvinder that Bobby told him that gangster Satish Kalya who is in jail told to make firing on a hotel owner B.R. Shetty. This fact is also substantiated by accused Dilip in his confessional statement that Talvinder told him that gangster Satish Kalya to whom Bobby knows, gave work to eliminate Hotelier B.R. Shetty. From the confessional statement of these accused, it reveals that accused Chhota Rajan assigned the work to kill B.R. Shetty to accused Satish Kalya. It has specifically come in the confessional statement of the accused Nityanand and Selvin Danial that absconding accused Bobby @ Gurdeep Singh used to visit accused Satish Kalya at Killa Court. Not even that, accused Satish Kalya told accused Selvin Danial on mobile phone to give money to Bobby. Thus, from the confessional statements of the accused, it is explicit that

accused Chhota Rajan assigned the work of eliminating B.R. Shetty to accused Satish Kalya, who assigned the said work to absconding accused Bobby. Accused Selvin Danial monetarily help absconding accused Bobby to get complete the work. Accused Nityanand Nayak showed the office and car of B.R. Shetty to accused Talvinder Singh and consequently Dilip Upadhyay, made firing on B.R. Shetty and attempt to commit his murder. The criminal conspiracy as per the confessional statements of the accused hatched at Killa Court and in performance of the same all accused associated with each other.

203. At the outset, it is not disputed that since May 2012 to October 2012, the accused Satish Kalya was lodged at Arthur Road Jail. This fact can be further substantiate from the evidence of PW.42 API Sanjeev Dhumal that during investigation he found complicity of accused Chhota Rajan in the offence and that, the offence was committed by accused Rohit Tangapan Joseph @ Satish Kalya. At that time, accused Satish Kalya was in judicial custody therefore, PW.42 took his custody from Arthur Road Central Jail on 31/10/2012 and arrested him vide arrest panchanama Exh.130. Undisputedly, when the accused was in jail, he must have been produced before the Killa Court. This fact clearly supported the confessional statement of the accused Selvin Danial that in May 2012, he introduced absconding Bobby with Satish Kalya in Killa Court. Further that the accused Bobby used to meet him at Killa Court.

204. From the remand papers of the accused Rohi @ Satish Kalya @ Satish Tangapan Joseph available in the record of this Court, it reveals that PW.42 IO Sanjeev Dhumal obtained permission of this Court to take custody of the accused who was lodged in Arthur Road Jail in C.R.No.57/2011 on 30/10/2012 and thereafter, arrested the accused

Rohi @ Satish Kalya @ Satish Tangapan Joseph vide arrest panchnama Exh.130 (admitted). This leaves no room of doubt that the accused Rohi @ Satish Kalya @ Satish Tangapan Joseph was in custody and used to produced before the Killa Court. This fact also corroborates the confessional statement of the accused Nityanand Nayak, Selvin Danial and Talvinder Singh that absconding accused Bobby @ Gurudeep Singh was meeting accused Satish Kalya in the Killa Court. So also that accused Satish Kalya was providing financial help to Bobby.

205. It is strenuously argued by the learned Advocate Mr.Rajput that the prosecution has not brought on record any oral or documentary evidence to prove that on a particular date, accused Satish Kalya was produced before particular Court. It is submitted that the entire story of the prosecution rest on the fact that the conspiracy was hatched at Killa Court, but, the prosecution failed to prove this fact beyond reasonable doubt. It is also argued that the prosecution has not examined any of the police guards who were deputed to take the accused to the Court and then, to Jail. The learned Advocate Mr.Rajput pointed out that section 167(2)(b) of Cr.P.C. authorizes the Magistrate to extend further detention of under trial prisoners in judicial custody on their production through medium of electronic video linkage and after this provision Jail Authorities are not producing under trial prisoners personally before the Court. In fact, there is no substance in this ground, as it could not be ascertained whether the electronic video linkage facility was available in the said Court. When it is the confessional statement of accused Selvin Danial itself that accused Satish Kalya was producing in the Killa Court, there is no reason to disbelieve the same, moreso, when it is admitted fact that the accused Satish Kalya was lodged in Arthur Road Jail at the relevant time.

206. The learned Advocate Mr.Rajput pointed out that section 114 illustration (e) and (f) of the Evidence Act states that a Court may presume that judicial and official acts have been regularly performed and that the common course of business has been followed in particular case. Certainly, the Court can draw presumption in respect of the judicial and official act being regularly performed and that the accused cannot be permitted to meet anyone without the permission of the Court. However, it is difficult to assure that except with the permission of the Court no other person met with the accused in the Court.

207. As regard the involvement of the accused Chhota Rajan, by law it is now settled that the criminal conspiracy are hatched in secrecy and direct evidence is therefore difficult to produce. The Hon'ble Apex Court in **State Vs. Nalini and others** reported in (1999) 5 SCC 253 held that,

“though the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine quo non of the criminal conspiracy, yet in the very nature of the offence which is shrouded with secrecy no direct evidence of the common intention of the conspirator can normally be produced before the Court. Having regard to the nature of the offence, such a meeting of mind of the conspirator has to be incurred from the circumstances proved by the prosecution, if such an inference is possible.”

208. Further, the learned Advocate Mr.Pasbola for accused nos.2 and 6 argued that there is no evidence of meeting of minds as regards accused Nityanand, Selvin Danial, Gurdeep Singh and that of accused Chhota Rajan. The learned Advocate Mr.Pasbola relied on the judgment of Hon'ble Supreme Court in the matter of **Baldev Singh Vs. State of Punjab** reported in (2009) 6 SCC 564 wherein it is held that,

“it is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must be borne in mind that meeting of the mind is essential; mere knowledge or discussion would not be sufficient.”

209. The prosecution has brought the evidence of conspiracy from the confessional statement of the accused Selvin Danial, Nityanand Nayak and Talvinder Singh. It is settled that confessional statement is a substantive evidence and it can be used against the co-accused if tried together. Though, the accused has retracted the confession, but as discussed earlier their confessions are having material corroboration and therefore admissible. Consequent to the agreement, the accused nos.4 and 5 accepted to do the work of eliminating B.R. Shetty to gain pecuniary advantage. There was no other reason for the accused nos.4 and 5 to attempt to commit murder of PW.28 B.R. Shetty. The only possible reason for accused nos.4 and 5 to attempt to commit murder of PW.28 B.R. Shetty is the conspiracy hatched in between all the accused. The act of accused nos.4 and 5 are clearly in due performance of the conspiracy hatched. This leaves no room of doubt that the accused hatched conspiracy to commit murder of PW.28 B.R. Shetty and each of the accused involved in the same.

210. It is argued by the learned Advocate Mr.Pasbola that accused Selvin Danial was unaware about the fact of killing B.R. Shetty. Attention is drawn towards the confessional statement of the accused Selvin Danial, wherein, he stated that on 03/10/2012, at 10.30 pm, Bobby made phone call to him and asked him whether he saw TV. It is argued that from the statement of the accused Selvin Danial, he was not

knowing that the firing was done on PW.28 B.R. Shetty on that day. It is argued that Selvin Danial came to know about the firing on B.R. Shetty when his friend Suresh Kutty saw the news and told about the firing on B.R. Shetty. In fact, it is specific statement of Selvin Danial that Bobby told him that Chhota Rajan gave the work of killing B.R. Shetty to Satish Kalya. Even Satish told him to take full information about B.R. Shetty. Not only that, when absconding accused Bobby was unable to receive proper information about B.R. Shetty he asked accused Nityanand “to look into some work of Bobby”. This fact is also ascertained by accused Nityanand Nayak. This is not the least after the act of firing absconding accused Bobby called accused Selvin Danial at MHADA office and after disclosing him that filing was made on B.R. Shetty accused Selvin Danial gave Rs.1,00,000/- to him. Thereafter, also through Nityanand an amount of Rs.49,000/- and Rs.30,000/- were deposited in the account of absconding accused Bobby @ Gurdeep Singh and even he paid Rs.10,000/- and Rs.20,000/- to the brother of absconding accused Bobby. This much confessional statement of the accused Selvin Danial clearly established that he was actively participated in the conspiracy.

EVIDENCE AGAINST ACCUSED NO.6 – OF HEARSAY NATURE.

211. The ld. Advocate Mr.Pasbola for accused no.6 strenuously argued that so far as the confessions of co-accused are concerned, the evidence against accused no.6 is mere hearsay. Attention is drawn towards confessional statement Exh.303 of accused Nityanand Nayak wherein he stated that Gurdeepsingh @ Bobby (absconding accused) told him that Bada Sheth means Chhota Rajan had told him to commit the murder of B.R.Shetty. Attention is also drawn towards the confessional

statement Exh.365A of accused Selvin Danial that in July 2012, Gurdeepsingh @ Bobby came to his office at Kalina and told him that Chhota Rajan told accused Satish to kill B.R.Shetty and therefore Satish (i.e. accused no.3) told to get complete information regarding B.R.Shetty. Linking with the same, it is argued by ld. Advocate Mr.Pasbola that accused no.1 and 2 have no personal knowledge of involvement of accused no.6 Chhota Rajan. Their information is not based on their personal knowledge. It is further argued that even it is difficult to attribute whether knowledge of absconding accused Gurdeepsingh @ Bobby is based on his personal knowledge or not, therefore their statement is inadmissible against the accused. It is also argued that it is unsafe to rely on the statement of absconding accused Gurdeepsingh @ Bobby. It is also argued that accused no.4 and 5 do not refer anywhere the name of accused no.6. The ld. Advocate Mr.Pasbola relied on the judgment of Hon'ble Supreme Court in the matter of **Kalyan Kumar Gogoi V/s. Ashutosh Agnihotri and Anr.** reported in (2011) 2 SCC 532 wherein it is held that,

Para 34 – The idea of best evidence is implicit in the Evidence Act. Evidence under the act, consists of statements made by a witness or contained in a document. If it is a case of oral evidence, the act requires that only that person who has actually perceived something by that sense, by which it is capable of perception, should make the statement about it and no one else. If it is documentary evidence, the Evidence Act requires that ordinarily the original should be produced, because a copy may contain omission or mistakes of a deliberate or accidental nature. These principles are expressed in Section 60 and 64 of the Evidence Act.

Para 35 – The term 'hearsay' is used with reference to what is done or written as well as to what is spoken and in its legal sense. It denotes that kind of evidence which does not serve its value solely from the credit given to the

witness himself, but which rests also, in part, on the veracity and competence of some other person. The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else and sometimes it is treated as nearly synonymous with irrelevant. The sayings and doings of the third person are, as a rule, irrelevant, so that no proof of them can be admitted. Every act done or spoken which is relevant on any ground must be proved by someone who saw it with his own eyes and heard it with his own ears.

Para 37 – Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought light and exposed, if they exist, by the test of cross-examination. A statement, oral or written, made otherwise than by a witness in giving evidence and a statement contained or recorded in any book, document or record whatsoever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceeding is inadmissible as evidence of any fact asserted. That the species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetence to satisfy the mind of a judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.

212. On the same footing the Id. Advocate Mr.Pasbola relied on following judgments :

- i) The Hon'ble Supreme Court in the matter of **Subhash Harnarayanji Laddha V/s. State of Maharashtra**

reported in (2007) 2 SCC (Cri) 122,

- ii) The Hon'ble Supreme Court in the matter of **State of Andhra Pradesh V/s. Putnam Anandam** reported in 2005 SCC (Cri) 1225.
- iii) The Hon'ble Supreme Court in the matter of **Saktar Singh V/s. State of Haryana** reported in (2004) 11 SCC 291.
- iv) The Hon'ble Supreme Court in the matter of **Prakash Kumar @ Prakash Bhutto V/s. State of Gujarat** reported in (2007) 2 Supreme Court Cases (Cri) 285.
- v) The Hon'ble Supreme Court in the matter of **Bhugdamal Gangaram and Others V/s. State of Gujarat** reported in MANU/SC/0091/1983.
- vi) The Hon'ble Supreme Court in the matter of **State of Maharashtra V/s. Kamal Ahmed Mohd. Vakil Ansari and Others** in Criminal Appeal no.445 of 2013 decided on 14/03/2013.

213. The common import of the afore cited judgments is that the statement of witness not based on his personal knowledge but on what he heard from others is inadmissible and the same is the rule against hearsay. The Hon'ble Supreme Court in **Prakash Kumar V/s. State of Gujarat** further held that “the confession of a co-accused by itself is not sufficient to hold the other accused guilty”. Placing reliance on the afore cited judgments and the law laid down about hearsay evidence, the Id. Advocate Mr.Pasbola submitted that the confessional statement of accused Nityanand and Selvin Danial referring the name of accused no.6 are inadmissible and against the rule of hearsay.

214. It is significant to point out here that the Hon'ble Supreme Court in the matter of **State of Maharashtra V/s. Kamal Ahmed Mohd.**

Vakil Ansari and Others (cited supra) also clearly held that,

“Para 15 – Admissions and confessions are exceptions to the 'hearsay' rule. The Evidence Act places them in the province of relevance, presumably on the ground, that they being declarations against the interest of the person making them, they are in all probability true”.

215. In the light of this pronouncement, the admissions and confessions are exceptions to the 'hearsay' rule. As per Section 18 of the MCOC Act confession made by a person is also admissible against the co-accused, provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused. Here in this case the accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan and accused no.3 Rohit Thangappan Joseph @ Satish Kalya are jointly tried alongwith accused Nityanand Nayak and Selvin Danial. Therefore their confessional statement against the accused no.6 and accused no.3 are admissible. No doubt, neither accused no.6 nor accused no.3 directly told the accused Nityanand Nayak and Selvin Danial about their intention to kill B.R.Shetty, but what has been communicated by accused no.6 and accused no.3 received to the knowledge of accused Nityanand Nayak and Selvin Danial and they acted accordingly. As such their statement against accused no.6 cannot be said as inadmissible, the reason behind this is that the statement made by them acknowledges the fact to their own detriment. Consequently, this ground raised by accused no.6 do not holds any substance.

OFFENCE UNDER MCOC ACT

216. In addition to the offence under section 307, 120-B of the IPC, the accused are also charged for the offence punishable under section 3(1)(ii), 3(2), 3(4) of the MCOC Act. As per story of prosecution, the

accused are the members of the organised crime syndicate headed by accused Rajendra Sadashiv Nikalje @ Chhota Rajan. To understand what is organised crime and organised crime syndicate, it is necessary to go through the definition section 2(e) and 2(f) of the MCOC Act :-

- (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;
- (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

217. In view of these definitions, to attract any of the provision under section 3 of the MCOC Act, prosecution is required to establish the existence of the organised crime syndicate and that, such syndicate or gang is indulged in activities of the organised crime. The existence of the organised crime syndicate is sine qua non to constitute organised crime. Thus, it is necessary for the prosecution to show that there exist such gang that is a group of two or more persons acting either singly or collectively as a syndicate and are indulged in activities of organised crime. More so, the activity must be continuing unlawful activity which is defined as :-

- (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which

more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

218. The definition of unlawful activity requires that prior charge-sheets should be in respect of :

- (i) an activity prohibited by law for the time being in force,
- (ii) activity which is a cognizable offence.
- (iii) it should be punishable with imprisonment of three years or more.
- (iv) that competent court has taken cognizance of such offence,
- (v) such activity should have been undertaken either singly or jointly as a member of an organised crime or of such syndicate,
and all this should be within the span of preceding 10 years.

219. In order to substantiate that in preceding 10 years, the organised crime syndicate headed by accused Chhota Rajan committed activities prohibited by law which is cognizable offence and punishable with imprisonment of three years or more and that the competent court has taken cognizance of the same, the prosecution placed on record two charge-sheets :

First charge-sheet Exh.260 - in respect of Crime no.57/2011 registered with DCB CID on 11/06/2011, under sections 302, 34, 120(B), 201 of IPC, 3,25,27 of the Arms Act, 37(1)(A), 135 of the Bombay Police Act and section 3(1)(i), 3(2) and 3(4) of the MCOC Act. Original crime no.256/2011 registered with Police Station, Pawoi in which accused Rohit Tangapan Joseph @ Rohi @ Satish Kalya and accused Rajendra Sadashiv Nikalje @ Chhota Rajan are the accused.

Second charge-sheet Exh.264 - in respect of crime no.03/2005 registered with Anti Extortion Cell, CID Mumbai on 12/01/2005, under section 387, 452, 342, 427, 323, 147, 148, 149, 504, 506(ii) of IPC and section 37(1)/135 of Bombay Police Act against accused Rajendra Sadashiv Nikalje @ Chhota Rajan.

220. To prove the charge-sheet and contents of it, the prosecution examined PW.27 ACP Ashok Duraphe, who was the investigating officer in DCB CID, Crime No.57 of 2011. He deposed that he filed the charge-sheet against the accused Satish Kalya and accused Chhota Rajan was wanted in that case. He specifically deposed that the case was registered as Special MCOC Special Case no.19 of 2011 and cognizance of the offence was taken by the Special Court. In the cross-examination. He admitted that the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay, Talvinder Singh and absconding accused Gurdeep Singh @ Bobby were not the accused in that case.

221. Further, the prosecution examined PW.29 API Suresh Vishwanath Avhad who was the Investigating Officer of C.N. no.03/2005. He deposed that accused Rajendra Sadashiv Niaklje @ Chhota Rajan was one of the accused in the said crime. He filed charge-sheet in the court of Additional CMM, 37th Court, Esplanade, Mumbai and the case number was 243/PW/2006 and the Court had taken cognizance of the offence. His evidence remains unchallenged.

222. From these two charge-sheets filed on record, it reveals that the offences are registered within the span of preceding 10 years. It is significant to note here that in the crime no.57 of 2011, the provisions

of MCOC Act are also invoked against the accused. The other charge-sheet is pertaining to the case of extortion coupled with other offences of IPC and Bombay Police Act. No doubt, the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay, Talvinder Singh and absconding accused Gurudeep Singh Raina were not the accused in the said charge-sheets, but, it is the specific case of the prosecution that they are the members of the organised crime syndicate headed by accused Chhota Rajan. This fact can also be deduced from the confessional statements of the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh. The filing of two charge-sheets goes to show that the organised crime syndicate headed by accused Rajendra Sadashiv Nikalje @ Chhota Rajan is involved in continuous unlawful activities.

PRIOR APPROVAL UNDER SECTION 23 (1)(a) OF THE MCOC ACT.

223. As per evidence of PW.42 API Sanjeev Dhumal and PW.44 ACP Mr. Arvind Mahabadi, during investigation involvement of accused Satish Tangapan Joseph and Chhota Rajan gang transpired, so, proposal was made to Joint CP (Crime) for invoking the provisions of MCOC Act in the offence. Accordingly, on 05/11/2012, Mr.Himanshu Roy Joint CP (Crime) granted prior approval (Article-X-51). It is necessary to point out here that as Joint CP Mr.Himanshu Roy is no more, the prosecution attempted to prove this document from the evidence of PW.41 Dr.Satyapal Singh, then Commissioner of Police, but it cannot be exhibited.

SANCTION FOR PROSECUTION

224. After completion of investigation, PW.44 IO ACP Mahabadi submitted the papers for sanction under section 23(2) of the MCOC Act

to Commissioner of Police. Accordingly, PW.41 accorded sanction by way of order dated 14/01/2013 vide Exh.355. It is specific evidence of PW.41 that he found enough evidence against the accused persons for the offences under the provisions of MCOC Act. It is now well settled that sanctioning authority has to record prima facie satisfaction about the commission of offence by the accused while granting sanction. Above all, sanction under section 23 of the MCOC Act cannot be excepted to be accused specific. The sanction is necessary to take cognizance of offence under MCOC Act and not against individual accused. From the sanction order Exh.355, it reveals that the sanctioning authority PW.41 Dr.Satyapal Singh perused the entire case papers including the prior approval granted by the then Joint CP. Not only that he found the involvement of the accused in the organized crime and came to the conclusion that they are the members of the organised crime syndicate. That's why, PW.41 Dr.Satyapal Singh accorded sanction for prosecution after due application of mind.

225. It is argued by the learned Advocate for the accused that there is no reference of any previous cases in the sanction order. Attention is drawn towards cross-examination of PW.41 Dr.Satyapal Singh, wherein, he admit that today he cannot say which were the other relevant documents. He also admits that the sanction order does not show the previous charge-sheets and it is not mentioned in the sanction order that the previous charge-sheets were also placed before him. As already pointed out, the sanctioning authority has to record prima-facie satisfaction about the commission of the offence by the accused. PW.41 Dr. Satyapal Singh perused the entire documents and then accorded the sanction, which cannot be faulted with.

226. The learned Advocate Mr.Pasbola and Advocate Mr.Deshpande submitted that mere filing of the charge-sheets against the accused is not sufficient and it is only one of the requisite for constituting offence of organised crime. The learned Advocate Mr.Pasbola relied on the judgement of Hon'ble Bombay High Court in the matter of **Prafulla s/o. Udhhav Shende Vs. State of Maharashtra** reported in **2009 All M R (Cri) 870** wherein, it is held that,

“**Para no.42** : This fortifies the conclusion that mere proof of filing charge-sheets in the past is not enough. It is only one of the requisite for constituting offence of organised crime. If only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of article-20 (1) of the Constitution and possibly article-20 (2) as well, (and in any case section 300, Cr.P.C.)”

227. The learned Advocate Mr.Deshpande relied on the judgment of the Hon'ble Apex Court in the matter of **State of Maharashtra Vs. Shiva @ Shivaji Ramji Sonavane and others** reported in **(2016) 2 SCC (Cri) 375**. It reveals that the aforecited judgments of **Prafulla s/o. Udhhav Shende Vs. State of Maharashtra** is challenged by the State before the Hon'ble Apex Court, which had upheld the order of the Hon'ble High Court and held that,

“The very fact that more than one charge-sheets had been filed against the respondents alleging offences punishable with more than three years' imprisonment is not enough. As rightly pointed out by the High Court commission of offences prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge-sheets and taking of cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of section 3 of the

MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge-sheets and the cognizance taken by the competent court, be said to have committed an offence under section 3 of the Act.”

228. It is significant to note here that the Hon'ble Bombay High Court while confirming the acquittal of the accused, observed that neither approval for recording information, nor sanction for filing charge-sheet under section 23 of the Act were accorded after applying minds to the requirements of law and the conviction of the accused persons based upon only filing of charge-sheet in the past which is not proper. Here in this case, the sanction is accorded by PW.41 Dr.Satyapal Singh after due application of mind. It is matter of fact that present offence is committed by the organised crime after promulgation of MCOC Act. Needless to say that in the previous charge-sheets the Court has taken the cognizance of the offence and it will not be out of place to mention here that in C.R.no.57/2011 (Special MCOC Case no.19/2011), the accused Rohit Tangapan Joseph @ Satish Kalya and accused Rajendra Sadashiv Nikalje @ Chhota Rajan were charged under the provisions of MCOC Act and convicted along with other eight accused. This fact is sufficient to prove that the organised crime syndicate headed by accused Chhota Rajan are involved in continuous unlawful activities to gain pecuniary benefits, or gaining undue economic or other advantage.

OBJECT OF ORGANISED CRIME

229. The learned Advocate Mr.Pasbola strenuously argued that the prosecution has miserably failed to prove the object of the organised crime. It is pointed out that as per section 2(e), the continuing unlawful

activity must have been done with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person for promoting insurgency. It is argued that it is not the case of the prosecution that the offence was committed by the member of the organised crime syndicate for extortion or gaining any pecuniary or undue economic benefits. Attention is drawn towards cross-examination of PW.28 B.R. Shetty, wherein, he admits that he had no enmity with anybody and therefore he was not aware as to why the firing was done at him. Placing reliance on the said admission, it is again argued that there was no object of the unlawful assembly. The learned Advocate Mr.Pasbola pointed out towards the evidence of PW.41 Dr. Satyapal Singh wherein he stated that he do not recall now what was the pecuniary benefit or other undue financial benefits involved in this offence. He admits that today he do not remember what was the object of conspiracy in this case. Therefore, it is argued that the prosecution has miserably failed to prove the object of the conspiracy or of organised crime syndicate to eliminate PW.28 B.R. Shetty.

230. The ld. Advocate Mr.Pasbola relied on the judgment of Hon'ble Supreme Court in the matter of **Ranjitsingh Brahamjeetsingh Sharma V/s. State of Maharashtra and another** reported in **2005 ALL MR (Cri.) 1538 (S.C.)** wherein it is held that,

“the statement of objects and reasons clearly state as to why the said act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with a commission of crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is an offence contemplated by the statement of offence and reasons. There are offences

and offences under Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. Only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOC Act.”

231. The ld. Advocate Mr.Pasbola further relied on the judgment of Hon'ble Bombay High Court in the matter of **State of Maharashtra V/s. Bharat Baburao Gavane and others** reported in **2006 ALL M.R. (Cri) 2895**, wherein, it is held that “merely stating that gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gang by violence, intimidation and other coercive means is not enough.” In the said matter there was no approval or sanction order disclosing any organised crime committed with the object mentioned in section 2(1)(e).

232. Similar to this, the ld. Advocate relied on the judgment of Hon'ble Bombay High Court in the matter of **Sherbahadur Akram Khan Vs. State of Maharashtra** in **Criminal Appeal no.202 of 2006** decided on **08/12/2006**, in which by relying on the judgment of Bharat Baburao Gavane (supra) it is held that “it must be established that such an offence of unlawful activity is undertaken by a person with the objective of gaining pecuniary benefits or gaining undue economy or other advantage for himself or any other person or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion.”

233. In view of the above pronouncement the object of the unlawful activity must be of gaining pecuniary benefits or gaining undue

economic or other advantage. Certainly, only because a person cheats or commits a criminal breach of trust more than once, is not sufficient to attract the provisions of MCOC Act

234. In this context, it is necessary to opt to rely on the Full Bench judgment of Hon'ble Bombay High Court in the matter of **State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jaggya and another** reported in 2011(5) Mh.L.J.386, in which it is held that,

" **Para 33** – It is pertinent to note that in both Statements of Objects and Reason and the Preface, though certain activities have been mentioned the same are followed by the term 'etc'. It is thus, clear that the activities mentioned in the Statement of Objects and Reasons and the Preface are only illustrative in nature and not exhaustive. It is thus clear that the legislative intent is not only to curb only the activities mentioned in the Statement of Objects and Reasons and the Preface but to curb various other activities of the organised crime syndicate so that unlawful element spreading terrorism in the society can be controlled to a great extent, with an intention that the feeling of fear spread in the society is minimized.

Para 34 – It can, thus, clearly be seen that the purpose behind enacting the MCOC Act was to curb the activities of the organised crime syndicate or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control the menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the act has been enacted."

235. This view is also reiterated by the Hon'ble Bombay High Court in the matter of **Narendra Singh @ Dattu Sardar Vs. State of Maharashtra** reported in **2015 All MR (Cri) 54**.

236. It is significant to note here that in the aforecited judgment of **Jagan Nepali @ Jaggya**, the judgment of Hon'ble Supreme Court in the matter of **Ranjeetsingh (cited supra)** and that of Hon'ble Bombay High Court in the matter of **Sherbahadur (cited supra)** were relied upon. It is held in clear terms that the scope of the word 'other advantage for himself or any other person' and 'etc' cannot be narrowed down. It has brought in the cross-examination of PW.28 B.R. Shetty itself that he is having hotels/dance bars by name Sheetal Bar, Ghungaroo Bar. In 2012, he was running seven restaurants out of which two were hotels. His hotel business are spread out of limits of India. Thus, to be wealthy person, itself is an attraction of the organised crime syndicate. Not only that it is brought in his cross-examination that he is having good relations with Police Officer Bhosale, Pradeep Sharma and Daya Nayak. This may be one of the additional reason, intending to commit murder of PW.28 B.R. Shetty to create terror. No doubt, PW.41 Dr. Satyapal Singh who accorded sanction (Exh.355) under section 23(2) of the MCOC Act on 14/01/2013, unable to recollect what were the pecuniary benefits or other undue financial benefits involved in the offence and what was the object of the conspiracy, but, he may forgot due to passage of time, as the sanction accorded in the year 2013. Fact remains that the scope of provisions of MCOC Act cannot be limited or narrowed down to the extent of pecuniary benefit or other undue financial benefits. The fact that PW.28 B.R. Shetty is owner of several hotels and dealing in the business of property is itself is the reason and the object

of the organised crime syndicate. It has come in the evidence of PW.28 B.R. Shetty that previously he has received some threats on phone and even he made complaint in the Police Station goes to show that the object of the organised crime syndicate was to eliminate him for failure to gain pecuniary or other advantage. This fact also substantiates from the contents of FIR Exh.324 colly.

237. It is gathered from confessional statement of the accused that it is accused Satish Tangapan Joseph, who arranged for the finance through accused Rajendra Sadashiv Nikalje @ Chhota Rajan. As per section 22(2) of MCOC Act, if it is proved that he accused rendered any financial assistance to a person accused of an offence of organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2). There is no rebuttal to this presumption. Therefore, this presumption invoked against the accused Satish Joseph and Rajendra Nikalje.

238. In their confessional statement, accused Nityanand Nayak and Selvin Danial specifically stated that one person by name Gaja had been to accused Nityanand Nayak on 14th October and gave him money by saying that Satish Kalya sent the same. The accused Selvin Danial in line with the same also stated that on 14/10/2012, Nityanand made phone call to him and told that Satish Kalya sent a person by name Gaja with Rs.3,00,000/-. This fact leaves no room of doubt that the conspiracy was hatched between the accused for commission of murder of B.R. Shetty and after completion of the work, payment was made to the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay, Talvinder Singh and absconding accused Gurudeep Singh@ Bobby. The accused

nos.4 and 5 done the work to gain pecuniary advantage and they have been offered to receive the huge amount. Thereby they associated themselves with the syndicate headed by accused Chhota Rajan and became member of organized crime syndicate. The accused nos.1,2, 4 and 5 were made known and got the knowledge about the object of organised crime syndicate to eliminate B.R. Shetty and they acted in furtherance of said object and conspiracy. The act of accused is nothing but a continuing unlawful activity on behalf of said syndicate/gang. Thus, the prosecution indubitably proved that the accused hatched conspiracy and being member of the organised crime syndicate attempt to commit murder of injured B.R.Shetty.

239. The accused no.4 is also charged under section 5 r/w. Section 27 of the Arms Act for possessing the firearm. On perusal of section 5 of the Indian Arms Act, it is pertaining to license for manufacture, sell etc. of Arms and Ammunition. It is not the case of the prosecution that the accused no.4 deals in manufacture, sell etc. of Arms and Ammunition. As such, the provisions of section 5 of the Indian Arms Act cannot be attracted against the accused no.4 and for that he could not be made punishable under section 27 of the Arms Act. As regards the evidence of possession of the firearms, the evidence of PW.28 B.R. Shetty is very specific that the pillion rider i.e. accused Dilip Upadhyay had opened the fire at him. Not even that, in the confessional statement accused Dilip Upadhyay specifically stated that he fired at the informant B.R. Shetty by gun. It tends to show that accused Dilip Upadhyay was holding the firearm and shoot at B.R. Shetty. Apparently, the accused Dilip Upadhyay was not holding license to possess the firearm. The weapons were arranged by wanted accused Gurdeep Singh and handed over to accused Talvinder. Therefore, the accused are guilty for the

offence punishable under section 3, 25 and 27 of the Indian Arms Act. Hence, I answer point nos.1,2 and 4 to 6 in the affirmative and point no.3 in the negative.

240. In view of the above findings, the accused are held guilty for the offence punishable under section u/s.120(B) r/w. 307 of IPC r/w. Section 3, 25 and 27 of the Arms Act r/w. section 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999. Once this court has come to the conclusion that the accused are guilty of the said offences, it is now necessary to hear the prosecution and the accused on the point of sentence. Hence, I took a pause to hear the prosecution and the accused.

(A.T. WANKHEDE)

Date : 20/08/2019
Place : Mumbai

Exclusive Special Court constituted for the cases
under MCOCA/TADA/POTA AND OTHER SESSIONS CASES
against the accused-Rajendra Sadashiv Nikalje @ Chhota Rajan

HEARING ON THE POINT OF SENTENCE

241. Heard the accused no.1 Nityanand, he stated that his family including two school going kids and senile parents are dependent on him. He is the only bread earner of the family. He is in jail since last seven years. He is having no criminal past.

242. The accused no.2 Selvin Challapan Danial stated that his family members are dependent on me. Minimum sentence be awarded. Since last seven years, he is in jail.

243. Heard the accused no.3 Rohi @ Satish Kalya @ Satish Tangapan Joseph. He stated that, since 2011, he is in jail. Family members are dependent on him. Minimum sentence be awarded.

244. Heard accused no.4 Dilip Atmaram Upadhyay. He stated that, his family is dependent on him. Minimum sentence be awarded.

245. Heard accused no.5 Talvinder Singh Gurubacchan Singh Bakshi @ Sonu. He stated that he is the only bread earner of the family. His mother is senior citizen. He is having two minor daughters. The period of imprisonment may kindly termed as sentence. Accused no.5 Talvinder also filed written submissions on the point of sentence. Perused the same.

246. Heard accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Sir. He stated that he is not involved in this offence. Minimum sentence may kindly awarded.

247. Also heard the learned Advocates for the accused. They submitted that leniency may kindly shown to the accused. This is the first offence of the accused of accused no.1,2,3 and 4.

248. Learned SPP Mr. P.D. Gharat for CBI/prosecution submitted that under section 3(1)(ii), 3(2) and 3(4) minimum punishment for five years which may extend upto life imprisonment along with fine of Rs.5,00,000/- minimum is provided. Therefore, maximum punishment may kindly be awarded.

249. I gave thoughtful consideration to the submissions made by the accused, their advocates and the learned SPP. The nature and gravity of the offence proved against the accused are of serious nature. For meager amount of money, the accused nos.4 and 5 alongwith accused no.1,2 and absconding accused Gurdeep Singh @ Bobby took the task to eliminate injured B.R. Shetty and associated in the conspiracy with accused Satish Joseph and Rajendra Nikalje. Needless to mention here that the organized crime is a menace to the society. The object and the foundation of MCOC Act is to control the organized crime. The purpose of imposition of sentence is not only to cause deterrence to the accused, but also to the potential accused who are likely to indulge in such activities. A message must have been given to the society and such offenders about the fate of commission of such crime. The grounds raised by the accused are of general and common nature. Keeping in mind, the objects of the MCOC Act and the punishment provided, no leniency can be shown to the accused and following sentence would meet the ends of justice.

250. Before parting with the judgment, it is necessary to point out here that one of the accused Gurudeep Singh Raina is wanted and therefore, the muddemal property cannot be disposed off. However, it reveals that the currency notes and coins which are seized from the accused Nityanand Nayak, Selvin Danial, Dilip Upadhyay and Talvinder Singh are having no concern with the said offence. Even, these accused have not claimed the said amount. Therefore, the currency notes and coins be sent to Treasury. With that I proceed to pass the following order :-

ORDER

1) The accused no.1 Nityanand Narayan Nayak, accused no.2 Selvin Challapan Danial, accused no.3 Rohi @ Satish Kalya @ Satish Tangapan Joseph, accused no.4 Dilip Atmaram Upadhyay, accused no.5 Talvinder Singh Gurubacchan Singh Bakshi @ Sonu and accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Sir are convicted as per section 235(2) of Cr.P.C.1973, for the offence punishable u/s.120(B) r/w. 307 of IPC r/w. Section 3, 25 and 27 of the Arms Act r/w. section 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999.

2) The accused no.1 Nityanand Narayan Nayak, accused no.2 Selvin Challapan Danial, accused no.3 Rohi @ Satish Kalya @ Satish Tangapan Joseph, accused no.4 Dilip Atmaram Upadhyay, accused no.5 Talvinder Singh Gurubacchan Singh Bakshi @ Sonu and accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Sir are sentenced to suffer rigorous imprisonment for a period of eight years each with fine of Rs.5,00,000/-, in default, to suffer rigorous imprisonment for one year each for the offence punishable u/s.120(B) r/w. 307 of IPC and section 3(1)(ii) of the MCOC Act, 1999.

3) As the sentence is imposed on the accused for the offence punishable under sections 120(B) r/w. 307 of IPC and section 3(1)(ii) of the MCOC Act, 1999, no separate sentence awarded to the accused for the offence punishable under sections 3, 25 and 27 of the Indian Arms Act and section 3(2) and 3(4) of the MCOC Act.

4) The accused Dilip Upadhyay is acquitted as per section 235(1) of Cr.P.C.,1973 for the offence punishable under section 5 r/w. 27 of the

Indian Arms Act.

5) The accused no.1 Nityanand Narayan Nayak, accused no.2 Selvin Challapan Danial, accused no.3 Rohi @ Satish Kalya @ Satish Tangapan Joseph, accused no.4 Dilip Atmaram Upadhyay, accused no.5 Talvinder Singh Gurubacchan Singh Bakshi @ Sonu and accused no.6 Rajendra Sadashiv Nikalje @ Chhota Rajan @ Nana @ Seth @ Sir shall be entitled for set off u/s.428 of Cr.P.C, 1973 for the period of detention already undergone by them during the investigation/trial of this case, against the substantive sentence awarded.

6) Out of the fine amount, an amount of Rs.5,00,000/- (Rupees Five Lakhs Only) shall be paid to injured PW.28 B.R. Shetty towards compensation under section 357 (1) (b) of the Cr.P.C. for the injury suffered by him.

7) Except the currency notes and coins which are seized from the accused no.1 Nityanand Narayan Nayak, accused no.2 Selvin Challapan Danial, accused no.4 Dilip Atmaram Upadhyay and accused no.5 Talvinder Singh Gurubacchan Singh Bakshi @ Sonu, the other muddemal property be preserved as one of the accused Gurudeep Singh @ Bobby Prem Singh Raina is wanted/absconding.

8) The currency notes and coins (Article-32, Article-53, Article-59, Article-66, Article-79 and Article-X-50 colly.) be confiscated and deposited in the Treasury of the Government of Maharashtra. The description of currency notes and coins be recorded and maintained.

9) The copy of the judgment be furnished to all the accused persons

free of cost. Considering the bulky nature of the judgment, the accused be produced on 26/08/2019 for providing the copy of judgment.

(A.T. WANKHEDE)

Exclusive Special Court constituted for the cases
Date : 20/08/2019 under MCOCA/TADA/POTA AND OTHER SESSIONS CASES
Place : Mumbai against the accused-Rajendra Sadashiv Nikalje @ Chhota Rajan

Dictated on : Several dates till today.
Transcribed on : 20/08/2019.
Signed on : 26/08/2019.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER"

DATE : 26/08/2019, AT 5.00 P.M. MAHESH KESHAV SAKHARKAR
STENOGRAPHER (S.G.)

UPLOAD DATE AND TIME NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI A.T.WANKHEDE. C.R.NO.57.

Date of pronouncement of judgment/order : 20/08/2019.

Judgment/order signed by the P.O. on : 20/08/2019.

Judgment/order uploaded on : 26/08/2019, AT 5.00 P.M.
