

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1157 OF 2012

Sahebro Kaluram Bhintade

Age 61 Years, Occu :

Resident at - A/204, Dhanlaxmi Co-op.

Hsg.Soc. Mohili Villa, Andheri-Ghatkopar

Link Rd. Sakinaka, Mumbai -400 072.

... **Appellant**

VERSUS

1. State of Maharashtra
(At the instance of DCB, CID,
UNIT (III), Mumbai.

2. Mrs. Komal Jamsandekar
Age 42 Years, Occu - Household;
Resident at - Rumani Manzil, Asalpha
Village, Ghatkopar (W), Mumbai.

... **Respondent**

**WITH
CRIMINAL APPEAL NO. 1066 OF 2012**

Sunil Sadashiv Ghate

Aged 55 Years,

Resident at - 714/F, Dagdi Chawl, Room

Nos.21 and 22, First Floor, Bapurao

Jagtap Marg, Byculla West, Mumbai -

400 011.

[At present in Judicial custody and
undergoing the sentence imposed upon
him at Taloja Central Jail at Taloja]

... **Appellant**

VERSUS

The State of Maharashtra

(At the instance of DCB, CID, UNIT III

Bombay vide their C. R. No. 69 of 2008

Original Saki Naka Police Station C.R.

No.82 of 2007.

... **Respondent**



**WITH
CRIMINAL APPEAL NO. 1077 OF 2012**

Suresh Raghunath Patil
Age 32 Years, Occu - Service;
Resident at - 714/1, Dagdi Chawl, Room
No.24, First Floor, Bapurao Jagtap Marg,
Byculla (West), Mumbai 400 011.
[Presently lodged at Taloja Central
Prison, Navi Mumbai]

... **Appellant**

VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police
Station, investigation carried out by
DCB CID Unit III
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at - Rumani Manzil, Asalpha
Village, Ghatkopar (West), Mumbai.

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 1094 OF 2012**

1. Pratap Tukaram Godse
Age 30 Years, Occu - Service;
Resident at - 2/21, Laxmi Niwas Chawl,
Laxminarayan Mandir Marg, Mohili
Village Sakinaka, Mumbai 400 072.
[Presently lodged at Taloja Central
Prison]
2. Ajit Chandrakant Rane
Age 26 Years, Occu - travel agency;
Resident at - B/501, Shivam Apartment,
Near Chandivali Studio, Sakinaka,
Mumbai - 400 072.
[Presently lodged at Kolhapur Central
Prison]

... **Appellant**



VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police Station, investigation carried out by DCB CID Unit III)
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at Rumani Manzil, Asalpha Village, Ghatkopar (West) Mumbai.

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 1076 OF 2012**

Sandeep @ Sandy Baliram Gangan
Age 42 Years, Occu - Service;
Resident at - 714/E, Dagdi Chawl, Room No. 28, Bapurao Jagtap Marg, Byculla (West), Mumbai 400 011.
[Presently lodged at Kolhapur Central Prison]

... **Appellant**

VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police Station, investigation carried out by DCB CID Unit (III))
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at Rumani Manzil, Asalpha Village, Ghatkopar (West) Mumbai.

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 1093 OF 2012**

Shrikrishna @ Babu Tukaram Gurav
Age 36 Years, Occu :
Resident at - Shriprasad Building, Room
No.2, Ground Floor, B. R. Nagar, Diva
(E), Thane.
[Presently lodged at Kolhapur Central
Prison]

... **Appellant**

VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police
Station, investigation carried out by
DCB CID Unit III)
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at Rumani Manzil, Asalpha
Village, Ghatkopar (West) Mumbai.

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 1095 OF 2012**

1. Vijaykumar Harihar Giri
Age 32 Years, Occu :
Resident at - Sonu Bhoir Chawl,
Shivdevi Sadan, Kokanipada, Dahisar
(E), Mumbai.
[Presently lodged at Taloja Central
Prison]
2. Ashokkumar Shivkant Jaiswar
Age 25 Years, Occu :
Resident at - Munshi Mahal, Shankar
Sheth Chawl, Room No.2, Pratap Nagar
Road, Bhandup (W), Mumbai - 400078
[Presently lodged at Taloja Central
Prison]

3. Narendra @ Kandi @ Guddu Lalmani
Giri
Age 25 Years, Occu :
Resident at - Pande Compound,
Hanuman Tekdi, Near Yadav Tabela,
Kajupada, Dahisar (E), Mumbai.
[Presently lodged at Taloja Central
Prison]
4. Anil Sherbahadur Giri
Age 28 Years, Occu :
Resident at - Room No. 401,
Ashtavinayak Society, Sangharsh
Nagar, Chandivali, Andheri (E), Mumbai
400 072.
[Presently lodged at Kolhapur Central
Prison]

... **Appellants**

VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police
Station, investigation carried out by
DCB CID Unit III)
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at Rumani Manzil, Asalpha
Village, Ghatkopar (West) Mumbai.

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 1061 OF 2012**

Arun Gulab Gawali
Age 60 Years, Occu ; MLA,
Resident at - Geetai Co-op. Hsg.
Society, 3rd Floor, Bapurao Jagtap Marg,
Byculla, Mumbai - 400 011.
[Presently lodged at Taloja Central
Prison, Navi Mumbai]

... **Appellant**



VERSUS

1. The State of Maharashtra
(At the instance of Sakinaka Police Station, investigation carried out by DCB CID Unit III)
2. Mrs. Komal Kamlakar Jamsandekar
Age 42 Years, Occu - Household;
Resident at Rumani Manzil, Asalpha Village, Ghatkopar (West) Mumbai. ... **Respondents**

**WITH
CRIMINAL APPLICATION NO. 144 OF 2019
IN
CRIMINAL APPEAL 1095 OF 2012**

Anilkumar Sher Bahadur Giri ... **Appellant**

VERSUS

The State Of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPLICATION NO. 1406 OF 2018
IN
CRIMINAL APPEAL 1095 OF 2012**

Anilkumar Sher Bahadur Giri ... **Appellant**

VERSUS

The State Of Maharashtra ... **Respondent**

**WITH
CRIMINAL APPLICATION NO. 1534 OF 2018
IN
CRIMINAL APPEAL 1157 OF 2012**



Sahebrao Kaluram Bhintade

... **Appellant**

VERSUS

The State Of Maharashtra & Anr.

... **Respondents**

**WITH
CRIMINAL APPLICATION NO. 951 OF 2019
IN
CRIMINAL APPLICATION NO. 144 OF 2019**

Anilkumar Sher Bahadur Giri

... **Appellant**

VERSUS

The State Of Maharashtra

... **Respondent**

Sr. Con. Rajiv Patil a/w Hasan Patel, Ms. Priyanka Thakur, Megha Bajoria i/b Shri Prashant M. Patil for Appellant in Appeal No.1157/2012.

Sr. Con. Shirish Gupte a/w Ganesh Gole, D.D. Ghadge, Ateet Shirodkar for Appellant in Appeal 1061/2012, Appeal 1066/2012.

Adv. Taraq Sayed a/w Advait Tamhankar & Ajay Dubey for Appellant in Appeal 1094/2012.

Adv. Sudeep Pasbola a/w Adv. Bhavesh Thakur for Appellant in Appeal 1076/2012

Adv. E.A.Sasi for Appellant in Appeal 1093/2012.

Adv. B. Sharada for Appellant in Appeal 1095/2012.

Sr. Con Ashok Mundargi for Appellant in Appeal 1066/2012.

Spl. P.P. A.M. Chimalkar a/w Siddharth Jagushte and Akash Kavade for State.

Shri J. P. Yagnik, APP for State.

**CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.**

**RESERVED ON : 9/8/2019
PRONOUNCED ON: 9/12/2019**

**JUDGMENT (Per B. P. Dharmadhikari, J)**

. These Appeals assail the common Judgment and Order dated 31st August 2012 delivered by the Special Judge, MCOC Act, Gr. Mumbai in MCOC Special Case No.7 of 2008 and other connected matters, whereby the said Court convicted -

(a) Arun Gulab Gawali (A-1), Sandip @ Sandy Baliram Gangan (A-9), Shrikrishna @ Babu Tukaram Gurav (A-10), Pratap Tukaram Godse (A-12), Ajit Chandrakant Rane (A-13), Suresh Raghunath Patil (A-15) and Sunil Sadashiv Ghate (A-20) for the offences punishable under Section 3(4) of the MCOC Act, 1999 and sentenced each of them to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5.00 Lac. each, & in default of fine, sentenced them to suffer rigorous imprisonment for three years.

(b) Arun Gawali (A-1), Sandip Gangan (A-9), Shrikrishna Gurav (A-10), Pratap Godse (A-12), Ajit Rane (A-13), Suresh Patil (A-15) and Sunil Ghate (A-20) for the offences punishable under Section 3(1)(ii) of the MCOC Act, 1999 and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5.00 Lacs each, and in default thereof, to suffer rigorous imprisonment for three years.

(c) Vijay Giri (A-2), Ashokkumar Shivakant Jaiswar (A-3), Narendra @ Kandi @ Lalmani Giri (A-4) and Anil Sherbahadur Giri (A-5) for the offences punishable under Section 3(2) of MCOC Act, 1999 sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.5.00 Lacs each, and in default thereof, to suffer rigorous imprisonment for three years.

(d) Vijay Giri (A-2), Ashokkumar Jaiswar (A-3) and Narendra Giri (A-4) for the offence punishable under Section 452 read with Section 34 of Indian Penal Code and sentenced each to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5000/- each, and in default to suffer rigorous imprisonment for one year.

(e) Vijay Giri (A-2), Ashokkumar Jaiswar (A-3), Narendra Giri (A-4) and Anil Giri (A-5) for the offence under Section 302 read with Section 34 read with Section 120-B of the Indian Penal Code and Section 3(1)(i) of the MCOC Act, 1999 and sentencing each to suffer rigorous imprisonment for life and to pay a fine of Rs.1.00 Lac each, and in default to suffer rigorous imprisonment for three years.

(f) Arun Gawali (A-1), Sahebrao Bhintade (A-6), Sandeep



Gangan (A-9), Shrikrishna Gurav (A-10), Pratap Godse (A-12), Ajit Rane (A-13) and Suresh Patil (A-15) for the offence punishable under Section 3(2) of the MCOC Act, 1999 and sentencing to suffer rigorous imprisonment for life and to pay a fine of Rs.7.00 Lacs each, in default to suffer rigorous imprisonment for three years.

(g) Arun Gawali (A-1), Sahebrao Bhintade (A-6), Sandeep Gangan (A-9), Shrikrishna Gurav (A-10), Pratap Godse (A-12), Ajit Rane (A-13) and Suresh Patil (A-15) for the offence punishable under Section 3(1) (i) of the MCOC Act, 1999 and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1.00 Lac each, and in default thereof, to suffer rigorous imprisonment for three years.

(h) Vijay Giri (A-2) for the offence punishable under Section 3 read with 25(1-B) of the Arms Act, 1959 and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.5000/-, & in default, to suffer rigorous imprisonment for six months.

There were total 21 accused before it & accused nos. 14,16,17 to 19 were discharged while accused 8,11 & 21 have



been acquitted. It is not in dispute that accused no. 7 Bala Surve died during pendency of trial on 17.7.2012.

2. Case of prosecution in brief is -

(a) The sitting Corporator namely Kamlakar Jamsandekar was shot dead in his house by two unidentified persons on 2nd March 2007 at about 16.45 hours who were hired by associates of Arun Gawali who was the then sitting MLA of Akhil Bhartiya Sena (ABS hereafter) and head of an organized crime syndicate ie ABS. It is the specific case of the prosecution that Accused Nos. 1, 9, 10, 12, 13, 15 and 20 were members of organized crime syndicate headed by Arun Gawali (A-1). Accused Nos. 1 to 7 and 10, 12 and 13 hatched a conspiracy to kill Kamlakar Jamsandekar who was sitting Corporator of Shivsena party. Kamlakar Jamsandekar was shot dead by Vijaykumar Giri (A-2) with a country made hand gun. Accused Nos. 2 to 4 accepted an amount of Rs.30.00 Lakh from Accused Nos. 6 and 7 through Pratap (A-12) and Ajit Rane (A-13) who accepted a *supari* i.e. a contract to eliminate Kamlakar Jamsandekar due to political rivalry. Accused No.1 assured Accused No.6 and Accused No.7 to get the work done.

(b) Said Kamlakar Jamsandekar was declared as elected



Corporator & Ajit Rane (A-13) who contested that election held on 1st February,2007 was the nominee of Akhil Bhartiya Sena (ABS) lost it. Ajit Rane (A-13) with a grudge in mind, gave a contract of killing Kamlakar Jamsandekar to Accused Nos. 6 Sahebrao Bhintade and 7 Bala Surve. The prosecution claims that, Accused Nos.6 and 7 went to Arun Gawali (A-1) and gave him '*supari*'. Accused Nos.2 to 5 were then engaged as assailants by Accused Nos.12 and 13 through accused 10 Babu @ Shrikrishana. Accused Nos.12 and 13 along with Accused No.6 arranged gun and cartridges from the native place of Surendra Panchal (A-8), and used for killing Kamlakar Jamsandekar. The said gun was recovered from Accused Nos.2 to 5 from Kalbadevi area while attempting to commit dacoity on 26.4.2008 in the jurisdiction of LT Marg Police Station.

(c) Deceased Kamlakar Jamsandekar resided at Rumani Manzil, Chawl No.1, Room No.7, Asalfa Village, Mohili Pipe Line, Ghatkopar, Mumbai with his wife Komal, daughter, son and niece Manali Keshav Hire (Complainant). On 2nd March 2007, at about 16.45 hours, the complainant PW-7 Manali was in the kitchen. Kamlakar Jamsandekar was watching TV in the adjacent room. The wife of deceased Kamlakar Jamsandekar



namely Komal (PW-1) had already left the house at about 4.00 p.m. The complainant's cousin Sayali was packing her school bag near her father Kamlakar. PW-7 Manali heard noise like that of fire crackers from the adjacent room. She rushed to that room and noticed two unknown persons leaving the said room. Kamlakar Jamsandekar was in the pool of blood and had received the head injury. Manali (PW-7) rushed outside screening to save her uncle. Somebody contacted the police who arrived at the place of incident immediately. Kamlakar Jamsandekar was admitted to Rajawadi Hospital where he was declared dead.

(d) The complainant Manali Hire (PW-7) lodged complaint vide Exh.177. Saki Naka Police registered the offence on the basis of the said complaint vide Crime No. 82/2007 under Sections 120-B, 452, 302 read with 34 of the Indian Penal Code read with Sections 3, 25 and 27 of the Arms Act and under Sections 37(1) and 135 of Bombay Police Act. The police from Saki Naka police station visited the spot and recorded the spot panchanama (Exh.165). The photographs of the place of incident were snapped vide Exh.163 collectively. PW-21 P. I. Motiram Kasar conducted the investigation and



found a scarbutt (Article-1) lying near the body of the deceased which was detached from the gun used by the assailants. Police arrested Pratap Godse (A-12) and Ajit Rane (A-13) along with Prakash @ Pappu Sawla (A-14), Subhash Upadhyay (A-16), Pankaj Kothari (A-17), Mohd. Saif Mohiddin Faruqui (A-18) and Badrealam Badruddin Faruqi (A-19).

(e) The dead body of deceased Kamlakar was sent for autopsy. Postmortem report was produced at Exh.281 and Ballistic report at Exh.196. The said report reveals that wad of the fired ammunition was found embedded in the brain matter of the deceased as well as the pellets (Article-7 colly.) were recovered from the head of the deceased Kamlakar Jamsandekar indicating that weapon used was 12 bore country made handgun.

(f) During the course of investigation statements of witnesses were recorded. Test Identification Parade was arranged on 31st May, 2007 and 1st June, 2007 with help of witnesses Ms. Nita Shah and Mayuresh Tandel vide Exhibits - 470 & 471 collectively. After completion of investigation chargesheet was filed by Sakinaka Police Station against seven accused persons in the Court of Metropolitan Magistrate,



Mumbai. Then the case was committed to the Court of Sessions.

(g) On 26th April, 2008 the secret information was received by Police Inspector Sandbhor to the effect that some persons were likely to commit dacoity in a jewelry shop at Kalbadevi. The trap was laid and Vijaykumar (A-2), Ashokkumar (A-3), Narendra (A-4) and Anil Giri (A-5) came to be arrested on 26th April, 2008 near Hotel Govindram at about 3.15 p.m. During their personal search, a country made handgun without a scarbutt along with one live cartridge was found in possession of Vijaykumar Giri (A-2) along with Nokia Mobile phone, some currency and driving license. Ashokkumar (A-3) was found in possession of 12 inch knife and some currency, Narendra Giri (A-4) was found in possession of 12 inch knife and some currency and Anil Giri (A-5) was also found in possession of one knife of 11 inch, one mobile and some currency as well as small pouch containing chilly powder. They were arrested under panchanama Exh.311.

(h) The statements of some witnesses were recorded. Offence was registered vide Crime No.118 of 2018 at L.T. Marg Police Station under Sections 399 & 402 of the Indian Penal



Code and Sections 3, 25, 27 of the Arms Act read with Sections 22 & 51 of Bombay Police Act. Investigation of that case was taken over by DCB CID CIU vide CR No.66 of 2008.

(i) Accused Nos. 2 to 5 were also found to be involved in Crime No. 82 of 2007 registered with Sakinaka Police Station. Dinesh Narkar (A-11) along with Shrikrishna Gurav (A-10) were also arraigned as accused by DCB CID vide Crime No. 69 of 2008. During the course of interrogation of Accused Nos. 2 to 5 it revealed that the country made handgun which was seized from them was used for committing murder of Kamlakar Jamsandekar and thus scarbutt recovered by Sakinaka Police Station on the spot had got detached from the said handgun at that time. Investigation was taken over from Sakinaka Police Station by DCB, CID vide Crime No. 69 of 2008. Thus, Accused Nos.1 to 4, 5, 6 and 7 were arrested by DCB CID on 29th April 2008 in connection with Crime No. 69 of 2008. Accused No.8 was arrested on 5th May 2008 and Sahebrao Bhintade (A-6) was arrested on 15th May 2008. Shrikrishna Gurav (A-10) and Dinesh Narkar (A-11) arrested by DCB, CID in Crime No. 52 of 2008 and were in custody; as per the orders of Special Court,



were arrested on 16th May 2008 in connection with Crime No. 69 of 2008.

(j) PW-33 Divakar Shelke sent a proposal to the Joint Commissioner of Police for obtaining prior approval (Exh.421) under Section 23(1)(a) of MCOC Act and the said approval was granted on 20th May 2008, to register the offence under MCOC Act. Further investigation was carried out by PW-37 ACP Duraphe. He arrested Arun Gawli (A-1), Sahebrao Bhintade (A-6) and Sadashiv Surve (A-7) under the provisions of MCOC Act.

(k) During the course of investigation, Ashokkumar Jaiswar (A-3), Narendra Giri (A-4), Anil Giri (A-5), Sandeep Gangan (A-9), Shrikrishna Gurav (A-10) and Dinesh Narkar (A-11) expressed their desire to make confessions and accordingly, their confessional statements were recorded by PW-17 DCP Vinaykumar Chaube, PW-15 Rajendra Dabhade, PW-23 DCB Vijay Singh N. Jadhav, PW-29 DCP Brijesh Singh and PW-18 DCP Dilip Sawant respectively. The statements of witnesses also came to be recorded. Muddemal articles were sent to Forensic Science Laboratory, Kalina for analysis. Test Identification (T.I.) parade was arranged by PW-37 ACP Duraphe with the help of PW-33 Divakar Shelke and Special



Executive Officer Mr. Dattaram Kambli (PW-24) on 20th June 2008 at Mumbai Central Prison. T. I. Parade memorandum was accordingly produced vide Exh.301. PW-7 Manali Hire and PW-12 Motilal Chaudhary are two material witnesses who identified the accused actually giving effect to the crime.

(l) The Call Detail Records were collected by PW-37 ACP Duraphe in respect of mobile phones of some of the accused. Similarly PW-34 Prashant Gawde also produced Call Detail Records vide Exhs. 426 and 427 (colly.), reflecting communication between Accused Nos. 2, 5, 8, 10, 12 and 13. PW-35 Shekhar Palande, who is a Nodal Officer of Tata Services explained the contents of CDR (Exh.436).

(m) Thereafter, proposal for obtaining sanction was submitted by PW-37 ACP Duraphe with PW-36 Mr. Hasan Gafoor, the Commissioner of Police, who granted sanction on 27th July 2008 under section 23(2) of MCOC Act to prosecute the Accused, vide Exh. 439.

(n) After completion of the investigation, PW-37 ACP Duraphe filed a chargesheet in the Court of Special Judge under MCOC Act, bearing Special Case No.7 of 2008. Supplementary



chargesheets bearing Nos. 16 of 2008 and 3 of 2009 were also filed in the said Court. All these cases were tried simultaneously as per the directions of the Special Court.

(o) During the course of investigation, it was revealed that deceased Kamlakar and Sadashiv Surve (A-7) were not in good terms over some landed property. Sadashiv Surve (A-7) hatched conspiracy with Sahebrao Bhintade (A-6). Accused Nos. 6 and 7 approached Pratap Godse (A-12) and Ajit Rane (A-13), who in turn gave contract to Arun Gawali (A-1) to eliminate Kamlakar Jamsandekar. A meeting was fixed by Pratap Godse (A-12) particularly Sahebrao Bhintade (A-6) with Arun Gawali (A-1). Pratap Godse (A-12) and Ajit Rane (A-13) took Sahebrao Bhintade (A-6) and Sadashiv Surve (A-7) to the office of Akhil Bhartiya Sena, a political party of which Arun Gawali (A-1) was sitting MLA on the ground floor of Geetai Co-op. Hsg. Society Ltd., Dagadi Chawl, Byculla, Mumbai.

(p) They met Sandeep @ Sandy (A-9) who is also associate of Arun Gawali (A-1). They informed Sandeep (A-9) about bringing contract money, on which Sandeep (A-9) called Suresh Patil (A-15) on his mobile phone by using the mobile phone of Pratap Godse (A-12). Suresh Patil (A-15) and Sandeep



(A-9) took Sahebrao Bhintade (A-6), Sadashiv Surve (A-7), Pratap Godse (A-12) and Ajit Rane (A-13) to the office of Arun Gawali (A-1) on second floor of the building. Sahebrao Bhintade (A-6), Sadashiv Surve (A-7) handed over the amount of Rs.30.00 Lacs to Arun Gawali (A-1) as a contract money to kill Kamlakar Jamsandekar. Arun Gawali (A-1) instructed Pratap Godse (A-12) and Ajit Rane (A-13) to hire new killers in order to avoid involvement of his gang. Pratap (A-12) therefore asked Shrikrishana Gurav (A-10) to find out new shooters to kill Kamlakar Jamsandekar upon which Shrikrishna (A-10) contacted Vijaykumar Giri (A-2) and Narendra Giri (A-4) and discussed with them about the said contract. They both accepted the said contract.

(q) Shrikrishana (A-10) then took them i.e. Accused Nos. 2 and 4 to Accused Nos. 12 and 13. They offered them Rs.2.5 Lacs for committing murder of Kamlakar Jamsandekar. Arun Gawali (A-1) asked Suresh Patil (A-15) to pay Rs. 60,000/- to Pratap Godse (A-12) for paying the said amount to the hired killers. Accordingly, Suresh Patil (A-15) gave amount of Rs.60,000/- to Sandeep (A-9) to hand over the same to Pratap (A-12) and Ajit Rane (A-13). Pratap Godse (A-12) and Ajit Rane



(A-13) paid Rs.20,000/- as advance amount to Vijaykumar Giri (A-2) and Narendra Giri (A-4). Pratap Godse (A-12) and Ajit Rane (A-13) also handed over 12 bore country made handgun to them which they had purchased from Surendra Panchal (A-8), who had a license for repairing arms and ammunition.

(r) As per the case of prosecution, PW-4 Abdul Rehman @ Addu pointed out Kamlakar Jamsandekar to Vijaykumar Giri (A-2), Ashokkumar Jaiswar (A-3), Narendra Giri (A-4) and Anil Giri (A-5). On 2nd March, 2007, at about 15.30 hours or so, Pratap Godse (A-12) informed to Vijaykumar Giri (A-2) telephonically that Kamlakar Jamsandekar was alone in his house, accordingly Vijaykumar (A-2) and Narendra (A-4) entered into the house of Kamlakar. Vijaykumar Giri (A-2) fired at deceased Kamlakar from his country made handgun. Resultantly Kamlakar Jamsandekar died on the spot. The accused persons then fled away. Pratap (A-12) then paid Rs. 30,000/ out of contract money to the killers.

The Special Judge framed charges vide Exh.133. Defence of the Accused is of total denial. The learned Special Judge after trial convicted the Accused as detailed supra.



3. Shri Gupte, learned senior advocate appearing for accused No.1 contended that no confessions are recorded as against accused No.1. The Trial Court has based conviction only upon confessions of accused Nos.9, 10 and 15. Since there is no evidence of any organized crime against accused Nos.1 or then against accused Nos.9, 10 and 15 and murder of Kamlakar Jamsandekar cannot be viewed as organized crime in which they have participated, their confessions need to be disregarded.

4. According to him motive alleged by prosecution is accused No.13-Ajit Rane loosing ward election & deceased accused No.7 Shri Surve and accused No.6 Sahebrao having a personal grudge against deceased. Deceased Kamlakar defeated accused No.13 in election and had disturbed smooth working of accused Nos.6 and 7. Learned counsel thus submits that in the entire story, there is no role ascribed to accused No.1 who himself was an elected MLA.

5. Adv. Gupte submits that according to prosecution accused No.12 happens to be close associate of accused No.13 and prosecution claims that accused Nos.12 and 13 are members of organization of accused No.1. Accused Nos.6 and 7 gave the contract to kill Kamlakar to accused Nos.12 and 13 and, accused



Nos.12 and 13 in turn went to accused No.1. Submission is this story is highly improbable and does not inspire confidence. In absence of any independent evidence, the alleged confessions, which have been retracted immediately, could not have been used to return a finding of guilt against accused No.1. He submits that as per prosecution case new boys(strangers) were engaged as assailants by accused Nos.12 and 13 for this job. Accused No.1 did not have any knowledge of accused Nos. 2 to 5 and accused Nos.2 to 5 also were not aware of any role of accused No.1. As such there is no organized crime and provisions of MCOCA therefore cannot be invoked against accused No.1.

6. He has pointed out that evidence of PW-1-Komal, PW-7-Manali, PW-6, PW-10 and PW-11 is relied upon by prosecution. Similarly, PW-19 to PW-21 and PW-29, PW-33 and PW-37 are the police officers who participated in investigation and detection. None of these witnesses were aware of any act or role of accused No.1 in the matter.

7. Our attention is invited to evidence of PW-7-Manali and it is submitted that she could not have, in a fraction of second, seen any accused person or described him or identified him in test identification parade. The fact that she did not doubt accused



Nos.6 and 7 in the matter of murder of her uncle (Kamalakar) is also highlighted. It is submitted that though she described accused Nos.2 and 4, in test identification parade, she has not identified correctly concerned accused according to their description given earlier, thus there is material variance between her description of accused Nos.2 & 4 and persons identified as said accused persons in test identification parade.

8. Our attention is also drawn to evidence of PW-6 Arun Kumar who is cable operator. It is pointed out that he speaks of a phone call allegedly coming from *"Dagadi chawl"* to *"Daddy"*. According to him the demand was communicated by accused No.20 Sunil and this witness also identified accused No.20 in Court. Omissions during his deposition are pressed into service with submission that this call was made way back in 1998 and as such his deposition does not inspire confidence.

9. By pointing out the evidence on record, it is submitted that this witness was not concerned with Ashish Vision Cable and business was being managed by one Reshimbai. In 2003 license was obtained in the name of Ashish and there is no family member by that name in family of PW-6. There is no reference to Sunny Cable in his statement under section 164 of Cr.P.C. and he has



accepted that Reshimbai was owner of Ashish Vision Cable. He could not remember any building by name Gitai building.

10. Learned Senior advocate Gupte submits that pressure was brought upon this witness by giving him impression that he would be made accused and statement under section 164 of Cr.P.C. came to be procured. We are taken through that statement to show how the atmosphere of fear and tension was created in the mind of this witness. In spite of recording his statement, learned JMFC has recorded his confession and as such his evidence is liable to be discarded. Not only this, PW-6 has complained about extortion almost after 10 years and his story therefore is unbelievable.

11. PW-9 Amrut Patil examined as panch on discovery of diaries by accused No.15 Suresh under section 27 of the Evidence Act is also read out to show that he does not support story of prosecution that accused No.15 was writing entries in said diary. It is submitted that this witness has also deposed only about maintaining of diaries. Maintaining the diary does not imply making entries therein. The diaries and papers allegedly discovered were not sealed and therefore writing of page numbers



upon it by Investigating Officer does not inspire confidence. Handwriting in it are not shown to be of accused No.15.

12. PW-9 Amrut in cross examination has accepted that he was made to sign 50-60 papers. In normal circumstances he could not have been required to make such large number of signatures. As per his deposition only two articles were sealed and phone of accused No.15 or phones discovered were not packed at all. The diaries are of period from 2/11/2015 till 8/12/2007 and nobody has proved its author or contents or truth of contents. It is pointed out that this witness has given incorrect answers and in advance, he was informed about the discovery to be made by accused No.15. It is submitted that this witness has therefore failed to support prosecution story on seizure/discovery of diaries by accused No.15.

13. These diaries and papers were allegedly in custody of PW-10 Ankush. He was declared hostile and his deposition shows that he does not know accused No.15 Suresh or PW-25 Vishwanath. He has signed as directed by police and he also states that portions marked "A" and "B" in his statement are incorrect. He has denied events recorded in Exhibit 183-A and also denied bag



at Article 4. He has stated that he cannot read and pointed out threats given to him by police.

14. Shri Gupte therefore submits that effort made by prosecution to reach accused No.1 on the basis of evidence of PW-9 and PW-10 cannot succeed.

15. Our attention is invited to evidence of PW-11 Mr. Ramchandra Jayram Gurav. Learned counsel submits that this witness was taken to accused No.12-13 by accused No.10. As per story of prosecution this witness made open enquirers every where about availability of illegal gun and in the process reached accused No.8-Surendra. He also pointed out advance paid to Surendra at Village Vilaye. He had no occasion to see gun properly and may have seen it very briefly in 2006. However, he identified the same almost after 4 years and also identifies its missing butt. His identification of article 12 is therefore liable to be discarded. He is an accomplice who has procured the licensed gun.

16. It is submitted that this witness does not connect gun with accused No.1 and also does not show that when gun was being procured, conspiracy to kill Kamlakar Jamsandekar was already hatched.



17. The gun was procured in May 2006 and at that time the considerations like Corporation elections in the year 2007 or outcome thereof did not exist & could not have been visualized.

18. Conduct of this witness is also assailed by pointing out complaint made by him to Kanakavali Police Station almost after 15 days of the incident. In that complaint this witness has stated that he was paid amount of Rs.25,000/- for not disclosing the facts to police. He did not go to police immediately after the threat or acceptance of amount by him. He did not go to police station which was easily accessible but reports the matter at a far off police station. Material omission in his deposition are also pointed out. It is submitted that the police did not at that juncture seize the cheque for the amount given to him. This witness was himself detained by police and enquiries were made with him thrice. He met accused in Court after August 2008 and had no contact with accused No.10 in the meanwhile. He had gone to office of Amit Travels on 2.6.2006 and his family had two mobiles. Thus, his entire conduct does not inspire confidence.

19. Evidence of PW-5 Pradip is also read out to show how prosecution has tried to introduce a false story through him. This



witness claims to be friend of accused Vijay and in 2007 he was offered allegedly amount of Rs.2 Lakhs and a revolver to kill deceased. According to this witness offer was given before election and he turned it down as amount of Rs.2 Lakhs was inadequate. But he submitted that as per his deposition he assisted Bhartiya Kamgar Sena in elections and paid Rs.25,000 for it. Learned Senior advocate submits that evidence of this witness could not have been accepted by trial Court.

20. Vishwanath-PW-25 explained that accused No.1 Arun Gawali also known as "Daddy" had a contact with him. Though this witness claims that he assisted Bhartiya Kamgar Sena in election, material on record does not support it and diaries at Article 3 are not in his handwriting. His statement under section 164 of Cr.P.C. has been recorded by inducing fear in his mind on same lines like that of PW-6. No specimen writing was obtained from him and entries in diaries in his handwriting are not shown to him.

21. Evidence of PW-28 Ketan is criticized by pointing out omission and by stating that this witness was paying ransom allegedly on behalf of some other person for several years and never complained about it.



22. It is submitted that thus evidence available against accused No.1 is not sufficient to show his involvement in any organized crime. He has then invited our attention to other material with submission that said material is only in the shape of confessions recorded allegedly under section 18 of MCOCA. He pointed out that confession of accused No.10 Shrikrishna is recorded by DCP-PW-19 and a farce has been made to show that requirements of section 18 of MCOCA are satisfied. Certificate which should be placed at the end of such confession, has been added later on vide Exhibit 251-B and it is not part of confession. No signature of accused is obtained upon it.

23. Accused was produced before the Court on 17/6/2008 and on that day he has withdrawn/ retracted his confession. He has brought this fact to the notice of punishing Court when he answered question No.376 on diary on 4/1/2012. He also sought production of roznama dated 17/6/2008.

24. Evidence of PW-19 Shri Fadtare shows that atmosphere on the day of recording of confession on 27/5/2008 or on 28/5/2008 was not neutral. Staff of Mahim police station was already present at the office of PW-19 as if they were knowing in advance that accused No.10 was to be brought there, he was to



agree to make confession and he was to be placed with them. Learned counsel submits that all this material shows predecided move to bring on record confession under section 18. Therefore only duration of his custody or time given to him to reconsider, has not been brought on record through documents like station diary entries. Medical record which formed part of confession proceedings recorded on 27/5/2008 should have been produced.

25. Learned Senior advocate contends that in order to fall under section 18, confession has to be of main crime and not pertaining to peripheral affairs. Hence mention of accused No.1 by accused No.10 is inconsequential. He does not give any role to accused No.1 and money consideration also does not reach accused No.1 Statement recorded in retracted confession has never been corroborated by any independent material. Our attention is invited to paragraph No.36 in deposition of PW-19 to show that PW-19 did not put relevant question to accused No.10.

26. The alleged confession made by accused No.9 is also challenged on identical grounds. The letter dated 29/5/2008 prepared for this purpose shows non application of mind and mention of accused No.10 in it is its example. It is further submitted that in letter dated 27/5/2007, the year 2007 recorded



is wrong. Misleading question was put to him as question No.8 since accused No.9 was actually continuing in custody of investigating officer. As per this witness, murder has taken place after 20 days of election. As per deposition of this witness elections were over on 10/1/2007 & thus he is not speaking of Kamalakar's murder.

27. Accused No.9 has claimed that he paid amount of Rs.60,000/- to family of accused but then this story is far from truth. If any bag containing Rs.30 lakhs was handed over to accused No.1, police did not produce it and words put in mouth of accused No.1 that work of Jamsandekar would be done as an assurance, are spoken of only by accused No.9 and by nobody else. Before 30.1.2007, the alleged assurance was given when there was no occasion for the same. Occasion arose on 2.3.2007 as per story of prosecution when elections were conducted. Thus prosecution has fabricated a false story.

28. Evidence of PW-29 who recorded confessional statement of accused No.9 is also read out with similar arguments as noted supra while dealing with confession of accused No.10-Shrikrishna. Though accused No.9 was given time to deliberate, said fact is not recorded in the proceedings of confession. Even



the year 2007 is wrongly mentioned in it which is instance of fabrication & nonapplication of mind. There is no compliance to section 18(3) of MCOCA. It is further submitted that neither confession nor verification at its end were allowed to be read by any of the accused persons and the certificate on last page about recording of confession peacefully in neutral atmosphere is incorrect. The confession statement was not read over to accused and even certificate was not explained to him. Learned counsel pointed out that this accused does not speak of any date after January-2007.

29. After confession was recorded, accused No.9 was sent to Competent Court with duty constable and roznama dated 21/5/2018 shows that he had refused to sign vakalatnama. He had therefore already retracted the confession and he has deposed about it when his section 313 Cr.P.C. statement was recorded. Inviting attention to order sheet recorded on 21.5.2008, learned senior advocate states that the present accused no. 9, who then was accused no. 7, had refused to sign vakalatnama and even in answer to section 313 Cr.P.C. examination on 04/01/2012, retracted the alleged confession.



30. Accused no. 15 Suresh had also on 15/7/2008 before Special Judge immediately withdrawn his confession. He states that both these accused persons only give hearsay evidence of the alleged conversation or the alleged handing over of money. None of them has role in the murder of Kamlakar and they do not in any way connect accused no. 1 with that murder.

31. PW-18 has recorded the confession of accused no. 15. But he does not advance the cause of the prosecution. Accused no. 15 also has on 4.1.2012 at the stage of section 313 Cr.P.C. examination submitted a letter to the trial court and retracted the confession. He has also withdrawn his confession on 26.6.2008 at the time of first remand. In this backdrop, learned advocate pointed out that the trial court has not placed any reliance upon the accounts and diaries allegedly maintained by accused no. 15 and hence, so called confession of accused no. 15 is rendered useless.

32. Evidence of PW-33 Investigating Officer Mr. Shelke is pointed out to show that the very same crime at Sakinaka has been later on used by Crime Detection Branch. Thus Crime No. 82 of 2007 has become Crime No. 69 of 2008. The Omissions of witnesses like PW-10 Ankush Gharkar and PW-25 Vishwanath are



proved through him. This witness was not sure of applicability of MCOCA and mechanically proceeded further. Accused no. 1 Arun Gavli was arrested on 20.05.2008 and in the order passed on that day at Exh. 421, he could not have been shown as arrested. Thus there is manipulation as also non-application of mind. There was no change in the material from 30.04.2008 till 16.05.2008 and still MCOCA has been invoked.

33. Our attention is invited to paragraph nos 21, 25, 26 and 27 of the deposition of PW-33 with a contention that it runs contrary to the stipulation in reference clause of order at Exh. 421 and reveals non-application of mind. This order does not support the confession of accused nos. 9 and 10 also. Only source is accused with their confessions and as such accused are entitled to the benefit of this error. The source of information has been deliberately suppressed with an oblique motive.

34. Exh.275 which is a final report by Sakinaka Police Station is also relied upon to urge that it does not contain any reference to sum of Rs.30 lacs.

35. PW-35 Hasan Gafoor who granted sanction at Exh. 439 on 17.7.2008 only mentions about the chargesheets filed in court



but does not mention whether cognizance thereof was taken or not. The nature of crime in those chargesheets is therefore, not relevant & the sanction order therefore is also vitiated. Charges therein does not show any pecuniary gain to the accused 1.

36. PW-37 Investigating Officer Mr. Duraphe has attempted to bring on record the willingness for confession expressed by accused no.3, 9 and 10. However, in view of the retraction of confession on the same day by these accused persons, this material is also rendered irrelevant. He states that no officer has been examined and no documents have been proved on record to demonstrate the transport of accused in veil in neutral custody and grant of time to him to calmly think over again. It is submitted that in Exh. 467 on 30.04.2008 there is no mention of accused no. 1. Similarly there is no mention of his name in Exh. 468 on 12.05.2008. These accused persons have not given any willingness till 20.05.2008 for giving their confession and PW-37 has given wrong date about it.

37. The fact that accused no. 11 Narkar has withdrawn his confession before Chief Metropolitan Magistrate on 5.6.2008 is highlighted by him. Learned senior counsel argues that the trial court has acquitted this accused no. 11 as there is no evidence



against him except that of retracted confession and two confessions of co-accused. He argues that the case of accused no.1 is therefore, more stronger. He pointed out that PW-37 was not aware of retraction before the Chief Metropolitan Magistrate. He submits that the grievance of accused no. 3 Ashok was not redressed and PW-37 did not have all certified copies while seeking sanction on 18.07.2008.

38. None of the assailants i.e. accused nos. 2 to 5 point out involvement of accused no. 1 Arun Gavli. The trial court has erred in relying upon the confessional statements and in attempting to find out corroboration inter se. Such an exercise was unwarranted in present matter atleast qua Arun Gawali.

39. He explains law on section 27 of Evidence Act by relying upon AIR 1947 Privy Council 67- **Pulukuri Kottaya v. King Emperor**, 2019 (4) SCC 771-- **Pattu Rajan vs. State of TN**. To point out how the entries in diaries are irrelevant & insignificant, he draws support from (1998) 3 SCC 410 - **CBI V.C. Shukla**. On conspiracy, he draws support from (1994) 3 SCC 569 **Kartar Singh vs. State of Punjab**. AIR 1952 SC 159-**Kashmira Singh vs. State of M.P.** is relied upon to point out the law on confession. The Constitution Bench Judgment of the Hon'ble Apex



Court reported at AIR 1964 SC 1184-**Haricharan Kurmi vs. State of Bihar** is pressed into service to explain how the law courts have to approach the confession of co-accused. **LAWS (BOM) 2004-9-63** is relied upon to submit that in the present situation, there was no material to frame charge also.

40. The definitions of “abet” in section 2(a) and “continuing unlawful activity” in section 2(d) of MCOCA are relied upon with reference to (2015) 14 SCC 272- **State of Maharashtra vs. Shiva**. It is submitted that though it is claimed that there are four chargesheets against accused no. 1, only two are exhibited. One out of exhibited chargesheets does not relate to pecuniary gain at all and it is about slapping the reporter/journalist.

41. While concluding his arguments, our attention is drawn to 2005 (11) SCC 600- **State (NCT Of Delhi) vs. Navjot Sandhu** 1998 (7) SCC 337- **Suresh Kalani @ Pappu Kalani v. State of Maharashtra** and 2007 (12) SCC 230-- **Aloke Nath v. State of WB**.

42. Senior Advocate Mr. Patil appearing for accused no. 6 Sahebrao Bhintade has submitted that this accused was arrested



on 29/04/2008. According to him the evidence of PW-No. 1 Komal, evidence of PW-No. 2 Nilkanth and PW-No. 7 Manali is important to appreciate the innocence of this accused. He submits that PW-33 Shelke and PW-37 Duraphe who have investigated into the matter, did not act fairly and impartially.

43. He submits that the alleged grudge against the deceased entertained by the defeated corporater (Accused No. 13 Ajit Rane), land dispute of deceased accused no. 7 with Kamlakar and dispute with accused no. 6 Sahebrao Bhintade are the reasons given by the prosecution. Accused no. 6 was once regarded as a political guru of Kamlakar. He states that as per prosecution, accused no. 7 and 6 together approached accused nos. 12 and 13 for this purpose which again can not be accepted.

44. He submits that the evidence of PW-1 Smt. Komal, widow of Kamlakar is liable to be discarded since the first statement under section 161 of Cr.P.C. has been recorded on 20.06.2008 i.e. after more than 15 months. She has deposed about the previous elections and position of rival parties. This shows that Kamlakar may have other enemies also. She did not disclose to the court or to the police, the files with her husband though she took period of 10 minutes to answer question



pertaining to it. She has expressed no doubt on anybody and accepted that accused no. 6 did canvass for her in the election held to fill in seat which became vacant due to death of Kamalakar.

45. PW-2 Nilkanth Bane happened to be the associate of the deceased and he pointed out unfriendly relations of deceased with accused nos. 6 and 7. Accused no.7 (deceased) Bala Surve was raising unauthorized structures. Deceased had expressed threats & insecurity perceived by him. Bhintade was getting support of PW-2 also and he had financially assisted Kamalakar till 1997. He has deposed about two incidents which according to this witness show fear in the mind of Kamalakar but then he did not bring those incidents to the notice of PW-1 Komal. Advocate Patil argues that this story of threats or fear is imaginary. Not a single unauthorized construction raised by accused no. 6 has been pointed out and no incident indicating any enmity is brought on record.

46. In relation to the deposition of PW-7 Manali, Shri Patil points out that except the alleged whispering of general public at funeral about the role of accused nos. 6 and 7 in the murder of Kamalakar Jamsandekar, no other evidence exists. He took us



through relevant portions contained in the alleged confessions of accused no. 10 Shrikrishna @ Bali, accused no. 9 Sandeep @ Sandi, the confession of accused no. 15 Suresh Patil to argue that except in confession of accused no. 9, there is no reference to accused no. 6 anywhere in those confessions. He contends that the evidence of PW-7 Manali and these retracted confessions are therefore, insufficient to support conviction of accused no. 6 Sahebrao Bhintade.

47. The Investigating Officer Shelke (PW-33) arrested accused nos. 6 and 7 after approval and after invocation of MCOCA. This action against accused no. 6 is therefore, erroneous and high handed. No independent enquiry was conducted in the matter. PW-37 Duraphe points out arrest of accused no. 6 but then thereafter there is no reference to him. In approval Order Exh. 421 dated 20.05.2008, accused no.6 is projected as part of syndicate of accused no. 1 in preamble itself. This mention runs counter to the motive pleaded by the prosecution. There is no previous criminal history against accused no. 6. He has invited our attention to sanction order and pointed out that it presumes that the conspiracy was hatched and accused no. 6 had aided and abetted in it. This observation is perverse.



48. He has submitted that if confessions are ignored, the conviction is based only on circumstantial evidence. To point out the tests relevant for this purpose, he has invited our attention to AIR 2003 SC 801=(2003) 2 SCC 202-- **State of U.P. vs. Arun Kumar Gupta**, (2002) 8 SCC 426—**Ravinder Prakash & another vs. State of Haryana** and (2009) 4 SCC 324-- **Syed Hakkim vs. State**.

49. Learned counsel Mr. Taraq Sayed appearing for accused nos. 12 and 13 points out that they have been arraigned only because of their participation in elections. The election were on 01.2.2007 and they have been arrested on 11.3.2007. These accused persons therefore, had no reason to kill Kamlakar before 1.2.2007 and it rules out any conspiracy at their behest.

50. Investigation conducted by PW-21 who happens to be IO of Saki Naka Police Station is relied upon to argue that this officer Shri Kasar did not find any other evidence against accused nos. 12 and 13. The story developed after obtaining MCOCA approval is inconsistent with his investigation. The chargesheet Exh. 275 in relation to murder of Kamlakar was filed on 7.6.2007 and thereafter no permission was obtained from JMFC to investigate further into the matter. He states that after MCOC



investigation, some accused named in Saki Naka chargesheet have been discharged and others continued in MCOC chargesheet. This IO had not arrested accused no. 6 or accused no. 7 or accused no. 10. The investigation papers were sent to DCB CID Unit III in April, 2008 and were also received back at that time. DCB CID Unit III was investigating the Crime No. 66 of 2008 dated 26.4.2008 in which it had arrested accused nos. 2 to 5 on the same day on the charge of attempted dacoity. The prosecution claims that on 26.4.2008, gun without scarbutt was found in that crime.

51. Our attention is invited to deposition of this witness in paragraph 14 where he has stated that the articles (muddemal property) was not deposited in Saki Naka trial. Contention is there is no record to show the transfer of muddemal to DCB CID Unit No. III.

52. In this backdrop, it is contended that the scarbutt found on the spot of murder of Kamlakar Jamsandekar on 02/03/2007 was not sealed. If the photographs taken on that spot show existence of scarbutt, such photographs should have been produced before the trial court and there was no need to suppress the same.



53. This witness PW-21-Motiram Kasar recorded statements of relatives and personal assistant of deceased to gather motive behind the murder of Kamlakar Jamsandekar. PW-1 widow and PW-2 associate of the deceased did not give any useful information in relation to Saki Naka crime. He points out that the sketch of accused persons drawn with the help of Nita Shah and Mayuresh Tandel was not shown to PW-1 Komal or PW-7 Manali. Nita Shah and Mayuresh Tandel are not witnesses in the MCOC trial.

54. According to learned counsel, deposition of PW-21 needs to be read with the evidence of PW-3 and PW-7. PW-21 considers all angles. Three teams were formed with defined duty-limits which investigated into the murder of Kamlakar Jamsandekar and then chargesheet was filed. Learned counsel relies upon paragraph 38 of cross examination of this witness to urge that Kamlakar was using a gun for hunting animals and the scarbutt if found on the spot, could have been of the gun of Kamlakar only.

55. PW-32 Arun Kirtavade has deposed that further investigation was carried out by PW-21 Kasar and statement of PW-7 Manali was recorded in hospital. Exhibit 276 is pressed into service to show that three unknown persons assailed the deceased



Kamlakar. PW-13 found PW-7 Manali in a sound condition even on 02/03/2007. Learned counsel argues that there might have been property dispute amongst family members of Kamlakar and this angle is not investigated into. Nita Shah though eye witness, has not been examined with oblique motive.

56. The deposition of PW-7 Manali is again read out to submit that it does not inspire confidence and she has in test identification parade identified accused with other description. Thus description & role of respective accused given by her does not apply to the concerned accused & proves confusion in her mind.

57. It is urged that PW-33 IO Shelke was instrumental in invoking MCOCA. Learned counsel submits that the accused no. 10 Shrikrishna was not arrested for over a month and half though Shri Shelke sent letter dated 28/4/2008 which contained the names of accused no.1 and accused no. 10. Vide Exh. 416, permission under section 173(8) Cr.P.C. came to be granted by Investigating Officer himself and a new crime vide CR No. 69 of 2008 was registered. This was therefore, second FIR for the same crime. About 17 days after its registration, accused no. 10 was arrested. Trial court was never approached with a request as



required under section 173(8) Cr.P.C. The judgment reported at **2013 (5) SCC 762- Vinay Tyagi vs. Irshad Ali** is pressed into service by learned counsel. As per this witness, investigation was incomplete and he carried out interrogation from 28/4/2008 till 15/05/2008. Learned counsel submits that the investigation by DCB CID without section 173(8) permission is illegal and identification of respective accused persons by PW-7 Manali is mutually destructive. Similarly police authorities at Saki Naka and at DCB CID Unit III have carried out investigation which prejudices the case of other agency. Saki Naka Police did not hold any test identification parade to enable PW-7 Manali to identify accused persons. Steps taken by PW-33 are inconsistent with the stipulation in Exh. 415.

58. Learned counsel Taraq Sayed submits that the prosecution has to explain relations between accused no. 12 and 13 on one hand and accused no. 10 Shrikrishna Gurav as also accused no. 8 on the other hand.

59. He states that as per prosecution, PW-4 Abdul was used by the accused 2 to 5 to reach house of deceased Kamlakar and he could identify accused no. 4, accused Anil and accused no. 10 Shrikrishna. He accepted that there were hoardings depicting



Kamlakar in the area and Kamlakar was a known figure. Anybody therefore, could have led accused nos. 2 to 4 to his residence and there was no need to give help to point out Kamlakar or his house to accused nos. 2 to 4. His statement under section 161 Cr.P.C. has been recorded belatedly on 07/05/2008.

60. PW-8 Narendra Panchal is brother of accused no. 8 Surendra and his statement under section 161 was recorded on 12/05/2008. PW-11 Ramchandra Gurav does not deserve any credence. It was not necessary for accused no. 12 Pratap to give phone number of accused no. 10 Balu to PW-11 Ramchandra. PW-11 Ramchandra and accused no. 10 Balu are relatives of each other.

61. Commenting upon the conduct of PW-11, Adv. Taraq Sayed submits that PW-11 was enquiring openly for gun and met several persons, still he did not remember any name. The entire conduct of PW-11 is unnatural. His statement shows that he was aware of the place where the gun was concealed and that gun was left at the hidden place itself. It was not carried either by Dinesh Narvekar or accused no. 10 Babu further to Mumbai. That gun was not with accused 2 to 5 for the purpose of the murder of Kamalakar.



62. According to learned counsel, accused no. 13 had no case in the year 2007 and there was no effort made to trace out the cartridges. He states that the cartridges left in the gun after the bullet is fired. He further argues that there is no evidence to connect gun recovered on 26/4/2008 from accused nos. 2 to 5 with the gun procured from accused no. 8 Surendra.

63. Our attention is drawn to evidence of police constable Ramesh Bhokare who had earlier deposed in Sessions Case No. 482 of 2008. Learned counsel states that there, he has referred to country made revolver while weapon in the present crime is a handmade gun. The weapon used in Crime No. 482 of 2008 was already sealed on 2.3.2007. Thus the same weapon was not shown to this witness Ramesh in Court. The date on label found in sealed packet noted in the court proves tampering and planting of the Scarbutt in the present crime. He submits that the deposition of PW-27 Ajay Joshi who claims that the weapon was sealed on 26/4/2008 is unbelievable as that seal has to be seal of CID.

64. In this backdrop our attention is drawn to the evidence of ballistic expert Shamsunder Munj examined as PW-13. His deposition shows systematic procedure followed while receiving the weapon and bullets for examination. He has mentioned that



Exh. 196 was a 12 bore shotgun. The weapon was sealed by CID and still he does not mention the seal by CID. He accepted the samples as the seal of forwarding authorities and specimen seal matched. However, there was no sample sent on 3/6/2008 and there was no seal of CID.

65. Learned counsel states that as per PW-13 Gyan Sunder Munj handgun seized on 26/4/2008 and cartridges recovered on 2.3.2007 were sent together. This witness has accepted that "empty" remains in the firearm. There has been no investigation to trace out the cartridges left in the gun on 2.3.2007 after the bullet was fired on Kamlakar. This witness accepts that the country made guns do not leave any mark for investigation on pellets/bullets. Cartridge therefore was not associated with any weapon. He has read out the evidence of this witness to urge that the handgun could not have been and has not been connected with the murder of Kamlakar at all.

66. Lastly he points out that there are no confessions against accused nos. 12 and 13 and hence, accused nos. 12 and 13 deserve to be acquitted. He draws support from the judgment reported at AIR 1964 SC 1184 **Haricharan Kurmi vs. State of Bihar** to state that confession is strictly not an evidence &



confession of co-accused can not be relied upon unless there is other incriminating evidence against the accused.

67. Learned counsel Adv. E.A.Sasi appearing for accused no. 10 in appeal no. 1093 OF 2012 points out that accused no. 10 has been acquitted under the Arms Act and only charge against him is of conspiracy and of being member of a syndicate. Only independent witness with the prosecution is PW-11 Ramchandra Gurav who happens to be cousin of accused no. 10. Accused no. 10 was arrested on 18/4/2008 in Crime No. 52 of 2008 by DCB CID Unit III. It is prosecution's case that he admitted involvement in murder dated 2.3.2007 even before the incident dated 26/4/2008. He was arrested already in Crime No. 69 of 2008 on 16/5/2008.

68. Learned counsel submits that this material therefore, needs corroboration. Accused no. 10 or PW-11 could have no idea why gun was required and PW-11 was not member of any syndicate. He has given a false story. Paragraph 12 of his deposition is relied upon for this purpose. It is submitted that he also came up with a false story of threat to him and of payment of Rs.25,000/-.



69. Our attention is invited to his alleged confession in an effort to demonstrate that it does not show any pecuniary benefit received by him. It is pointed out that the said confession was also withdrawn and therefore, cannot be acted upon. Evidence of PW-19 Dnyaneshwar Phadtare who recorded that confession is also read out for this purpose and with a contention that no documents to show compliance with the procedure are produced on record. PW-33 Diwakar working under the DCP and his evidence does not rope in accused no. 10.

70. Advocate Pasbola for accused no.9 Sandeep and accused no. 15 Suresh has submitted that only evidence against accused no. 9 is his own confession and two other confessions. Accused no. 9 has not admitted any guilt and as such his statement cannot be read as confession. He has not been convicted under section 302 or section 120B IPC and is not involved in any organized crime. He reads out charges as framed. According to him first charge is vague while fourth charge requires abetment or mens rea. The fifth charge distinguished accused no. 9 from the others.

71. Confession of accused no. 15 Suresh Patil is also not



confession and there was no talk between accused no. 10/12 or accused no. 15 or accused no. 9. He states that the prosecution did not examine Tandalekar, tea stall owner where Rs.60,000/- were paid allegedly by accused no. 15 through accused no. 9 to accused nos. 12 and 13. He draws support from judgment reported at (1999) 5 SCC 253--State vs. Nalini.

72. He points out that all confessions allegedly recorded are after the unexplained and sudden change of heart that too at the fag end of period of police custody. These confessions are doubtful. All accused persons were making applications to retract their confessions and one of them even was not permitted to obtain legal advice.

73. The alleged payment of Rs. 30 lacs is in December, 2006 and thereafter there is no evidence of any positive step by accused no. 1. The motive as alleged is not in consonance with this story. The role played by accused nos. 12 and 13 and action of accused nos. 2 to 5 are independent and have no bearing on accused no. 1 or his alleged organization. There is no CDR of any call made by accused no. 1 to any other accused and vice versa.



74. The alleged confession of accused no. 10 contains hearsay information about collection of contribution in Navratri festival in the year 2006 and its payment to accused no. 1.

75. The alleged diary maintained by accused no. 15 Suresh or PW-25 Vishwanath are inconsequential. PW-10 Ankush does not support recovery thereof and there is no handwriting expert to associate accused no. 10 with it.

76. Advocate V. Sharda appearing for accused nos. 2 to 5 has submitted that the story of obtaining intelligence about attempted dacoity on 26/4/2008 is unbelievable. The person giving secret information did not furnish description of any of five suspects, name of the jewelry shop to be robbed and in that situation, contention of prosecution that it trapped accused nos. 2 to 5 at 3.30 pm is unbelievable. Story of finding of handgun with cartridges and knives with them and its recovery is unacceptable. Arrested accused were not sent to LT Marg Police Station in Crime No.118 of 2008. Even station diary entry Exh. 316 is vague. She points out that PW-26 Pancha on recovery is a pet witness and he did not remember any details. His story about the sealing on spot cannot be accepted as there is no material and station diary entry to show that seals were removed from police station to the spot.



She claims that this weapon was described by Ramesh Bhokare in his deposition in Sessions Case No. 482 of 2008 as a revolver. Very same person has in MCOC case called it "gavthi katta". This change in description is on account of different weapon being seen in MCOCA trial.

77. She has taken us through the deposition of PW-26 to show that he does not even identify the accused persons from whom respective material was seized. According to him, panchanama of seizure drawn on 26.4.2008 is not at all proved by the prosecution. She points out that surprisingly the motor cycle allegedly used in attempted dacoity was made over on supratnama to its true owner.

78. Evidence of API PW-No. 27 is also attacked by urging that he contradicts PW-31 Bhokare. PW-27 states that the Crime No. 118 of 2008 was registered at LT Marg Police Station while Crime No. 66 of 2008 was recorded at DCB CID office. Evidence of PW-17, PW-21 does not inspire confidence as their 161 Cr.P.C. statements are recorded belatedly.

79. Advocate Sharda submits that the seizure panchanama Exh. 311 was drawn between 15.40 hrs to 17.45 hrs on 26.4.2008



while station diary entry of Sakinaka Police Station shows that the papers were sent by Saki Naka Police Station to District Crime Bureau at 16.40 hrs. This shows a plan & tampering with a design to falsely implicate accused nos. 2 to 5 since FIR itself has been recorded at 19.15 hrs.

80. In this backdrop, she has taken us through evidence of PW-14 and she argues that Saki Naka police had correctly completed the investigation and arrested different persons as assailants. She relies upon the test identification parade by Sakinaka Police Station on 31.5.2007 and on 10.06.2007 and its outcome. She further states that in test identification parade conducted on 20.6.2018, witnesses like Nita and Mayuresh were not invited. Said test identification parade was conducted by PW-24 Kambli and in it PW-7 Manali and PW-12 Motilal only participated. She submits that the evidence of PW-12 Motilal, hotel owner, recorded long after 2.3.2007 is not free from doubt.

81. She has then pointed out how accused nos.3, 4 and 5 have retracted their confessions immediately. She submits that there is no sign of any accused person at the end of the statutory certificate which is required to be given by police officer recording such confession. Efforts made by accused persons even at



section 313 stage, torture pointed out by accused no. 2 Vijay are pressed into service by her. She states that accused no. 3 Ashok was in fact arrested on 25.4.2008 and he has also pointed out his torture.

82. Inviting attention to CDR relied upon by prosecution indicating presence of accused persons on 2.3.2007 in vicinity of crime spot, she contends that the evidence of PW-34 Prashant Gawade, does not inspire confidence. Section 65B certificate relied upon is incorrect. There is no statement under section 161 IPC and there is no proof of control of this witness on master server.

83. Evidence of PW-35 Shekhar, other nodal officer is also assailed on the same grounds. She points out that Exh. 435 was produced by this witness for the first time in court though such production was objected to by the accused. This Exh. 435 contains tower address and it has been correlated with CDR Exh.434. Learned counsel states that though serious objection was raised, the trial court has ignored it and Exh. 435 has been looked into. This witness has not placed his seal or sign on CDR and has no personal knowledge. His evidence also shows that there were several towers within the range of 5 kms and Exh. 435 can not be used to show tower relating to accused no. 3 to be tower no.1363.



84. Advocate Mundergi appearing for accused no. 20 has submitted that the evidence of PW-6 Arun does not inspire confidence. He adopts the arguments of Advocate Shirish Gupte and other counsel for this purpose. He further states that PW-6's evidence appears to be hearsay and cannot be used to convict accused no. 20 at all. His deposition that money was taken for accused no. 1 is an improvement. This improvement has been made only to rope in accused no. 20 as a member of the organized crime syndicate.

85. The confession of accused no. 15 Suresh is also assailed by urging that it is not trustworthy. It could not be used against accused no. 15 under section 18 of MCOCA as he has not participated in organized crime and hence, it cannot be used even against accused no. 20. It is contended that the prosecution has before the trial court accepted that it had a weak case against accused no. 20. Learned senior counsel submits that there is no evidence to show that room in Dagadi chawl belongs to accused no. 20 or then it was used for the purposes of extortion by accused no. 2.



86. We have heard reply arguments of SPP (Special Public Prosecutor) Shri Chimalkar & his team as also APP Shri J. P. Yagnik. Spl.PP at the outset pointed out that all accused before trial Court are convicts indulging in “continuing unlawful activities” and murder on 2.3.2008 is only its manifestation. Local police at Sakinaka Police Station conducted investigation and filed charge-sheet against 7 persons on 7/6/2007 i.e. within stipulated period. Eye-witnesses Manali and Komal were then not fully interrogated and scar-butt recovered from room of Kamlakar was not accounted for or associated with handgun. Neeta Shah and Mayuresh Tandel who then identified the assailants in TIP, had not seen actual assault or the assailants. Thus, investigation then was not complete.

87. After 26/4/2008 when attempt of dacoity was foiled, the missing gun was found and involvement of those dacoits in murder of Kamlakar came to light. As per law, the MCOCA was then used and crime at Sakinaka Police Station was made over to DCB CID. He has invited our attention to letters dated 28/4/2008 and dated 29/4/2008 when investigation was taken over by DCB CID. Accused persons were already in custody in one or the other matter and as such there was no urgency to arrest anybody. On



29/4/2008 prior permission to invoke MCOCA in Crime No.52/2008 was granted. Accused No.10-Babu, accused No.6-Sahebrao and deceased accused No.7-Bala Surve were arrested on 29/4/2008. Accused No.8 Surendra was arrested on 5/5/2008.

88. After these developments on 16.5.2008 prior permission under Section 23(1)(a) of MCOCA was sought and it came to be granted on 20/5/2008. Exhibit 218 (C.R. 77/2004) Exhibit 219 (C.R. No.189/2004), Exhibit 464(CR No.164/2004) and Exhibit 465 (CR No.159/2005) are the four chargesheets relevant for this purpose. Accused No.1-Arun Gawali was arrested on 20/5/2008. All accused in chargesheet dated 7/6/2007 were also accused in DCB CID chargesheet. The Trial Court discharged those who were found not involved in MCOCA and accused No.14 was also discharged. In MCOCA Court, charge-sheet was filed on 11/8/2008. Thus, investigation which left incomplete by Sakinaka police was completed by DCB CID in MCOC matter.

89. In the above backdrop learned Special PP submits that contention about absence of permission under section 173(8) of Cr.P.C. is erroneous as in MCOCA offence's law does not envisage such permission from Court which is not authorized to take cognizance of MCOCA cases. The contention that there could not



have been conviction for continuing unlawful activities is also challenged by submitting that since the existence and involvement of organized crime syndicate is established, every member thereof is liable to be punished.

90. Our attention is drawn to evidence of PW-33 Shelke who investigated the MCOCA offence. It is pointed out that scar-butt was not sent on 26/4/2008 by Sakinaka police to DCB CID. It was demanded on 8/5/2008 vide Exhibit 418 and received vide Exhibit 419 in sealed condition. That seal was by FSL only. Handgun was sealed separately and said handgun and already sealed scar-butt were then sent to FSL again.

91. Earlier deposition of Ramesh Bhokre in sessions trial case No.482/2008 is explained by pointing out that weapon is same and its loose description as revolver or handgun does not make any difference. It is pointed out that accused persons 2 to 5 who indulged in attempted dacoity on 26/4/2008 have been found guilty and punished in Sessions Case No.482/2008 in that regard.

92. He submits that with the assistance of PW-11-Ramchandra Gurav; accused No.10, accused No.12 and 13 approached accused No.8 Surendra. The sketch of gun drawn by



accused no. 12 was made over to accused no.8 who then manufactured gun accordingly.

93. PW-11 has established that accused No.10 is active member of Akhil Bhartiya Sena and he was taken to accused Nos.12 and 13 in the office of Akhil Bhartiya Sena by accused No.10 only. There he was given mobile numbers to remain in contact. PW-11 then promised to help accused persons and accordingly started making inquiries which lead him to accused No.8. Learned counsel submits that PW-11 remembers important dates and he was given amount of Rs. 25,000/- by accused persons with threats to keep silence. Because of this incident and threats, PW-11 stayed away from house of accused No.10. He was threatened and amount was paid 8-10 days before he received summons from the Court. He then filed complaint against person giving threat vide Exhibit 188 at Kanakavli Police Station. It is submitted that this evidence therefore shows systematic efforts made by Akhil Bhartiya Sena of accused No.1 through its office bearers towards procurement of unlicensed handmade gun. This procurement is itself an offence under Indian Arms Act.

94. Evidence of PW-6-Arun Singh is relied upon to show that he paid extortion money as proprietor of Cable business Ashish



Vison Cable. He pointed out that Sunny Cabel also paid ransom to Arun Gawli. It is submitted that PW-11 was earlier associated with the business which actually was being looked after by PW-6. The diaries recovered at the instance of accused No.15 shows this. The fact that accounts of business of this witness are in the name of wife does not help accused persons at all.

95. Evidence of PW-28 is also pressed into service to show that he used to pay Rs.2 Lak per month and its receipt is also reflected in above mentioned diaries & there is no material omission in his deposition.

96. Accused No.15 Suresh was keeping accounts of said money including amount received from PW-6, and PW-28. He absconded and was arrested on 26/6/20087 at Kosegaon, Sangli. Arrest panchanama Exhibit 443 is relied upon for this purpose. Documents seized from him are mentioned therein. These documents include entry pass to Mantralaya. This entry pass is found genuine and it is at Exhibit 461.

97. Though accused persons and witnesses are denying any association with Akhil Bhartiya Sena, in letter written by accused No.1, names of PW-10, PW-25 and accused No.15 are



mentioned. Handwriting in this letter is of accused No.1 only. PW-10 and PW-25 therefore are deposing falsely that they do not know each other.

98. Evidence of Investigating Officer PW-37 is relied upon to show arrest of accused No.15 and recovery vide Exhibit 461 of 12 diaries at his instance. PW-9-Amrut Patil is a panch on recovery of these diaries and under section 27, the diaries were seized from possession of PW-10-Ankush. Though PW-10-Ankush has avoided to cooperate with prosecution, he has signed recovery panchanama. At that time two cell phones were also seized. The place from which diaries were seized and residence of PW-10 show their stay in "Dagdi chawl" and with accused No.1. The Marathi word "*sambhalato*" in recovery panchanama is explained to mean to manage financial affairs. Learned Special PP submits that it does not mean that duty was only of preserving ie safe-keeping those diaries and accounts as argued by the accused.

99. Shri Chimalkar, Spl.PP points out Exhibit 183A to show 11 pocket diaries and loose pages of running expenditure. In this backdrop, evidence of PW-10 is strongly relied upon. It is submitted that evidence of PW-25-Vishwanath is on same lines and claim that he did not work for accused No.1 or then diaries



before the Court are not in his handwriting is false. Section 164 statement at Exhibit 308 is relied upon and it is claimed that those diaries, sign and handwriting was identified by PW-25 therein.

100. It is submitted that precautions taken before recording section 164 Cr.P. C. statement by learned J.M.F.C. show that PW-25 was given full understanding and was therefore not under any pressure or delusion when Exhibit 308 was recorded.

101. PW-1 Komal Jamsandekar has pointed out the unfriendly relation of Kamlakar Jamsandekar with accused Nos.6 and 7 and she has also disclosed some names in this respect. She has pointed out that her husband Kamlakar was against encroachments and unauthorized erection of huts. She has given names of few such unfriendly persons. PW-2- Bane was a close associate of deceased Kamlakar. He pointed out that accused No.6 Sahebrao was unfriendly after 1997. Deceased apprehended danger to his life from accused No.6. There was political difference between two since the year 2002. Accused No.6 Bhintade agreed to purchase an ambulance which he never purchased. Because of terror of Shri Bhintade deceased Kamlakar had developed blood pressure. Learned Special PP contends that alleged omissions during her deposition are not material. He further states that



accused No.7 deceased Bala was also enemy of Kamlakar. Sakinaka Police looked into motive with Ajit Rane only. Our attention is drawn to cross of PW-21. It is submitted that after 26/4/2008, role of accused Nos.12 and 13 and 6 and 7 together emerged & though they may have different motives, their object was same.

102. Evidence of PW-5 Pradeep Shinde is also read out to show that accused persons had attempted to hire him for committing murder of Kamlakar but, Pradeep had refused as he found the amount offered inadequate. It is submitted that accused No.11 Dinesh had also turned down that offer. Accused No.11 was also accused in other case and hence Sr. P.I. Dond had called for papers from Sakinaka which were given on 26/4/2008 as per station diary entry taken at 16.40 hours. He explains that this entry is not about scarrbutt.

103. PW-33 has registered crime in DCB CID Unit-3 in that respect and papers were then sent back and received by Sakinaka police at 15.45 hours. At 16.10 hours papers were summoned by police officer again for the purposes of MCOCA case.



104. Learned Special Public Prosecutor submits that the material supports the confessions recorded under MCOCA. Our attention is drawn to provisions of section 2(d) (e) of MCOCA.

105. Inviting attention to section 18 of MCOCA prescribing the procedure for recording of confessions, learned Special PP submits that it lays down exception to section 30 of the Evidence Act. Rule 3 of the rules framed under the Act is also pressed into service with a submission that while recording confessions, the procedure prescribed has been strictly followed. There are total 7 confessions and only lacuna pointed out is absence of signature of the concerned accused at the end of the certificate. Learned Special PP explains that there is no such requirement in law. The satisfaction to be reached by the recording authority is a subjective satisfaction of that authority which is final. AIR 2013 SC 2687-- **Sanjay Dutt (A-117) vs. State of Maharashtra** is relied upon to show that such confession constitutes substantive evidence. 2010 (4) SCC 641- **Mohd. Farooq Abdul Gafur vs. State of Maharashtra** is also cited for the same purpose. Contention is there is no retraction in the present matter & in any case, alleged retraction is irrelevant and also by way of afterthought. Accused no. 10 Shrikrishna @ Babu and accused no.



9 Sandy stood by their confession and there is no retraction by them. Accused no. 3 Ashokkumar Jaiswar has attempted to disown the confession and tried to retract it but then this effort is without any merit. Similarly accused no. 5 Anil Giri, accused no. 15 Suresh Patil, accused no. 11 Dinesh Narvekar and accused no. 4 Narendra @ Kandi have also before the Metropolitan Magistrate tried to show that their confession was not voluntary but have failed in it.

106. Each confession is read out to us to show how carefully accused was given every opportunity to reconsider his decision to confess. Questions were put to them to find out any pressure or undue influence or then any promises made by any authority to persuade them to give such confession. To dissuade him from giving it, he was pointed out that such confession may be used against him and he could be punished on its strength. After explaining all this, when he still wanted to record the confession, he was given time of 24 hours or more to deliberate again on his decision and on second occasion, after re-verification, he was permitted to make the statement. Thus even on the second occasion, he could have resiled and refused to give the confession. During the period of 24 hours or more given to him to reconsider



his decision, he was kept in neutral custody i.e. away from the influence of Investigating Officer. Learned Special PP submits that these confessions are supported/corroborated by other material on record and also support each other., The confessions therefore, have been rightly relied upon by the trial court.

107. The evidence of eye witness PW-7 Manali and evidence of PW-12 Motilal Chaudhari is relied upon to show that this witness had seen the accused persons and identified them in court and also in test identification parade. PW-24 ACO Dattraya Kambli has proved the procedure followed during the test identification parade and there is no challenge to it. There is no challenge to the fact that the scarbutt was found on spot i.e. in the house of Kamlakar. PW- 3 Ramesh Patil has identified the scarbutt. Learned Spl.PP. explains that PW-7 Manali could not have seen third accused standing outside the room. It is pointed out that the defense advocate has admitted the photographs Exh. 163 (colly) as mentioned in the roznama dated 18/10/2010. It is submitted that the panchanama Exh. 165 is also proved on record.

108. PW-21 Motiram Kasar, Investigating Officer of Sakinaka police station reached the spot when body of Kamlakar



Jamsandekar was there. He saw the body as also the scarbutt lying on the spot.

109. PW-13 Shamsundar Munj of Forensic State Laboratory has explained the procedure followed after samples were received for analysis. He pointed out how and at what stage the ballistic number is put on property received for test/analysis. The scarbutt had two numbers since it was sent again with the handgun after 26/4/2008. SPP states that Kamlakar Jamsandekar was fired at from very close range.

110. Special PP submits that the crime dated 26/4/2008 was registered with LT Marg Police Station but the investigation continued with CIU. CIU sent the handgun to DCB(CID) which in turn collected scarbutt from Sakinaka police station. The handgun and scarbutt were then forwarded by DCB to the FSL. The scarbutt with Sakinana police was already having seal put by FSL while handgun was sealed by CIU.

111. It is submitted that the physics department with FSL re-assembled the handgun and scarbutt and PW-14 expert therefore has pointed out that said scarbutt fitted exactly and matched with the handgun. The emptys after firing remained in the gun only.



112. To facilitate consideration, Special PP produced a chart of all confessions with the material showing corroboration and explained how actual assault is described by accused no.3 Ashok Jaiswal. According to him, confessions of accused nos. 15, 10 and 3 bring on record the complete chain.

113. The two charts at Exh. 426 and 427 are explained to show how CDR supports disclosure in the confession and also corroborate the presence of concerned accused persons at the relevant site. PW-35 Shekhar Palande is read out for this purpose.

114. There were total 9 calls between accused no. 8 and 12. The last call is on 15/08/2006 i.e. the day on which accused nos. 10 and 11 collected the handgun. The call showing the presence of accused no.10 at Dagadi chawl with accused no. 6 and 7 when he paid Rs. 30 lacs is also pointed out with a submission that this position is also explained in his confession by accused no. 15 Suresh Patil. The location of accused no. 12 Datta when he visited Dagadi chawl in January, 2007 to collect Rs. 60,000/- is also shown with the CDR. Learned Special PP submits that all this data has been explained to the trial court and trial court has mentioned it in its judgment elaborately.



115. The charts have also been submitted to that Court to facilitate explaining the CDR. It is stated that this CDR has been collected in 2009 and it validates the fact or information which has surfaced in the respective confessions.

116. AIR 2013 SC 2687- **Sanjay Dutt (A-117) vs. State of Maharashtra**, 2010 4 SCC 641- **Mohd. Farooq Abdul Gafur vs. State of Maharashtra**, 2014 ALL MR Crime 2011, 2013 (1) Crimes 254 and AIR 1999 SC 1744—**Syed Hakkim vs. State** are relied upon additionally for this purpose.

117. Some miscellaneous interim applications are still pending. However, our attention has not been drawn to any of it & no arguments have been advanced about any such interim prayer.

118. Consideration of arguments on further investigation can begin with the evaluation of rival contentions on need of an order under S. 173(8) CrPC or otherwise, after event of attempted dacoity dated 26.4.2008 as Sakinaka police had already completed the investigation into the murder dated 2.3.2007 & also filed charge-sheet. Ex. 416 is permission dated 29.4.2008 by the



Dy. Police Commissioner for further investigation & it is not by the investigating officer of crime dated 2.3.2007 at Sakinaka police Station. Investigation after Ex.416 is not by this investigating officer. We have to revert back this little later.

119. **2012 (4) LJSOFT 152=2012 Cr.L.J. 2651-- Lt.Col.Prasad Shrikant Purohit & ors. Vs. National Investigation Agency & ors.** is the judgment of learned Single Judge of this Court which deals with Section 25 of Maharashtra Control of Organised Crimes Act, 1999, Section 173(8) & S.309 of Code of Criminal Procedure, 1973 & Section 6(1), 6(5) of National Investigation Agency Act, 2008 . Issue regarding further investigation arose in said matter after transfer of Malegaon Blast investigation to NIA. Effect of special Act over General Act has been answered therein in the light of Art. 254(2) of Constitution of India, 1950. Offences under MCOC Act were initially investigated by ATS and charge-sheet came to be filed. Subsequently NIA took over investigation after a FIR was registered. Application filed u/s 21(7) of MCOC Act by NIA for interrogation of the petitioners was allowed & their police custody was permitted for 8 days. Learned Single Judge of this Court found that S. 21(7) of MCOC Act has overriding effect on section 167 of Cr.P.C. It also held that NIA Act



does not put any restriction on the investigating agency to investigate or further investigate and permits new agency to take over pending investigation. Section 173(8) Cr.P.C. does not envisage that further investigation has to be by same investigating agency. Learned Single Judge has held that due to express provisions in section 25 of MCOA Act and by virtue of Article 254(2) of The Constitution of India, special laws providing special procedures must prevail and no provision in Cr.P.C. could defeat or dilute the sweep of such special law.

120. In **(2013) 5 SCC 762—Vinay Tyagi vs. Irshad Ali**, the Hon. Apex Court in paragraph 56 takes note of High Court observation made in the order dated 24-10-2007, that though CBI had taken considerable time for completing its investigation, it had still not done so. Noticing that the investigation was handed over to CBI on 9-5-2006 and despite extensions it had not submitted its report, the Court granted to CBI four weeks' time from the date of the order to submit its findings in respect of the allegations made by the accused in the complaint and directed the matter to come up on 28-11-2007. Said order clearly showed that the High Court contemplated submission of a supplementary report, which



means report in continuation to the report already submitted under Section 173(2) of the Code by Delhi Police.

121. Hon. Court notes that on 28-11-2007, the case came up before the High Court when CBI filed its closure report making a request that both the accused be discharged. The High Court on 4-8-2008 noticed that CBI had filed a report in the sealed cover and disposed of the writ petition and while noticing the earlier order dated 4-7-2007 wherein the accused persons had assured the Court that they would not move bail application before the trial court till CBI investigation was completed, permitted the applicants to move bail applications as well. The application for discharge filed by the accused persons on the strength of the closure report filed by CBI was rejected by the trial court on 13-2-2009 on the ground that it had to examine the entire record including the report filed by Delhi Police under Section 173(2) of the Code. The High Court, however, took the contrary view that it was only the closure report filed by CBI which could be taken into consideration, and then the matter would proceed in accordance with law. The High Court had relied upon the judgment of this Court in *K. Chandrasekhar v. State of Kerala* to say that once



investigation was transferred to CBI, it only had to proceed with the investigation and not the Special Cell of Delhi Police.

122. Hon. Apex Court in para 59 onwards does not agree with the High Court. It points out that once a report under Section 173(2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the police nor a specialised investigating agency has any right to cancel the said report. Furthermore, the High Court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a “supplementary report”. CBI itself understood the order of the Court and conducted only “further investigation” as is evident from the status report filed by CBI before the High Court on 28-11-2007. Hon. Apex Court therefore concludes by mentioning --

“61. In our considered view, the trial court has to consider the entire record, including both Delhi Police report filed under Section 173(2) of the Code as well as the closure report filed by CBI and the documents filed along with these reports. It appears, the trial court may have three options: firstly, it may accept the application of the accused for discharge; secondly, it may direct that the trial may proceed further in accordance with law; and thirdly, if it is



dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to direct "further investigation", it may do so."

123. In paragraph 36 of the Hon. Court relies upon its three-Judge Bench judgment of *Bhagwant Singh vs. Commissioner of Police (1985) 2 SCC 537* which in para 4 has dealt with the powers of the Magistrate as enshrined in Section 173 of the Code & reproduces it. But in present matter, We find it sufficient to take note of the principles crystallized in paragraph 40 by the Hon. Apex Court -

"40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant



Singh case by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5 The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6 It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."



124. Most significant fact here is prior to 20.05.2008, the Investigating Officer or the Court in which the charge sheet was filed by the Sakinaka police could not have taken the cognizance of an organized crime as the preliminary order under S. 23 permitting information of offences under MCOC Act, 1999 to be registered is granted for the first time in April 2008. Proposal for further action as per law was itself moved on 18.5.2008 after the CIU apprehended accused nos. 2 to 5 on 26.4.2008. Till 20.5.2008, the MCOC could not have been invoked & was not invoked. Murder of Kamalakar Jamsandekar on 2.3.2007 was not perceived as an organized crime and investigated under Cr.P.C. & chargesheet or trial was to be by the Sessions Court & not by the Special Court under MCOCA. Till then the offences under S. 3(2) or (3) or (4) of the MCOCA were not even looked into. Charge sheet filed on 7th June, 2007 against 7 persons was not in relation to an offence of the organized crime.

125. Perspective of the said murder as an offence under S. 302 IPC undergoes a change & it received a new dimension needing a further investigation. The Court which had received a chargesheet for the IPC offence in June, 2007 therefore could not have either permitted or prohibited the further investigation into



an organized crime. Order granting approval dated 20.5.2008 or process involved does not show any jurisdictional error by the authority granting approval. In the face of that order, the contention that provisions of S. 173(8) have been violated can not stand. It can not be said that any irrelevant chargesheet has been looked into. The relevant chargesheets are Exhibit 218 (C.R. 77/2004) Exhibit 219 (C.R. No.189/2004), Exhibit 464(CR No.164/2004) and Exhibit 465 (CR No.159/2005) which have been looked.

126. Moreover, the competent IO has investigated & it lead to exoneration of persons earlier charged as assailants due to their identification by Mrs. Shah & Mayur in TIP. In that TIP PW-1 widow Komal, PW-7 Manali & hotel owner PW-12 had not participated. Mrs. Shah & Mayur had only seen those persons in the vicinity & not while committing offence. PW-7 Manali is the eye witness & she had described & identified them in TIP. The Special Court which took cognizance of the organized crime has discharged these unconnected persons.

127. Judgment of Hon. Apex Court in Vinay Tyagi vs. Comm. Of Police(supra) does not govern this controversy. Murder dated



2.3.2007 does not remain an offence under S. 302 IPC only but it becomes an organized crime under MCOCA, as is being discussed little later in the body of this judgment.

128. Hon. Apex Court in Criminal Appeal Nos. 816-817 of 2019 (SLP (Crl.) Nos.10051-10052 of 2018) decided on 01.07.2019-**Pradeep Ram Vs.The State of Jharkhand and Ors.** : MANU/SC/0881/2019 has explained the law in similar manner. Appeals were filed against judgment of High Court dismissing Writ Petition under Section 482 of CrPC filed by Appellant. Questions raised were - (1) Whether in a case where an Accused had been bailed out in a criminal case, in which case, subsequently new offences were added, was it necessary that bail earlier granted should be cancelled for taking accused in custody? (2) Whether re-registration of F.I.R. was a second F.I.R. and was not permissible there being already a FIR registered arising out of same incident? (3) Whether N.I.A. could conduct any further investigation in matter, when investigation in the P.S. Case having already been completed and charge sheet submitted of which cognizance had already been taken by Chief Judicial Magistrate? (4) Whether order passed by Judicial Commissioner-cum-Special Judge, NIA, Ranchi remanding Appellant to judicial custody was in



accordance with law? and (5) Whether power under Section 167 of CrPC could have been exercised in case, where cognizance was already taken by Chief Judicial Magistrate on 11th March, 2016 or accused could have been remanded only under Section 309(2)?

129. Facts there reveal that FIR was lodged for offences under Sections 414, 384, 386, 387, 120-B Indian Penal Code, 1860 (IPC) read with Sections 25 (1-B)(a), 26, 35 of the Arms Act and Section 17(1) and (2) of the Criminal Law Amendment Act wherein apart from appellant there were 11 other accused. The allegations made against the accused were that, petitioner by showing fear of extremist TPC Group recovered levy from the contractors, transporters and coal businessman. On information received from a co-accused, a search was conducted in his house and an amount of Rs. 57,57,510/ was recovered from the bag alongwith four mobiles. No satisfactory explanation was given by the appellant. Thereafter, on the prayer made by the investigating officer, offences (scheduled offences) under Sections 16, 17, 20 and 23 of the Act, 1967 were added against the accused. Central Government issued an order in exercise of power conferred under Sub-section 5 of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 suo-moto directing the National



Investigation Agency to take up investigation of said F.I.R. in which Sections 16, 17, 20 and 23 of Act, 1967 were added. In pursuance of this order, National Investigation Agency re-registered the First Information Report as FIR dated 16th February, 2018.

130. A Writ Petition was filed by the appellant praying for quashing the entire criminal proceedings in connection with Special NIA Case including the First Information Report with further prayer for quashing the order remanding the appellant to the judicial custody by the Judicial Commissioner-cum-Special Judge, NIA. The High Court by the impugned judgment dismissed both the Writ Petitions & aggrieved, against said judgment, appeals were filed by the appellant.

131. While dismissing the appeals, the Hon. Apex Court holds that in facts before it, the investigating agency itself had not taken into custody the appellant after addition of new offences rather accused was produced in the Court in pursuance of production warrant obtained & it was not necessary for the Special Judge to pass an order cancelling the bail granted to the appellant before permitting the accused appellant to be produced before it or remanding him to the judicial custody.



132. Reiterating the settled proposition that, second FIR with regard to same offences is barred, Apex Court finds that FIR dated 16th February, 2018 registered by NIA, can not be said to be second FIR. NIA Act, 2008 was enacted to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, other international matters as specified and for matters connected therewith or incidental thereto. It points out that any offence under Act, 1967 is a scheduled offence. When the offences under the Act, 1967 were added in case Crime No. 02/2016 and the Central Government issued an order in exercise of its power under Sub-section 5 of Section 6 by entrusting the investigation to NIA, NIA is competent to investigate the offence and submit a supplementary report. In case before the Hon. Apex Court, charges were framed on 19th September, 2016, offences under Act, 1967 were added for the first time on 09.04.2017; thus, there was no occasion for investigation of offences under Act, 1967 prior to April, 2017. When the Central Government directed the NIA to investigate the scheduled offences, NIA was fully competent to investigate those offences and submit a supplementary report. It was not a case where charge/s for offences punishable under the Unlawful



Activities (Prevention) Act, 1967 were available prior to April, 2017. When order was issued by Central Government on 13th February, 2018, it was not competent for the State Police to proceed with the investigation. FIR re-registered by NIA on 16th February, 2018 was not a second FIR for the offences, rather it was re-registration of the FIR to give effect to the provisions of the NIA Act, re-registration being only a procedural step to initiate the investigation and the trial under the NIA Act. Such re-registration of the FIR, thus, was neither barred nor could it be held to be a second FIR.

133. Hon. Apex Court finds in **Pattu Rajan vs. State of T.N.--(2019) 4 SCC 771** the the crimes underlying the two FIRs distinct and different. The offence punishable under Section 302, in the case before it was committed during the course of investigation of the case in the first FIR i.e. relating to the crime of abduction. In this backdrop Hon. Apex Court holds -

“25. In Rameshchandra Nandlal Parikh v. State of Gujarat, earlier judgments of this Court including T.T. Antony were considered, and it was held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences, and have not been alleged to have been committed in the course of the



same transaction or the same occurrence as the ones alleged in the first FIR, there is no prohibition on accepting the second FIR. In this respect, in Nirmal Singh Kahlon v. State of Punjab, this Court observed thus: (SCC pp. 466-67, para 67)

“67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.”

134. MCOCA also has a similar scheme as considered in **Pradeep Ram Vs.The State of Jharkhand and Ors.**supra. In case before us, none of the advocates has argued that a second FIR has been registered in relation to murder of the corporator Shri Kamalakar Jamsandekar. On the contrary, the developments demonstrate parity with the facts in matter before the Hon. Apex court in case of Pradeep Ram Vs.The State of Jharkhand and Ors. (supra). The elements essential for constituting the “CULA” and to



attract MCOCA surfaced only after a trap in dacoity intelligence on 26.4.2008. After examining those facts, proposal for approval under S. 23(1)(a) of the MCOCA was moved on 18.5.2008 & the competent authority functioning under that Act, granted the permission on 20.5.2008. Thus, before that date there was no MCOCA offence before the Court or before the competent investigating agency. The Court which had then taken cognizance of the charge sheet dated 7.6.2007 submitted by the Sakinaka police was not the Special Court authorized to take cognizance & the Sakinaka Investigating Officer was also not competent to investigate into MCOCA offences.

135. MCOCA has been assented to by the President of India on 23.4.1999 & its object is to make special provisions for prevention & control of organized crime, to cope up with criminal activities of the organized crime syndicate or the gang and to deal with connected or incidental matters. S.2(d) defines what is continuing unlawful activity while S. 2(e) explains what is an “organized crime”. The S. 2(f) defines the phrase “organized crime syndicate”. We are required to apply these concepts little later in the body of this judgment but suffice it to mention that MCOCA recognizes “Code” as criminal procedure code only.



136. S. 3 of MCOCA prescribes various punishment for the organized crimes. Holding of unaccountable wealth on behalf of a member of the organized crime syndicate is also punishable under S. 4. S. 5 obliges the State Government to constitute the Special Court/s for trial of these offences. S. 6 confers exclusive jurisdiction on such Special Court to try the offences punishable under MCOCA. S. 7 empowers the Special Court to try & punish for the other offences which the accused before it may have committed along with the offences punishable under its S. 3 & 4. Special rules in relation to law of evidence & presumption are seen in S. 17, 22 while a provision for making the confessions admissible against accused & co-accused is incorporated in S. 18 of MCOCA. The Act contains a procedure for interception of electronic or oral or other communications vide Ss. 13 to 17, attachment of or forfeiture of the in S.20 & for protection of witnesses in S. 19. S. 21 modifies Ss. 2(c), 167 Cr.P.C. & while denying the benefit of S. 438 thereof, also specifies the safeguards to be adopted while entertaining the bail requests.

137. S. 23 (1) (a) Of MCOCA stipulates that no information regarding the commission of an organized crime shall be recorded without prior approval of the Deputy Inspector General



Of Police and vide subsection (b) no investigation shall be carried out by an officer below the rank of Deputy Superintendent of Police. As per S. 23(2), the Special Court constituted under S. 5 can not take cognizance of offence without the previous sanction of the officer not below the rank of Additional Director General of Police. S. 24 prescribes a punishment of either description up to 3 years and fine for a public servant who helps or supports the organized crime or fails to discharge his duties in relation to an organized crime.

It is in this backdrop that S. 25 gives the overriding effect to MCOCA or Rules made there under or orders made under the Rules over any other law. It definitely overrides Cr.P.C. Ss. 28 & 29 empower the High Court & the State Government to make Rules. Thus nothing inconsistent with the MCOCA or Rules or Orders made thereunder can affect application or execution of the MCOCA. This discussion therefore leads us to conclude that interposing S. 173(8) Cr.P.C. in the above scheme in this case would be introducing a discordant note in the otherwise complete scheme of the MCOCA. Moreover, in the matter before us, Order under S. 23(1) passed on 20.5.2008 is on the basis of the material becoming available in the investigation in relation to attempted



dacoity dated 26.4.2008 or exercise undertaken thereafter. The offence of murder which took place on 2.3.2007 could never have constituted an organized crime had the investigation in attempted dacoity on 26.4.2008 not progressed.

138. In the light of material gathered in said investigation as per S. 23(1)(a) & S. 18, the persons erroneously apprehended as accused for the murder of Shri Jamsandekar were also discharged. Investigating Officer concerned with the murder plain & simple would not have proceeded with the investigation into an organized crime & the court in which the charge-sheet was then filed could not have taken cognizance of the organized crime. In this situation, it can not be argued that such a court should have passed an order & permitted police officer concerned with sakinaka offence to investigate into an organized crime after S. 23(1)(a) approval. That Court was not the Special Court under S. 5 of the MCOCA & could not have entertained an application under S. 173(8) Cr.P.C. from the Deputy Superintendent of Police or other officer envisaged in S. 23(1) of the MCOCA. If S. 173(8) obstructs the working of S. 23(1)(a) & (b), it has to give way to MCOCA. During trial before the Special Court, there were no two charge-sheets, one under IPC and the other for organized crime under



MCOCA. We therefore find the contentions based on S. 173(8) misconceived & are rejected.

139. While proceeding further, few questions need to be answered. First & foremost question to be looked into is whether the alleged actual assailants ie accused 2 to 5 are guilty of the murder of Kamalakar. But alongwith it, some of the questions which necessarily fall for determination are--

(a) If in present facts, the offence of the murder is not proved & accused 2 to 5 are not guilty; can they be still prosecuted for offences under Ss. 3(3),(4),(5) of MCOCA and punished therefor?

(b) If the offence of murder here can not be seen as an organized crime; can there be a prosecution for offences under Ss. 3(3),(4),(5) of MCOCA and a punishment therefor to others?

(c) If in earlier chargesheets relevant for constituting CULA, the competent court which has taken the cognizance thereof ultimately acquits the accused therein, whether the present trial or conviction under MCOCA would still stand?

140. Hon. Apex Court in para 23 in **State (NCT of**



Delhi) vs. Brijesh Singh- (2017)10 SCC 779 explains that statutes made by Sovereign States cannot be said to be invalid on the ground of extra-territoriality subject to certain conditions as is held by it in its earlier judgments. The same principle was applied to State legislations & there is no distinction between the applicability of this principle to civil or criminal statutes. Hon. Court was considering whether there is a territorial nexus between the charge-sheets filed in competent courts within the State of Uttar Pradesh and the State of NCT of Delhi where the respondents were being prosecuted. The Hon. Court concluded that the prosecution of the respondents under MCOCA cannot be said to be invalid on the ground of extra-territoriality in case the nexus be sufficiently established. It explains that organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant precondition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge-sheets filed against the members of an organised crime syndicate within the previous 10 years and a “competent court” has taken cognizance of such charge-sheets. In that case, there were eight charge-sheets filed against the respondents, six out of



which are in the State of Uttar Pradesh. The submission of the respondents, which was accepted by the courts below, was that such charge-sheets filed in the State of Uttar Pradesh were not relevant for the purpose of determining whether the respondents had indulged in a continuing unlawful activity. The courts below held that only charge-sheets filed in competent courts within Delhi could be taken into account. Hon. Apex Court did not agree with the courts below. It points out that an organised crime is not an activity restricted to a particular State which is apparent from a perusal of the Statement of Objects and Reasons. A restrictive reading of the words “competent court” appearing in Section 2(1) (d) of MCOCA will stultify the object of the Act. It disagreed with the learned senior counsel for the respondents that it is impermissible for the Special Courts to take into account charge-sheets filed outside the National Capital Territory of Delhi as that would result in giving extra-territorial operation to MCOCA.

141. It is in this light that Hon. Apex Court records its agreement with the submission that an activity of organised crime in Delhi is a sine qua non for registration of a crime under MCOCA. In the absence of an organised crime being committed in



Delhi, the accused cannot be prosecuted on the basis of charge-sheets filed outside Delhi.

142. The question before this Court is whether commission of some crime/organized crime is necessary to invoke MCOC & whether in its absence or proof, only for CULA, punishment can be imposed. It can not be said that said facet stands answered by this precedent.

143. **In State of Maharashtra vs. Bharat - (2008) 13 SCC 5** Hon. Apex Court in para 14 states that according to its Preamble, the said MCOCA (1999 Act) is enacted to make specific provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang and for matters connected therewith or incidental thereto. The word “abet” is defined in Section 2(1)(a) of MCOCA to mean and include the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate, the passing on or publication of, without any lawful authority any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or



matter obtained from the organised crime syndicate and also rendering of any assistance, whether financial or otherwise, to the organised crime syndicate. Clause (d) of section 2(1) defines the expression “continuing unlawful activity” to mean 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. Clause (e) of sub-section (1) defines the expression “organised crime” to mean 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. The term “organised crime syndicate” is defined under clause (f) of sub-section (1) to mean a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.



144. In paragraph 18, Hon. Court points out that Section 3 provides the punishment for organised crime. It states that (i) whoever commits an offence of organised crime, (ii) whoever conspires or attempts to commit or advocates, abets or knowingly facilitate the commission of an organised crime or any act preparatory to organised crime, (iii) whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate, (iv) any person who is a member of an organised crime syndicate, and (v) whoever holds any property derived or obtained from commission of an organised crime, shall be punished as provided in the said section. Section 4 provides punishment for possessing unaccountable wealth on behalf of a member of organised crime syndicate.

145. In this judgment only ie State of Mharashtra v. Bharat Shanti Lal Shah (supra), the Hon. Apex Court also takes note of the important procedural sections. Section 13 of MCOCA deals with the power of the State Government to appoint the competent authority. As per the said section the State Government may appoint any of its officers, in Home Department, not below the rank of Secretary to the Government, to be the competent authority for the purposes of Section 14. Section 14 empowers a



police officer not below the rank of the Superintendent of Police supervising the investigation of an organised crime under the aforesaid Act to submit an application in writing to the competent authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer, when such interception may provide or has provided evidence of any offence involving an organised crime. Sub-sections (2) to (13) of Section 14 lay down the detailed procedure therefor as also the requirements to be fulfilled before approval is granted. Section 14, therefore, authorises the interception of wire, electronic or oral communication, subject to certain conditions and safeguards laid down therein. Section 15 requires constitution of a Review Committee to review every order passed by the competent authority under Section 14. Section 16 imposes certain restrictions regarding interception and disclosure of wire, electronic or oral communication. It prohibits the interception and also disclosure of wire, electronic or oral communication by any police officer except as otherwise specifically provided, and makes any violation of the provision punishable. Following observations of the Apex Court are relevant here -

“30. Even otherwise when the said definitions as existing in Sections 2(1)(d), (e) and (f) of MCOCA are read and



understood with the object and purpose of the Act which is to make special provisions for prevention and control of organised crime it is clear that they are worded to subserve and achieve the said object and purpose of the Act. There is no vagueness as the definitions defined with clarity what it meant by continuing unlawful activity, organised crime and also organised crime syndicate. As the provisions treat all those covered by it in a like manner and does not suffer from the vice of class legislation they cannot be said to be violative of Article 14 of the Constitution.

31. With respect to Section 3 of MCOCA, even before the High Court the attack was in particular in respect of the provisions of Sections 3(3) and (5) on the ground that the requirement of mens rea is done away with, thus automatically rendering a person without any intention or knowledge liable for punishment. It is a well-settled position of law insofar as criminal law is concerned that in such provisions mens rea is always presumed as integral part of penal offence or section unless it is specifically and expressly or by necessary intendment excluded by the legislature. No such exclusion is found in sub-sections (3) and (5) of Section 3. As held by the High Court, if the provisions are read in the following manner no injury, as alleged, would be caused:

“3. (3) Whoever (intentionally) harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may



extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lakhs.

* * *

(5) Whoever (knowingly) holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lakhs."

146. This consideration therefore shows that everything revolves around the concept of the Syndicate and CULA as also an organized crime. A cognizable offence punishable with three years imprisonment or more committed once does not qualify as an organized crime. If it satisfies the other requirements stipulated therein, it may become a CULA. If this CULA is continuing & a third offence committed is not cognizable one, it may still constitute an organized crime. What is punishable under S. 3 is this CULA which surfaces through an organized crime. So accused or some person must be shown to have indulged in commission of some organized crime as a member of a syndicate or gang. CULA of an organized crime syndicate are therefore being dealt with sternly to curb the crimes or organized crimes.



147. Observations in **Prasad Shrikant Purohit vs. State of Maharashtra, (2015) 7 SCC 440** , in para 45 read -- “By conspectus reading of the above three definitions, if in the preceding 10 years from the date of third continuing unlawful activity if more than one charge-sheet has been filed before a competent court which had taken cognizance of such offence which would result in imposition of a punishment of three years or more, undertaken by a person individually or jointly either as a member of an “organised crime syndicate” or on its behalf, such crime if falls within the definition of “organised crime”, the invocation of MCOCA would be the resultant position.”

148. **Kartar Singh vs. State of Punjab** -(1994) 3 SCC 569 is considered in State of Maharashtra v. Bharat Shantilal Shah (supra) as also in Col. Prasad Shrikant Purohit vs. State of Maharashtra (supra).

149. The scheme of MCOCA is considered in para 41 onwards in **Prasad Shrikant Purohit vs. State of Maharashtra (supra)** From paragraph 41 onwards the scheme of MCOC & relevant dates are looked into. Question considered is whether on the date of Malegaon blast, there existed two earlier chargesheets



to constitute CULA & an organized crime. Paragraph 56 of the judgment shows that “29-9-2008” was the relevant date, namely, the date of third occurrence i.e. Malegaon bomb blast. Moot question was whether in respect of the bomb blast in Parbhani on 21-11-2003 and similar bomb blast in Jalna on 27-8-2004, the charge-sheets were filed and cognizance was taken by the competent court within the said period of preceding 10 years. There was no dispute that the very first charge-sheet in Parbhani as against A-1 was filed on 7-9-2006 before the Chief Judicial Magistrate. Similarly, the filing of the first charge-sheet on 30-9-2006 in Jalna case was also not in dispute. The contention put forward was that the supplementary charge-sheet arraigning A-7 as accused in Parbhani case was filed only on 13-11-2008 and in Jalna case, on 15-11-2008 and if these two dates with regard to A-7 be the relevant dates, then the requirement of two earlier cases as stipulated under Section 2(1)(d) in preceding 10 years’ period was not satisfied. In paragraph 61, the Hon. Apex Court holds that if more than one charge-sheet is filed in respect of such offence before the competent court and the said court had taken cognizance of such offence, the definition of “continuing unlawful activity” would be satisfied. In para 74, the Court has pointed out that Section 173(8) CrPC makes the position much more clear to



the effect that the filing of the supplementary charge-sheet does not and will not amount to taking cognizance by the court afresh against whomsoever again with reference to the very same offence. What all it states is that by virtue of the supplementary charge-sheet further offence may also be alleged and charge to that effect may be filed. In fact, going by Section 173(8) it found that in case before it, by way of supplementary charge-sheet some more accused were to be added to the offence with reference to which cognizance was already taken by the Judicial Magistrate. While cognizance was already taken of the main offence against the accused already arraigned, the supplementary charge-sheet may provide scope for taking cognizance of additional charges or against more accused with reference to the offence already taken cognizance of and the only scope would be for the added offender to seek for discharge after the filing of the supplementary charge-sheet against the said offender. In para 81, the Hon. Court has observed that in Parbhani, the occurrence was on 21-11-2003 and in Jalna it was on 27-8-2004. In the Parbhani case, the first charge-sheet was filed as early as on 7-9-2006 before the Chief Judicial Magistrate and in Jalna, it was filed on 30-9-2006 before the Chief Judicial Magistrate concerned and in both the cases, cognizance was taken and the proceedings before the



respective Magistrates concerned were continued. Therefore, it held that to that extent, the definition under Section 2(1)(d) relating to “continuing unlawful activity” in respect of more than one case of an offence punishable for more than three years was fully satisfied.

150. Next contention looked into in para 82 is that though A-7 was implicated both in Parbhani and Jalna, such implication was not relevant qua his role as a member of an “organised crime syndicate” involved in Malegaon bomb blast nor the gang involved in Malegaon blast was responsible for the bomb blast in Parbhani and Jalna. In para 86, the Apex Court holds that facts disclosed that insofar as A-7 was concerned, he had a nexus with the member of an “organised crime syndicate” and also had every nexus with two earlier cases/the offence in the nature of an “organised crime” , namely, Parbhani and Jalna and also direct involvement in the bomb blast at Malegaon. There was no difficulty in concluding that insofar as, A-7 was concerned, his activity and involvement in all the three occurrences, namely, Parbhani, Jalna and Malegaon disclosed nexus with the crime and also with the other accused involved in the crime and thereby the the “continuing unlawful activity” through an “organised crime” on



behalf of an “organised crime syndicate” was satisfactorily shown. By virtue of Section 21(4) of MCOCA he was not entitled for the grant of bail and he did not fall within the excepted category stipulated in clause (a) or (b) of the sub-section (4) of Section 21. Though the other accused persons were not arraigned in Parbhani or Jalna blasts & were chargesheeted only in Malegaon blast, Hon. Apex Court after considering the disputed facts & other material, found it not possible to declare that MCOCA was not attracted. It found that they could not have been discharged from MCOCA. However, in para 87, it found that the bail application of other accused persons could have been considered by the Special Court as per S. 21(4)(b). However it denied the same to A-7 observing that by virtue of Section 21(4) of MCOCA, he was not entitled for the grant of bail and he did not fall within the excepted category stipulated in clause (a) or (b) of the said sub-section (4) of Section 21.

151. In paragraph 90, the Hon. Court also concludes that there was no scope to hold that involvement in the organized crime had to be only for pecuniary advantage & it can be either for pecuniary gain or for economic advantage or for any other advantage either for the person who indulged in such activity or



for any other person or for promoting insurgency. In the light of its findings, Hon. Apex Court in para 95 states that there was no scope to doubt recourse to MCOCA in case of A-7 and as such, S. 21(4) bar operated & he was not entitled to bail.

152. Here we may also add that a Full Bench of this Court in **State Of Maharashtra vs. Jagan Gagansingh Nepali & Ors. MANU/MH/1155/2011** has held that word “other advantages” needed to be given wider meaning & rule of ejusdem generis was not attracted. The object & purpose of the MCOCA warranted such an approach. Division Bench of this Court followed it in **MANU/MH/0887/2014 -- State of Maharashtra vs. Sachin.** But this point may not pose any problem here as the prosecution claims that amount of Rs. 30 Lak was in fact paid and received as consideration for eliminating Kamalakar Jamsandekar. The offence alleged to be the organized crime here is on 2.3.2007 while earlier charge-sheets are not in dispute. PW-33-Shri Shelke is the investigating officer of Crime Branch prior to invocation of MCOCA. He has stated that till 8/5/2008 he did not reach to the conclusion about any organized crime committed by the members of Arun Gawali’s gang. He is the witness who sent the proposal and obtained prior approval under S. 23(1) vide Exhibit 421. PW-33 has



been cross-examined at length but no material to discard his testimony could be brought on record. PW-36-Hasan Gaffur- the Commissioner of police has accorded sanction under section 23(2) of MCOCA at Exhibits 439 to 441. He accorded sanction on 17/7/2008 vide Exhibit-439. On 20/11/2008, he accorded sanction in case of Sunil Ghate (A-20) vide Exhibit-440 & in relation to, Ganesh Krishna Salvi (A-21) on 28/1/2009 vide Exhibit-441. These officers entered the witness box & have been cross-examined. Nothing to their discredit or to show any jurisdictional error or non-application of mind in these orders has come on record. Vague attempt to assail order dated 20.5.2008 therefore can not succeed.

153. It will be appropriate to refer to other judgments cited before us. **(2005) 5 SCC 294-- Ranjitsingh vs. State of Maharashtra**, in para 24 to 31 shows that MCOCA needs to be construed strictly & for offence under S. 3(2), mens rea is essential. Concerned accused must have either nexus with main accused or then syndicate or then with an organized crime. **(2007) 1 SCC 242- Chenna v. State of Maharashtra** reiterates law in *Ranjitsingh vs. State of Maharashtra* (supra) but points out the relevant parameters for grant of bail under S. 21(4) of the MCOCA.



154. In **(2015) 14 SCC 272-- State of Maharashtra vs. Shiva** the Hon. Apex Court leaves the question whether words “any other advantage” in S. 2(1)(e) of MCOCA need to be construed ejusdem generis, open. Full Bench of this Court in **State Of Maharashtra vs. Jagan Gagansingh Nepali & Ors. MANU/MH/1155/2011** has already held that word “other advantages” needed to be given wider meaning & rule of ejusdem generis was not attracted.

155. Before dealing with the precedents on the point of confession, it is necessary to note the relevant legal provisions contained in the MCOCA & Rules framed thereunder.

“18. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 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 from 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) along with 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.”

Rules 3(5) (6) and (8) is as under : -

“3(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 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 a narrated by the confessor.

3(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 the 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 confession/statement made by him.”

3(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 conducting investigation into the offence*



in connection with which, or relating to which, such confession has been made, for the purpose of investigation.”

156. In LAWS(SC) 2018-10-111 **Asar Mohammad v. State of UP**, the Hon. Apex Court states that though the confession is evidence in generic sense in view of S.30, it does not qualify as evidence u/S. 3 of the Evidence Act and the Court can not start with confession. We are here concerned with S. 18 of the MCOCA and as direct precedents on said section hold the field, we need not delve more into this judgment.

AIR 1952 SC 354—Palvinder v. State of Punjab

which holds that confession must be accepted or rejected as a whole & not in part does not have any application in present facts.

Similarly **Cr. Appeal 410/11-- Manoj Gawade v. State of Maharashtra** which does not deal with the organized crime need not be gone into here. The appellants have only placed copy of this judgment on record without pointing out its relevance.

AIR 1952 SC 159- Kashmira Singh v. State of MP,

pointing out when & to what extent the confession of a co-accused can be used need not be gone into in present matter where we have the recent judgments directly under the MCOCA.

**AIR 1952 SC 354—Palvinder v. State of Punjab**

which holds that confession must be accepted or rejected as a whole & not in part does not have any application in present facts. Learned Single Judge of this Court in **LAWS(BOM) 2004-9-63-Laxmi Koli Babita v. State of Maharashtra** considered the arguments as advanced & refused to frame charge when, except for the confession of the co-accused, there was no evidence against the applicants. This judgment is followed in **LAWS(BOM)207-7-180- Virbhadram v. State of Maharashtra**. The view taken is on facts at hand in said matters & is not a binding precedent before us in present facts.

157. Hon. Apex Vourt in **State (NCT of Delhi) vs. Brijesh Singh**, has observed--

“32. However, we are in agreement with the submission of the learned Senior Counsel for the respondents that an activity of organised crime in Delhi is a sine qua non for registration of a crime under MCOCA. In the absence of an organised crime being committed in Delhi, the accused cannot be prosecuted on the basis of charge-sheets filed outside Delhi.”



158. The Division Bench of this Court in **Madan Gangawani v. State of Maharashtra** Cr. Appeal 308/2002 d/o 26.3.2009 at Nagpur, has observed--

"51. The learned counsel for appellants submitted that evidence of P.Ws. 11 Rajesh, 17 Ravindra, 18 Subhash and 22 Jayant could not be received in this case, since it pertained to an offence which was separately tried. They relied on judgment in Vijay Kisan Mate Vs. State of Maharashtra, reported at 2007 ALL MR (Cri.) 3471, where the Court was considering an appeal under Section 12 of the MCOC Act against an order rejecting the application by the accused to defer cross-examination. This came in the context of an application by the prosecution to amend the charge so as to exclude charge of murder of one Swapnil Shirke in respect of which a separate chargesheet has been filed. Thereafter, the prosecution resiled from its own stand and sought to tender evidence of murder in case of MCOC Act. The learned single Judge held that in the said case under MCOC Act the actual proof of crime need not be offered unless that crime was also being tried together. The learned single Judge, therefore, held as corollary that the act of the Special Judge allowing the eyewitness of a murder case to be examined in MCOC Act trial, without there being a joint trial of both the offences, will have to be quashed and that the said witness shall not be further examined in MCOC Act case, and that the case should be tried as if the said witness was never examined at MCOC Act trial.



52. *For proving the offence of organised crime, it has to be proved among other things that accused indulged in continuing unlawful activity. For proving involvement in continuing unlawful activity, it is not necessary to prove the past crime, but only the fact that a chargesheet has been filed in respect of that crime that the crime bears `a punishment of three years or more and that the Court has taken cognizance of the crime. Therefore, examining witnesses in proof of past crime itself is unnecessary and also undesirable, because it is not the requirement or ingredient of offence under MCOC Act. Therefore, testimonies of PWs 11 Rajesh, 17 Ravindra, 18 Subhash and 22 Jayant are irrelevant.*

107. *It was contended that the observations in Bharat Shah's case by this Court have to be read in context of the fact that Section 2 is a definition clause which just defines the offence and, therefore, could not have prescribed punishment, which Section 3 prescribes. It is truly said that Section 2 merely defines, not only the offence of "organised crime" but also other terms used in the Act. What is material is the definition of offence of "organised crime" and not the definitions of other terms included in Section 2. Had the term "continuing unlawful activity" been synonymous with "organised crime", it would not have been necessary for the Legislature to include two definitions. It would have been sufficient to provide for only one definition of continuing unlawful activity and make that activity punishable. The definitions in clauses (d) and (e) clearly show that one of the components of organised crime is continuing unlawful*



activity and, therefore, organised crime is something more than mere continuing unlawful activity.

108. *Thus the fact of more than one chargesheet having been filed in competent Court in preceding period of ten years and such Court having taken cognizance of such offence, is merely one of the ingredients of the offence of organised crime. Therefore, it cannot be contended that the offence of organised crime is completed by collection of previous criminal activities.*

109. *In Jaisingh Ashrfilal Yadav & Ors. v. State of Maharashtra & Anr, reported at 2003 ALL MR (Cri) 1506, to which the learned A.P.P. drew my attention, a Division Bench of this Court was considering the constitutionality of the provisions of MCOC Act. The Court observed in paragraph 9 as under : “9. The analysis of the definition of the organised crime, therefore, would reveal that continuing unlawful activity is one of its ingredients. ... In other words, lodging of two charge-sheets in relation to the acts which are already declared under the law then in force as offences of the nature specified under Section 2(d) during the preceding period of ten years is one of the requisites for the offence of organised crime under the said Act.” (Emphasis supplied)*

110. *The Court then considered the challenge based on Article 20(1) of the Constitution of India. In paragraph 19 the Court observed as under : “19. There is lot of difference between the act or activity itself being termed or called as an offence under a statute and such act or activity being taken into consideration as one of the requisites for taking action under the statute. The former situation has to satisfy*



the mandate of Article 20(1) of the Constitution, however, in case of latter situation, it stands on totally different footing. Undoubtedly, for the purpose of organised crime there has to be a continuing unlawful activity. There cannot be continuing unlawful activity unless at least two charge-sheets are to be found to have been lodged in relation to the offence punishable with three years' imprisonment during the period of ten years. Undisputedly, the period of ten years may relate to the period prior to 24-2-1999 or thereafter. In other words, it provides that the activities which were offences under the law in force at the relevant time and in respect of which two charge-sheets have been filed and the Court has taken cognizance thereof, during the period of preceding ten years, then it will be considered as continuing unlawful activity on 24-2-1999 or thereafter. It nowhere by itself declares any activity to be an offence under the said Act prior to 24.02.1999. It also does not converts any activity done prior to 24.02.1999 to be an offence under the said Act. It merely considers two charge-sheets in relation to the acts which were already declared as offences under the law in force to be one of the requisites for the purpose of identifying continuing unlawful activity and/ or for the purpose of an action under the said Act. This by itself cannot be said to be in any manner violative of the mandate of Article 20(1) considering the law laid down by the Apex Court in Rao Shiv Bahadur Singh's case as well as in Sajjan Singh's case." (Emphasis supplied) This too would show that for establishing offence of organised crime something more than mere continuing unlawful activity is necessary."



159. It will be in fitness of things to first decide whether the prosecution has proved that accused 2 to 5 have killed Kamalakar Jamsandekar on 2.3.2007. The question whether said murder constitutes an organized crime also can be conveniently considered along with it. Testimonies of PW-7 Manali, PW-12 Motilal, PW-4 Addu, evidence on TIP etc. is no doubt the important material available on record. But then the confessions recorded under S. 18 of MOCA are also equally important. Murder of Kamalakar may not be an organized crime qua all the accused but if it is so for few, these confessions may be relevant & used against all. Admissibility of these confessions has been seriously debated before us with the added submission that they have been retracted. We, therefore find it apt to begin with the confessions.

160. There is one more reason for this approach. The trial court has not independently examined the issue of involvement of accused 2 to 5 in an organized crime. There are total 7 confessions and accused 9 Sandip as also accused 10 Babu have stuck to their admissions in confessional statements before the CMM. If any of the confessions can be legally acted upon, whether a finding of accused 2 to 5 participating in an organized crime is possible is the moot question.



161. We intend to consider the merits of the narration in these confessions first to ascertain whether the same nail any accused. Thereafter, the contentions on procedure followed while recording it or retraction thereof will be examined.

Confessions need evaluation in the backdrop of law considered supra & keeping in mind the fact that circumstances disclosed therein throw light on CULA & murder.

162. We find it appropriate to begin with Part II statement of accd. 10 Shrikrishna @ Babu Gurav. PW-19 Dnyaneshwar Phadtare has recorded it at Ex. 251 and this accused has admitted this confessional statement before the learned CMM when he was produced before him immediately. Shri Phadtare has also entered the witness box & proved that the procedure was properly followed.

163. Accused 10 Shrikrishna @ Babu was plying an auto-rickshaw to earn livelihood. He knows accd. 13 Ajit Rane & was attending his office at Sakinaka Pipe Line, Parera Wadi. Ajit Rane is Kurla Taluka Vice President of Akhil Bhartiya Sena. Ajit sent him to Mahendra Bagwe in Byculla Dagdi Chawl & he became branch president of Akhil Bhartiya Sena (ABS). He has acquaintance with Accd. 12 Pratap Godse, Accd. 11 Dinesh Narkar, PW. 5 Pradeep



Shinde & Mohd. Arif @ Guddu. He also points out extortion between July 2005 to October 2005 from builders like Sagartek at Sakinaka, Sadguru Developers at Ghatkoper (west), Tunga village developers at Sakinaka & Runwala Group. Builders were pressurized & told that they have come from Dagadi Chawl. Part of money so extorted was paid to accd. 1 Arun Gawali through Ajit Rane, Pratap Godse, accd. 15 Suresh Patil and accd. 9 Sandy @ Sandip Gangan. His auto-rickshaw was driven by accd. 2 Narendra @ Kandi Giri. Through Narendra, he came to know Narendra's maternal uncle accd. 4 Vijay Giri. Narendra & Vijay used to ply auto-rickshaws & offences were already registered against them. They had absconded as Rabale Police Station was after them.

164. In May 2006, Ajit & Pratap expressed need of a Gun to threaten the builders. Accordingly he brought his maternal cousin PW-11 Dhaktya @ Ramchandra Gurav r/o Kharepatan, Distr. Sindhudurga to office of Ajit & Pratap. Dhaktya disclosed that Gun would be arranged from Rajapur. Babu & Pratap gave their mobile numbers 9819251750 & 9223202133 respectively to Dhaktya. After 4 or 5 days, Dhaktya telephoned to inform that Gun could be arranged. He, accd. 11 Dinesh, accd. 12 Pratap & driver Raja Mulekar went to village in Tata Sumo vehicle. Next day, they went



to village Vilaye in Rajapur with Dhaktya where introduced to accd. 8 Surendra Panchal. There Acc. 12 Pratap drew sketch of gun as required and accd. 8 Surendra demanded Rs. 6000/ for it. Next day they could not meet accd. 8 & hence a call was given on his mobile no. 9224770420. They met at 7pm at Kharepatan where Pratap paid Rs. 3000/ as advance to Surendra.

165. In August,2006, accd. 8 informed that gun was ready. As directed by accd. 12 & 13 & with Rs. 5000/ given by them, Accd. 10 Shrijrishna @ Babu & accd. 11 Dinesh then went to village by train. On same day, with PW-11 Dhaktya in auto-rickshaw, all went to village of accd. 8 Surendra, paid him balance Rs. 3000/ & took gun in possession. Accd. 10,11 & Surendra in auto-rickshaw came to Kharepatan where accd. 8 Surendra brought 5 cartridges,red in colour and he paid Rs. 300 / to accd. 8 Surendra for it. Then they returned to house of Dhaktya at Kharepatan Guruwadi where accd. 8 Surendra fired one cartridge to demonstrate that gun was working.

166. Next day was a festival of Dahikala ie Krishna janmashtami & hence, accd.10/11 returned by train to Mumbai with gun & remaining 4 rounds. Accd. 10 got down at Sion, went to accd. 12 Pratap & gave him the gun & cartridges. In 2006, at



Durgadevi festival ie Navratri celebrations in Dagadi chawl, Ajit Rane gave him a card inviting accd. 7 Bala Surve (deceased) for it. He went to Jangleshwar Mandir, Sakinaka but Bala Surve was not present. He then left the card in office of Bala. He learnt that taking advantage of said festival, accd. Ajit & Pratap extorted huge ransom from builders or traders and part of it was sent to accd. 1 Arun Gawali through accd. 9 Sandip & accd. 15 Suresh Patil.

167. After few days, when accd. 10 Babu went to office at Hotel Milan Complex, Building no. 6/5, Ajit Rane & Pratap Godse showed him said gun & two cartridges stating that they had fired a round each. Shrikrishna @ Babu also states that through this office, the affairs & working of ABS were managed. In that office, Anita Ghaywat treated as sister of Ajit, also used to sit. Ajit had two mobiles ie no.9869148966 & 983347356. Later number was some times used by Anita Ghaywat.

168. In October, 2006 trial of one Solanki who had attacked accused 12 Pratap started in Shiwadi court. He, accd. Pratap, PW-5 Pradeep, accd. 11 Dinesh & Mohd. Arif @ Addu carried out ground work (fielding) and attended that court on 2 to 3 occasions to



attack Solanki. Their plan could not succeed as Solanki did not turn up & did not attend the court on those dates.

169. In January,2007 as Ajit Rane was to contest from ward no. 152, he, Dinesh Narkar, Pratap Godse, Addu, Pradeep Shinde, Raja Mulekar, Mohd. Arif @ Guddu, Pintu Ramkrishna Dhaykar,Abhijit Satam etc, started canvassing. In said election in February, 2007 Ajit got 379 votes & was displeased as Shivsena candidate Shri Jamsandekar won with huge margin. In February, 2007, when he had gone to Travel's office of Ajit Rane, Pratap Godse was present there.

170. Pratap Godse, in presence of Ajit Rane asked him whether two boys could be arranged for eliminating somebody. He also that amount of Rs. 2.50 Lak would be paid to those boys. Acc. 10 Shrikrishna promised to inquire & inform. On same day, he called Vijay Giri & informed him about the need. He asked Vijay to contact him at Sakinaka near HP Petrol pump at 10.00 am. On next day, he met Viajay Giri & Narendra Giri at Sakinaka junction.

171. After sometime one person introduced as Ashok arrived. Shrikrishna then called Pratap Godse using his mobile. Then they had tea together & went near HP pump. Pratap & Ajit



arrived on motorcycle. He took Vijay to one side & introduced him to them. That time it was agreed between Pratap & Vijay that Pratap would give gun, knives & Rs. 2.5 Lak & Vijay would with the help of three, kill the person shown by Pratap. Pratap then asked Shrikrishna to show office of Amit Travels to Vijay, Narendra, Ashok & then left with Ajit. Shrikrishna then has shown office of Amit Travels at Chandiwali to those three & asked them to come there at 10.00'o clock. Next day he came to the said office on Discovery motorcyle. As office was closed, he called Pratap on phone who told him to fetch key from house of Ajit Rane & to open the office. Accordingly, he brought key & opened the office. He, Vijay & Narendra sat there. Shrikrishna then saw Ashok standing outside with one colleague. Vijay told that colleague was Anil Giri. Ajit Rane & Pratap Godse arrived there shortly.

172. As directed by Pratap he took out a bag from a drawer in office & shown the Gun, Two cartridges, & Three knives to Vijay & Narendra. Pratap then informed that 3 cartridges were fired through said gun. Vijay & Narendra went out & brought Ashok & Anil in the office who also has a look at the articles. Pratap then asked these 4 persons to go out & wait. Pratap then gave Rs. 10,000/ to Shrikrishna & instructed him to give it to Vijay with



message to come on next day to collect the bag containing the articles ie weapons. At that time, Ashok saved mobile number of accd. 10 Shrikrishna. Vijay then gave 9224676768 & 9323709336 as his mobile numbers to accd. 10 Shrikrishna. When Shrikrishna inquired, Pratap for the first time disclosed to accd. 10 Shrikrishna that he had a contract to kill Shivsena corporator Kamalakar Jamsandekar.

173. On next day Vijay telephoned Shrikrishna in the morning to inform that the office was closed. Shrikrishna then obtained key from house of Ajit Rane. He then handed over the bag with articles & Rs. 10,000/ to Vijay. He told them to come in the evening to collect motorcycle. Narendra alone came & as directed by Pratap, Shrikrishna handed over the Discovery motorcycle to him. He called Viajay & his colleagues again next day morning in the office as per Pratap's instructions.

174. All 4 then came to office on next day in the morning & shortly, Pratap & Ajit also arrived. PW-4 Addu also came as directed by Pratap. Pratap told them that Addu would show to them the man & his residence. Anil, Narendra & Addu then left on motorcycle. At that time Pratap told Vijay to collect bag with articles everyday in the morning & then deliver it back in the office



in evening, if the work could not be done. Narendra & Anil returned shortly & then they all left. From next day, every morning he used to fetch key from house of Ajit Rane, open office, handover the weapon bag to Vijay. Vijay & others used to return in the afternoon to return the weapons & used to go back to their houses.

175. Accordingly, for 15 days Vijay, Anil, Narendra & Ashok were looking for Kamalakar Jamsandekar with a view to kill him and return back as he was not being found. Pratap therefore expressed that group of 4 would not be able to do the work & abused Shrikrishna. He expressed that he would engage some other group. Shrikrishna then states that no other group was however shown to him.

176. On 2.3.2007 at 5 pm in the evening Vijay phoned Shrikrishna that game of Kamalakar Jamsandekar was done & motorcycle was left near a timber mart near masjid at Narayan Nagar, Ghatkoper. Shrikrishna informed this to Pratap who asked Shrikrishna not to collect the motorcycle for few days. Accordingly, Shrikrishna did not go to collect the motorcycle.



177. On 3rd March 2007, Anita Ghaywat, sister of Ajit Rane called Shrikrishna to the residence & told that phone calls were being made for the balance amount by Vijay & Kandi. She handed over the amount in a plastic cover and asked him to give it to them. He called Vijay who then asked him to come near Borivali National Park Gate. He went there & handed over that plastic cover. He was not then aware of the quantum of the amount.

178. 8 to 10 days after the incident, police arrested Ajit Rane & Pratap Godse for the murder. Anita Ghaywat then called him & told him to throw his mobile in gutter. He broke the mobile & threw it in Nallah on Powai road. Vijay Giri & Narendra used to contact him to demand the balance amount. However he started avoiding them as Ajit & Pratap were arrested.

179. In July,2007 on say of Dinesh Narkar (accd. 11), he himself, Dinesh Narkar, Pintu & Guddu forced entry in the office of one builder at Dadar. Dinesh Narkar damaged the office & beat one employee therein with hands. He aimed revolver with him at the head & threatened to kill. He gave message to builder Nandu Naik to come to Dagadi Chawl. In October,2007 Ajit Rane & in October,2007, Pratap Rane came out on bail in crime of murder of



Kamlakar Jamsandekar. They started sitting in office of Amit Travels at shop no. 4, Crystal Court, Rambag, Powai. Shrikrishna went to meet them & then, Pratap told him that after coming out, he gradually collected Rs. 10,000/ and had paid it to Vijay. Confession of Shrikrishna (accd. 10) ends with the sentence that Sakinaka police arrested him on 18.4.2008.

180. Next important confession appears to be that of Narendra @ Kandi @ Guddu Lalmani Giri. This person has attempted to retract it before the CMM. Efforts made by him & others on same line are being considered separately. His confessional statement is recorded by DCP Shri Rajendra Dabhade who has been examined as PW-15. Its part second is recorded on 5th June 2008.

181. He states in second part that since 4 months he was staying with his uncle Vijay & both were plying auto-rickshaw on rent in Tunga village of Sakinaka. At the relevant time he was plying auto-rickshaw belonging to Babu Gurav ie accused 10. In February,2007, Vijay told him that he had a phone call from Babu who wanted them to do work of a man (which means to kill a man). Babu was ready to pay Rs. 2.5 Lak for it. Both of them



decided to take help of his school friend Ashok Jaiswar & nephew of Vijay by name Anil.

182. Next day Vijay took him to Sakinaka junction. They met Babu Gurav there. Shortly, Ashok Jaiswar also reached there. Vijay introduced Ashok to Babu. Babu then informed on phone about them to somebody. All then went to a Hotel, had tea & then came to a petrol pump in the neighbourhood. Two persons arrived there on motorcycle. Babu Gurav told their names to Ajit Rane & Pratap Godse. Babu then took three to office of Amit Travels at Chandivali and told them to come to that office on next day at 10.00 am. Next day they went to that office.

183. Babu Gurav opened the office & showed to them a bag containing a gun, 2 rounds & knives. He asked them to come on next day to collect it. Next day at 9.30 am. they reached Amit Travels. In office, Babu took out the bag from a table drawer & gave it to him with Rs. 10,000/-. Babu asked them to come in the evening to take the bike ie motorcycle. They then returned home. In the evening, Narendra returned & took Discover motorcycle M.S. 03 AE 2476 in his custody. On next day as asked by Vijay, on bike he & Anil went to office. Vijay & Ashok also reached there. A



boy shortly arrived in that office. Pratap introduced him as Addu & told that Addu would show the man & his residence.

184. On say of Vijay, he (Narendra), Anil & Addu went on bike of Babu Gurav to Asalpha Village, Ghatkoper. Addu then had shown them that man. That man had a red tilak on his forehead. Addu told them that said man applied red tilak like that always. That man then proceeded towards his house. On 2.3.2007, all 4 went to office to collect the bag. Anil then demanded money from Vijay. Vijay refused & angered, Anil left. Narendra, Ashok & Vijay collected bag & went to Asalpha village.

185. At 4.30 Ashok alone went inside. He came out after some time & stated that man was alone inside. Viajy then took out the gun from bag & loaded a round in it. He kept other round in his pocket. Narendra & Ashok then took a knife each from that bag & kept it with them. They reached near the house of that man. Ashok stood by the side of "Bari". Narendra & Vijay went to the door. That man was sitting in chair with back towards the door. Vijay immediately entered inside taking gun out. Narendra was standing outside the door. Vijay fired the bullet in the head of that man.



186. After shot was fired, they ran out towards the motorcycle. He started motorcycle. Vijay & Ashok sat pillion. On next day from the news paper, he learnt that the man murdered was Shivsena corporator Kamalakar Jamsandekar. He was arrested on 26.4.2008.

187. To facilitate the further application of mind, we deem it appropriate to note mutual corroboration between Babu & Narendra. Both were knowing each other since Narendra was plying auto-rickshaw belonging to Babu Gurav. In February, 2007 Vijay had a phone call from Babu who wanted them to eliminate a man. Babu was ready to pay Rs. 2.5 Lak for it. Both of them decided to take help of his school friend Ashok Jaiswar & nephew of Vijay by name Anil. Next day Vijay took him to Sakinaka junction. They met Babu Gurav there. Shortly, Ashok Jaiswar also reached there. Vijay introduced Ashok to Babu. Babu then informed on phone about them to somebody. All then went to Hotel, had tea & then came to a petrol pump in the neighbourhood. Babu then informed that two persons by name Ajit Rane & Pratap Godse arrived. Babu then took three to office of Amit Travels at Chandivali & told them to come in that office on



next day at 10.00 am. Next day Babu Gurav opened the office & showed to them a bag containing a gun, 2 rounds & knives.

188. Next day at 9.30 am. they reached Amit Travels. In office, Babu took out the bag from a table drawer & gave it to him with Rs. 10,000/. Babu asked them to come in the evening to take the bike ie motorcycle. They then returned home. In the evening, Narendra returned & took Discover motorcycle M.S. 03 AE 2476 in his custody. On next day as asked by Vijay, he took Anil on bike & they went to office. Vijay & Ashok also reached there. PW-4 Addu shortly arrived in that office. On say of Vijay, he (Narendra), Anil & Addu went on bike of Babu Gurav Asalpa Village, Ghatkoper. Addu then had shown them that man.

189. We have mentioned supra the two confessions and also the mutual corroboration therein. In the light of this application of mind it will be proper to look into other confessions.

190. Perusal of confessional statement of accused No.9 Sandeep Gangan shows that he is resident of Dagdi chawl since his birth. He pointed out connection between accused No.1-Arun Gawali and accused No.12-Pratap Godse and accused 11 Ajit Rane. His statement does not contain any reference to accused Nos.2 to



5 who actually gave effect to crime ie murder of Kamalakar. However, he has not resiled from his confession before the CMM. We therefore find it appropriate to note his confessional statement at this stage. PW-29 DCP Brijesh Singh has proved it before the Trial Court.

191. He has stated that in 1997 Jitendra Dabholkar and Arun Gawali formed a party by name Akhil Bhartiya Sena (ABS). He was employed in office of said party by Jitendra Dabhokar as a peon. Thereafter he started working as computer operator in that office. He was getting Rs.2,500/- p.m. as salary. He has given Nos.23015868 and 23091771 as telephone numbers of office. He disclosed that office bearers and workers of Akhil Bhartiya Sena used to collect information about construction works and other events or matters in their region and supply it to Arun Gawali. Thereafter builders and other traders were called in a room known as "*bhajanachi kholi*" on ground floor of Gitai Building and ransom was collected from them. This accused disclosed that he was knowing that one Pappu Savla, a Matka king used to pay Rs.5 Lakhs per month to Arun Gawali. Similarly, for Navratri celebration or on occasion of a party programme, amount was collected and that amount was deposited with him and with Suresh Raghunath



Patil (Accd.15), Vasant Jayram Raut, Jayant Ingawale, Vishwanath Hinge (PW-25), Babu Dighe, Pandit, Santosh @ Deed and, ultimately, it was sent to Arun Gawali. Anybody who did not remit the amount to Arun Gawali after collecting it in his name, was brought in “*Bhajanachi Kholi*” and beaten with belt and sticks. We may note here that “Bhajan” means the prayers in praise of god & “kholi” means in room.

192. In the middle of December 2006, Ajit Rane and Pratap Godse of *Akhil Bhartiya Sena (ABS)* came to office of *Akhil Bhartiya Sena* at about 2.45 p.m. with two elderly persons. Pratap Godse was then carrying a brown colour bag of size 1½ ft. x 1 ft. Pratap Godse and Ajit Rane in his presence using mobile contacted & asked Suresh Patil to come down. After short time, Suresh Patil came there. Ajit Rane stayed in office. Sandeep, Suresh Patil, Pratap Godse and those two persons went to second floor of Gitai building in office of Arun Gawali. Suresh Patil shut the door of that office from inside.

193. Pratap Godse then handed over bag to Arun Gawali mentioning that it was containing Rs.30 lakhs. After signal by Arun Gawali, Suresh Patil took bag in his custody. Arun Gawali then spoke to those two persons and told that work of Jamsandekar



would be done and they should not worry. After this assurance, he, Pratap Godse and two persons came to office. Pratap then disclosed that the two persons were Bala Surve (accused No.7-now no more) and Sahebrao Bhitande (accused No.6) Then Ajit Rane, Pratap Godse and those two persons left.

194. At the beginning of January 2007 at about 4.00 clock in the afternoon Suresh Patil called him (Sandeep) on second floor of Gitai Building and gave him Rs.60,000/- & asked him to hand it over to Pratap Godse standing near tea stall outside the gate. Accordingly, he paid Rs.60,000/- to Pratap Godse. That time Pratap Godse disclosed that Nana Bhitande (accd.6) was to pay him Rs.10 lakhs for work of Kamalakar Jamsandekar. "work of Kamalakar Jamsandekar" means job to kill Kamalakar Jamsandekar.

195. On 10/1/2007 election of Trade Union of Mumbai Mahanagar Telephone Limited was being held and in it candidates of Akhil Bhartiya Sena contested. At that time, on instructions of party head Arun Gawali, Suresh Patil had sent Ajit Rane, Pratap Godse and other workers to Trombay Telephone Exchange for creating disturbance by resorting to *gundaism* and to bogus voting. Accordingly, Ajit Rane, Pratap Godse and workers went there and created terror. Police then arrested Ajit Rane, Pratap



Godse and other three persons. They were produced in the Court on next day and were taken out on bail. Expenditure for this bail and fees of advocate was incurred by Arun Gawali through Suresh Patil.

196. After about 20 days he learnt about murder of Shivsena Corporator Kamlakar Jamsandekar in Sakinaka area through paper news. Then he learnt that police caught hold of Pratap Godse and Ajit Rane. When Pratap and Ajit were behind bar, mother of Pratap Godse had come in the Dagdi chawl to meet Suresh Patil to get money for expenses. He then states that he was arrested on 15/5/2008 by Crime Branch at Sion.

197. This confessional statement shows an organization by name ABS with accused No.1 at its head. It also demonstrates accused Nos.6 and 7 contacting accused Nos.12 and 13 and coming to said organization at Dagdi chawl to contact accused No.1 and to give him the supari ie work to eliminate Kamlakar Jamsandekar. It brings on record the room on ground floor called as *Bhajanachi kholi* where extortion amount was collected or disobedients were punished. It also shows office of accused No.1 on second floor, the activities of Akhil Bhartiya Sena like keeping watch in the region to ascertain sources for demanding ransom,



using festivals etc. to demand and collect it. Spreading atmosphere of terror by resorting to *gundaism* is also brought on record. Those participating in acts of *gundaism* were harboured ie assisted financially and their families were also looked after.

198. This statement shows acceptance of amount of Rs.30 lakhs to eliminate Corporator Kamlakar Jamsandekar by accused No.1 and his assurance to accused Nos.6 and 7 for that purpose. It also shows distribution of money to other persons in organization for getting that work done. It supports the facts disclosed by accused 10 Babu Gurav. Nonmention of fact of grant of time to reconsider decision to confess given to him & wrong mention of year "2007" in his confessional statement, are therefore not the fatal defects.

199. Next important material is the confession of accused 3 Ashok -friend of accused 4 Narendra who knew Vijay also. PW- 17 Vinay Kumar Chaubey has proved his confessional statement. Perusal of Part II of confession of accused No.3 Ashok Jaiswar shows that he happens to be a school friend of accused No.4 Narendra Giri. In February' 2007, he received a phone from Vijay, maternal uncle of Narendra on mobile No.9224676768. Vijay had made that call from PCO in Dahisar and told him to meet at



Mangatram Petrol Pump in Bhandup. Accordingly, at 6.30 in the evening he went there. There Vijay told him that a person was to be killed and for it amount of Rs.2.5 lakhs would be paid. Vijay told him that this work was given by Babu. On next day he was called at 10.00 a.m. at Sakinaka junction. On next day he met Narendra and Vijay, one more person was accompanying them and Vijay told that his name was Babu. (This Babu is accused 10.) Babu then gave a call on his mobile and informed that Ashok, Narendra and Vijay had reached. Then they went to nearby hotel, had tea and came to H.P. Petrol Pump in the vicinity.

200. Two persons arrived on motorcycle there. Babu told their names to be Pratap Godse and Ajit Rane. Babu took Vijay with him and then those four went to one side and had a talk. Pratap and Ajit left thereafter. Babu took them to Chandivali and showed them office of Amit Travels. They were called in that office at 10.00 a.m. on next day. Vijay called him (Ashok) near Rambaug police chowky at Pawai at 9.30 a.m. on next day. Vijay accordingly reported at 9.30 a.m. Vijay, Narendra and Anil Giri were present there. Vijay then informed Babu on mobile about their arrival. Then four of them went on foot to office of Amit Travels. Office was closed. Shortly Babu arrived on Discovery Motorcycle. He then



called Pratap on mobile and then left on foot. He returned shortly with office keys. Babu opened the office with the said keys. Vijay and Narendra entered office with Babu. He and Anil were standing outside the office on road. They also saw Pratap entering the office.

201. Vijay and Narendra then came out and informed them that they have seen the goods and Ashok and Anil should also see it. (Here the context in which word “goods” is used implies weapons.) All four went into the office. A bag was kept on table. Vijay took out gun, two bullets and three knives from that bag. Ashok and Anil then came out. Vijay and Narendra followed them. They were standing outside. After some time Babu came out and he gave Rs.10,000/- to Vijay. Vijay told Ashok and Narendra to come on next day to office to collect the bag containing weapons. Ashok then saved mobile number of Babu in his mobile. Vijay also gave mobile numbers of Ashok and Anil to Babu. Then they left that place.

202. This confession as recorded therefore shows that it is in consonance with the story narrated by accused No.10-Babu or accused No.4-Narendra. Accused No.3-Ashok in his confession further states that on next date at 9.30 a.m., Narendra, Ashok



reached Amit Travels They found office shut. Ashok therefore called Babu on mobile and Babu arrived near office and went away. He returned back with office keys and opened the office. He took out bag containing weapons from drawer of the table and gave it to Narendra and he also gave Rs.10,000/- to Narendra. Ashok then returned home. In the evening, Vijay gave a phone call and informed Ashok that Babu had given discovery motor cycle to them.

203. As directed by Vijay he reached office of Amit Travels on next day. Vijay, Narendra, Amit and Babu were present there. Pratap Godse also arrived and then a boy also came. Pratap told them that name of that boy was Addu. He informed them that said boy would show to them the person to be eliminated and his house. On discovery motorcycle, Narendra, Amit and Addu left and returned after one hour. Narendra and Anil told that Addu had shown to them subject and his house. Thereafter everybody returned to their respective houses.

204. This narration therefore is in consonance with the story narrated by accused No.4-Narendra.

205. Ashok in confession adds that from 10.00 a.m. till 1.00



p.m. on next day and thereafter continuously for 10-15 days, they continued to search for subject at Asalpha village Andheri-Ghatkopar link road and subject was not seen. After showing that house to accused No.3-Ashok they described to him personality of subject and also told that said person was putting *tilak* of red colour. These four persons were searching for him separately. They were parking their motorcycle in front of a Country Liquor Bar near bus stop in Asalfa village. They used to pick up the bag (of weapons) in the morning and used to deposit it back in the office in afternoon. During this period they used to take food at Kamal hotel. These efforts were being informed by Vijay to Pratap using mobile of Ashok and Anil. Pratap used to scold them.

206. This therefore shows that confession by accused No.3 is in consonance with the facts disclosed by other accused persons in their confessions.

207. On 2.3.2007 these four persons reached office of Pratap. Anil demanded money from Vijay. Vijay refused. Anil got angry and left the place. Therefore, Ashok, Vijay and Narendra collected bag and reached Asalpha village. As usual they were moving separately in search of subject person. In the afternoon, Pratap called Vijay on mobile of Ashok and told him that said



person was to go to Bhatwadi funeral ground. At the same time one funeral procession started in the area. They followed it to Bhatwadi funeral ground but said person was not found. Vijay communicated this to Pratap on telephone. Pratap told them to immediately go to house of that person. In the afternoon at 3.30 they reached his house. That person was sitting with 3-4 men. Hence, they had to wait again. After one hour, Ashok went near the said house and found that said person was sitting alone on chair. He came back and told it to Vijay and Narendra. Vijay and Narendra then entered the lane and went into the toilet located on left hand turn. Vijay took out the gun from bag in hand of Ashok and loaded one bullet in it. He placed other bullet in his pocket. He (Ashok) and Narendra also took a knife each in their custody. He (Ashok) concealed his knife in socks. Thereafter on foot, they reached near house of deceased.

208. Ashok stood near window while Vijay and Narendra went ahead towards door of house. Narendra stood outside the door. Vijay took out his revolver and came near room. He fired one bullet on said man. After hearing sound of bullet, running, they came out. Narendra started motorcycle and other two sat pillion. They escaped and reached one lane in Narayan Nagar, They left



the motor cycle there. Vijay called Pratap on mobile phone and informed him that work was done. They also informed him that motorcycle was left in front of Masjid at Narayan Nagar. For making this phone call, mobile of Ashok was used. On foot they came to the toilet. There Vijay put gun and one round back into the bag with accused Ashok. He and Narendra also kept the knives in the bag. Vijay entrusted that bag to Ashok and asked him to go to his house. Accordingly, accused No.3 Ashok returned to his house. On next day, after reading newspaper, he learnt that person murdered was Kamlakar Jamsandekar.

209. Two days after this Vijay phoned him and asked him to reach to Borivali National Park with bag. He accordingly went there and handed over bag to Vijay. Vijay then gave him Rs.4,000/- and promised to pay balance amount. Ashok then left that place.

210. Vijay then called him and informed that police had arrested Ajit & Pratap, and hence there was no chance to receive balance amount. In December 2007, when Pratap and Ajit were released on bail, Pratap and Ajit refused to pay balance amount. Pratap and Ajit demanded the bag back. Vijay told them that after the money was received, bag and articles would be returned.



Ashok also told that he was arrested on 26/4/2008 with Vijay and Narendra and weapons at Girgaon, Mumbai.

211. We have already compared above the material appearing in confession of Babu@Shrikrishna & Narendra@Kandi. Same exercise need not be repeated here. Needless to mention that none of the Counsel have even attempted to demonstrate any inconsistency between the facts narrated in the confessions.

212. DCP PW-23 Shri Vijay Sigh Jadhav proves confession made by accused no. 5 Anil. Part II statement of accused Anilkumar Giri also supports the facts disclosed by other accused persons. He also states that his uncle Vijay Giri and his maternal nephew Narendra @ Kandi (both accused) ply auto-rikshaw. He knew accused 3 Ashok also. A police case is registered against Anil at Kurar police station. He supports the story that Vijay made a call and brought everybody together. He received phone call from Vijay on his mobile No.9323709336 and he was told to come at 10.00 am at Dindoshi Bus depot next day. On the next day, there he met Vijay and Narendra. Vijay told him that they had to kill one person and accused Babu Gurav was to pay them Rs.2.5 lacs. He also told them that the friend of Narendra by name Ashok was with them. Thus he supports the story as narrated by other



accused persons. He thereafter gives his version that initially he had tried to dissuade Vijay but then Vijay told him that he would get Rs.50,000/- and he had to only drive the motor bike. As he needed money for the marriage of his sister, he agreed. Vijay then told him to wait near his house at Film City Road, Vagheshwari Mandir on the bus stop. Next day, Vijay and Narendra came by bus. He also boarded same bus and they got down at Rambaug Police Chowki, Pawai. Ashok also came there shortly and all of them, on foot, came to office of Amit Travels at 10.00 am. This narration therefore, again supports the story as narrated by the others.

213. One person came there on motor cycle and Vijay introduced that person as Babu. Babu went on foot somewhere and came back after short time. He had brought a key and opened the office. Vijay and Narendra went into the office with Babu. He and Ashok were standing outside. Vijay and Narendra came out after some time and informed that they had a look at the material (weapons) and Anil and Ashok can also have look at it. All four accused again went in the office. In the office, Vijay opened a plastic bag and showed them one gun, two bullets and three knives. At that time, apart from Babu, two other persons were also



present in the office. Afterwards, Anil and Ashok came out and shortly thereafter Vijay and Narendra came out. Babu then came out and paid to Vijay Rs.10,000/-. Vijay gave Anil's mobile number 9323709336 and mobile number of Ashok i.e. 9224676768 to Babu. Then they returned home. On way, Vijay paid Rs. 1,000/- to him. Thus this narration also corroborates the version of other accused persons.

214. On the next day, Vijay called on his mobile and informed that Narendra would come on bike to pick up Anil and both of them should reach the office. On the next day he and Narendra came to the office on bike. Thereafter Vijay and Ashok came there. One boy came to office and the person sitting in the office introduced that boy as Addu. That person explained that Addu would show to them the concerned person and place.

215. Then he (Anil), Narendra and Addu left on same bike and went to Asalpha village, Ghatkopar. They left their bike at Andheri- Ghatkopar link road and followed Addu on feet in Asalpha village. Addu showed to them one house and told that the said person was residing in it and that he was not at home. All of them, then returned on foot to the place where the bike was parked. Half an hour thereafter, a person got down from auto and Addu



drew their attention to him. That person had a red colour “tilak” on his forehead and Addu told them that the said person always applied tilak like that only. That person went towards his house on foot. All three then returned to office and told it to Vijay and Ashok. Then for the first time Vijay told him that the names of other two persons sitting in the office were Pratap Godse (accused no. 12) and Ajit Rane (accused no. 13). Thus this version also is in accordance with the story narrated by accused Ashok or Narendra.

216. Anil states that for the next about 15 days, four of them were searching for that person and he was not to be found. Whenever Vijay used to contact Pratap or Babu on mobile, Pratap Godse used to scold them on delay. During this search, they always parked their bike at Andheri-Ghatkopar Link Road, Asalpa village, in front of a country liquor bar. This again is in accordance with the story narrated by the others.

217. On 02/03/2007, when these four persons reached the office to collect the weapons, Anil demanded Rs.200/- from Vijay and Vijay refused. There was quarrel between Vijay and Anil and Anil left for his home. This is again in corroboration of statement of others. In the evening, Vijay informed him on telephone at about 5.30 pm to 6.00 pm that the work was done and Anil should



not move out of his house. When he watched the television news, he learnt that Kamlakar Jamsandekar, Shivsena Corporater was murdered at Asalpha village. On the second day, Vijay invited him on telephone at Borivali National Park. He reached there in the afternoon. Vijay paid him Rs. 1,000/- and told him that the balance amount would be paid latter on. Anill then returned back to his home. He did not get the balance amount thereafter and he was arrested on 26/4/2008. This version therefore, again appears to be in consonance with the narration of facts by the other accused persons.

218. PW-18 Shri Dilip Sawant is the DCP who recorded the confession of Accused No.15-Suresh Patil. Suresh Patil has stated in his confession that he is also known as *Mothi* Bank. He is residing since his birth in Byculla, Dagdi chawl. Since 1997 he has been working as watchman on main gate of Dagdi chawl of Arun Gawli gang. He used to check people coming to meet Arun Gawli and regulated their entry. A person by name Sada Pavle had placed him as mathadi kamgar at Vashi Market with PW-25 Vishwanath Ingale. He and Vishwanath were not working at Vashi market but still getting salary. He was doing private jobs of Sada



Pavle for this obligation. As he did not get any other job, he started working for Arun Gawali gang.

219. Since 2001, Arun Gawali entrusted him work of looking after financial affairs. Arun Gawali used to pay him Rs.15,000/- p.m. for it. He was also getting paid for his additional expenses. He was popularly known as *Mothi* Bank. Arun Gawali and members of his gang used to collect extortion money from builders and cable operators. People / victims of extortion were threatened by bringing them to *Bhajanachi kholi* located on ground floor of Gitai building in Dagdi chawl. Bhajanachi kholi was owned by Sunil Ghate who is accused no. 20. Some secret works of Arun Gawli gang were transacted from second floor of Gitai building where office of Arun Gawli was located. As per instructions of Arun Gawali, motor vehicles, motor cycles were purchased in the name of various persons and those persons were paid monthly allowances through funds with Arun Gawali. These vehicles were used for gang work.

220. The members of Arun Gawali Gang and office bearers of Akhil Bhartiya Sena used to furnish information from their region to Arun Gawali. Motiram Mahadik, resident of Mandar Niketan Chawl, Byculla; working for gang used to collect ransom amount



from builders and deposit it with him. Similarly, Sunil Ghatе (accused no. 20) and Babu Dige used to collect amount of Rs.1.5 lakhs every month from cable operator Arun kumar Singh (PW-6) of Mazgoan and deposited it with him for Gawali gang.

221. Pappu Savla and his partners Pankaj Shah, Vinod Bhagat, who were running Matka business, Jaya Bhagat running Kalyan Matka used to provide financial assistance to Arun Gawali gang. Hence their gang had killed Vasant Shah and Manish Shah at the instance of these parties. Because of this Pappu Chawla used to pay Rs.5 Lakhs every month while Jaya Bhagat used to pay Rs.1.5 lakhs every month to the gang. Prabhakar Raut of their gang residing at Dagdi chawl used to collect money from Pappu Savla while Suhas Rege used to collect amount from Jaya Bhagat.

222. Either he (Suresh Patil) or then Vishwanath Hinge (PW-25) used to make entries of these amounts in diaries. Out of funds so accumulated, payments to members of gang and relatives of deceased gang members, office bearers of Akhil Bhartiya Sena, salaries of watchman, security and expenses of dinner, breakfast of visitors were defrayed. Apart from this, entire expenditure of family of Arun Gawali and their other expenses were also entered into in small diaries by him. Arun Gawali used



to inspect those entries. When Arun Gawali was in jail, accused no. 20 Sunil Ghate managed the affairs.

223. At the beginning of December 2006 Arun Gawali instructed him that *supari* (contract) to kill Shivsena Corporator Kamlakar Jamsandekar of Sakinaka was received by Pratap Godse & Ajit Rane from accused No.6 Sahebrao Bhitande and deceased accused No.7- Bala Surve and they were coming to Dagdi chawl. Accordingly, in second week or third week in the afternoon Ajit Rane and Pratap Godse came to office of Akhil Bhartiya Sena in Gitai building. He was given a phone call to come to that office. Accordingly, from second floor he went to that office. That time computer operator accused No.9-Sandeep Gangan was present. Except Ajit Rane, other 5 persons came to second floor. At that time Pratap Godse was carrying a brown colour bag. After coming to office at second floor, he closed door from inside. This narration in confession statement by Suresh Patil supports disclosure by accused No.9-Sandeep Gangan.

224. Pratap Godse disclosed that said bag contained Rs.30 Lakhs and that he was making it over bag to Arun Gawali, Arun Gawali signaled him to receive it. Accordingly, he (Suresh Patil) took that bag. At that time Arun Gawali told Sahebrao and Bala



Surve that work of Jamsandekar would be done and they should not worry. After this promise Pratap Godse, Sandeep Gangan went down with Bala Surve. This narration also supports disclosure by Sandeep Gangan.

225. Accused No.15 then disclosed that he kept said bag in an almirah in room. Arun Gawali told him to give money, if demanded by Pratap Godse and Ajit Rane for expenditure. In January'2007 in first week, upon instructions from Arun Gawali he paid Rs.60,000/- to Pratap Godse through Sandeep Gangan. Again this disclosure supports narration of accused No.9 Sandeep Gangan.

226. He then pointed out the elections conducted on 10/1/2007 in Mumbai Mahanagar Telephone Limited. His narration is in consonance with narration of accused No.9-Sandeep Gangan and it is therefore not necessary to reproduce it here.

227. Accused No. 15 (Suresh Patil) then disclosed that in March 2007 Pratap Godse and Ajit Rane were arrested in connection with murder of Kamalakar Jamsandekar. Thereafter as directed by Arun Gawali, he paid Rs.20,000/- to mother of Pratap Godse.



228. After Arun Gawali was arrested in April 2008, they all started keeping away from Dagdi chawl. As directed by accused no. 20 Sunil Ghate, he took in possession diaries in which accounts were mentioned, attendance registers, two mobile phones of Nokia Company of Arun Gawali from office on second floor. He placed all these articles in a bag and handed over that bag to Ankush Gharkar, resident of first floor of Gitai Building at Dagdi chawl. Thereafter he left Mumbai and went to Pune first and thereafter to Aurangabad and lastly to his native place.

229. Police arrested him on 26/6/2008 and handed over to Crime Branch , Mumbai. He then took out said bag in presence of panch witnesses and gave it to police.

230. He also states that because of terror of Arun Gawali and under instructions of Advocate, earlier he had stated that he was not giving confessional statement. However, later on he started repenting for his mistakes and hence voluntarily, he gave confessional statement.

231. Confession of accused 11 Dinesh Narkar is recorded by DCP PW- 20 Shri Yadav Dhum. This accused, in his confession statement recorded on 5/6/2008 submitted that he was 23 years



old and residing in Room No.46, 4th floor, Sanjivini Prasad, Khedgalli at Prabhadevi. He has taken education up to 11th standard from Elphistan College and then worked in different companies. Offences were registered against him at Dadar, Worli and Crime Branch. As he was visiting Dagdi Chawl, he was knowing workers of Akhil Bhartiya Sena and its office bearers as also some gundas. He got acquainted with Kurla Taluka Vice President of Akhil Bhartiya Sena Ajit Rane, resident of Sakinaka and its North-East region President Pratap Godse. Thereafter he used to visit office of Ajit Rane at Parerawadi, Sakinaka. In that office he got acquainted with Babu Gurav and Mohd. Sharif @ Guddu. One Sanni Shirodkar in his area introduced him to Pradeep Shinde. He was aware that crimes were registered against Pradeep Shinde. In June 2005, he took Pradeep Shinde to office of Ajit Rane and introduced him to Pratap Godse, Ajit Rane, Babu Gurav, Pintu, Mohd. Sharif @ Guddu etc.

232. In May 2006 he, Pratap Godse, Babu Gurav and Raja Gulekar went to Kharepatan in Tata Sumo of Ajit Rane. There they met Ramchandra @ Dhaktya - a relative of Babu Gurav and went with him to village Vilaye in Rajapur. He learnt that Pratap then had inquired with a person by name Panchal about manufacturing



a gun. On next day Pratap Godse paid Rs.3,000/- as advance to said Panchal. They returned back to Mumbai.

233. In August 2006, on say of Pratap Godse he and Babu Gurav again went to Kharepatan and with Dhaktya to Vilaye and contacted Panchal. Along with gun prepared by Panchal they came to Kharepatan. He learnt that Panchal then gave some cartridges to Babu and also a trial by firing of one round. As next day happened to be "dahikala" - a festival, he and Babu returned to Mumbai on same day. At that time gun and cartridges were given to Babu by wrapping it in Alu leaves (a leafy vegetable with large leaves). Dinesh says that he was aware that said gun and cartridges were then given by Babu to Pratap in Mumbai.

234. In January 2007, Pratap Godse and Ajit Rane had inquired with him about killing Kamlakar Jamsandekar but he refused. Thereafter Pradeep Shinde told him that Pratap Godse had made similar inquiries with him. Dinesh advised Pradeep to refuse and accordingly Pradeep communicated his refusal to Pratap.

235. In election of Municipal Corporation in February 2007, Ajit Rane contested on ticket of Akhil Bhartiya Sena but lost and



Kamlakar Jamsandekar won from that ward with huge majority. In March 2007, he learnt about murder of shivsena corporator Kamlakar Jamsandekar by firing bullet. He learnt that Sakinaka police arrested Pratap Godse, Ajit Rane and others.

236. This witness therefore brings on record the important posts held by accused Pratap Godse & Ajit Rane in the organization ABS of which accused 1 Arun Gawali was the founder & head. It also points out the office of accused Ajit Rane & visits of accused 10 Babu @ Shrikrishna to that office. Facts leading to search & procurement by Ajit & Pratap of a handgun manufactured illegally, also supports the criminal activities of the ABS. However, the prosecution could not establish his status as a member of ABS or as a criminal assisting or facilitating the CULA of ABS. He is not privy to murder of Kamlakar Jamsandekar. Trial Court therefore has acquitted him & State has not questioned it. His exoneration however does not render his confession recorded under S. 18 of MCOCA inadmissible.

237. PW-5-Pradeep Shinde is the important witness who supports the confessional disclosure by accused 10 Shrikrishna @ Babu. Pradeep turned down the offer of Rs.2 Lakhs and a revolver given by accused No.12-Pratap Godse for eliminating Kamlakar



Jamsandekar. He, in consultation with accused No.11-Dinesh Narkar refused it as the consideration offered was inadequate. He also supports the efforts to attack Shri Solanki (a rival) in Sewree court and cause of its failure narrated by Shrikrishna.

238. PW-6 Arun Kumar deposes and points out payment of ransom of Rs. 1.5 lak to the members of gang of Arun Gawali. He supports the confessions already referred to supra. He shows role of accd. 20 Sunil Ghatе & Babu Dige in this extortion. In the month of June 1998, first he went to the ground-floor of the building in Dagadi Chawl. One person came and took him to the ground floor room of 'Geetai Building'. That person introduced himself as Sunil Ghatе (A-20). Sunil Ghatе (A-20) made a demand of Rs. 5.00 Lacs per month as an extortion money as PW-6 Arunkumar was doing business in that area. Sunil Ghatе (A-20) told him that Daddy had asked him to make such demand. He also threatened PW-6 Arunkumar with dire consequences, if the demand was not fulfilled. Though he has disclosed the facts belatedly ie after several years, that by itself can not be used to disbelieve him. Receipts of the entertainment tax, for the period from 1993 to 1998 (Exh. 170 Colly.) & registration certificate of Ashish Vision Cables for the period from 2003 to 2010 vide Ex. 172



lend credence to his narration. No doubt his statement under S. 164 has been recorded after giving him requisite understanding about the possible consequences, that does not mean that under coercion, he was made to depose on stipulated lines pressurizing him. On the contrary, it shows that he was given a fair chance to evaluate & deliberate. He has produced the license in the name of Ashish Cable Vision of year 2003 & income tax returns for year 2003-2004 as also for years 2005 and 2008. Record at Ex. 170 Coll. show payment of entertainment duty for years 1993 to 1998 but the same are in the name of Sunny Cable Services. There is no material to show that either PW-11 or accused 11 were at any time associated with this business. Omissions brought out in paragraph 7 of his cross-examination are not fatal. Payments made by him are supported by entries in diaries recovered under S. 27 of Evidence Act from accused 15 Suresh Patil.

239. PW-28 Mahesh Shah has been examined to prove extortion by Bhartiya Kamgar Sena. Mahesh is the owner of photo studio by name "Hetal Photo Studio" and he has pointed out regular payments to crime syndicate of accused No.1-Arun Gawali over a long period. As per his deposition, he was purchasing goods/material from one Chandrakant Shah, Secretary of All India



Photographic Trade and Industries Association. Establishment of Chandrakant Shah is named as “Angel Photo”. Mahendra Shah is relative of Chandrakant Shah and known to Mahesh. Mahendra sometimes stayed in America. In 2005, Chandrakant informed Mahesh that Mahendra was receiving calls demanding money in the name of accused No.1-Arun Gawali . Mahendra therefore wanted to pay Rs.2 Lakhs per month to accused No.1-Arun Gawali. Chandrakant told Mahesh that amount of Rs.2 Lakhs would be kept in photo studio of Mahesh for being paid to Arun Gawali. Accordingly, Chandrakant was keeping amount of Rs. 2 Lakhs every month with Mahesh and person of gang of Arun Gawali used to collect it on 4th or 5th day of every month through person named Prabhakar. Prabhakar used to tell Mahesh that entry of payment would be made in diary. Mahesh went to Crime Branch in July 2008 and then learnt that amount was being shown as paid by “Hetal”. We need not dwell more on this witness. Though trial Court has discarded his evidence in toto, the fact that payment from “Hetal” is reflected in diaries seized at the instance of accused No.15-Suresh Patil is not in dispute.

240. Appreciation of deposition of PW-25 Vishwanath, PW-10 Ankush & PW-9 Amrut is equally helpful here. This exercise needs



to be preceded by the consideration of impact of an entry pass to Mantralaya. Its verification is done by PW-37 Shri Duraphe vide Ex. 461. Verification shows that the letter sent by Arun Gawali referred to in it is on letter head of as also under signature of accused 1. Prosecution relies upon it to urge that PW-25 Viswanath, PW- 10 Ankush Gharkar & accd. 15 Suresh Patil worked together & are knowing each other.

241. PW-37 ACP Ashok Duraphe has proved the letter dated 20.2.2009 with annexures as Ex. 461, colly. This letter is written by chief Secretary, Maharashtra Legislative Secretariat and this witness is informed that accused 1 Arun Gawali has on 28.1.2008 sent a letter on his letterhead to permit entry of the staff of ABS to visit the party office in Secretariat ie Mantralaya premises. Shri Gawali requested the Chief Secretary to take back the old identity cards & to issue new ones to the persons named in it with their designation. Accordingly the entry passes valid till 31.12.2008 were issued to Suhas Vilankar- Assistant, Vishwanth Hinge- clerk (PW-25), Nilesh Ingawale- typist, Vasant Raut- Typist, Ankush Gharkar- peon(PW-10), Suresh Patil- Clerk (accused 15), Rajendra Sandwilkar- assistant. This deposition & the documents are not



challenged by way of cross-examination by any of the accused persons.

242. It is in this backdrop that we have to appreciate the evidence of PW-10 Ankush Gharkar & PW-25 Vishwanth Hinge. Thereafter its impact on the confessions given by accused 9 Sandip @ Sandy, accused 10 Shrikrishna @ Babu & accused 15 Suresh Patil can be looked into.

243. PW-25 Vishwanath Hinge, age 39 years has been residing in "I" building of Dagadi Chawl since his childhood. He knows accused 1 Arun Gawali @ Daddy as one of the prominent personalities residing in said chawl. He also knows accused 20 Sunil Ghate for the same reason. Arun Gawali resides on third floor of Geetai building while he has office on first floor. Sunil Ghate resides in "F" building. This witness does not know whether Sunil Ghate has any other room in Dagadi Chawl.

244. PW-25 identified accused 1 & accused 20 in Court but stated that he did not know the other accused present in Court. He was not aware of the business of Arun Gawli or why he was put behind the bar. He states that he does not know the other visitors of Dagadi Chawl. He was paid for canvassing for Arun Gawali in



election. He denied that he was not paid for it. He has also denied that he did any writing work for the accused Arun Gawali. He was asked to peruse the handwriting on each page in 12 diaries in which the accounts were mentioned and were recovered at the instance of accused 15 Suresh under S. 27 of the Evidence Act. He stated that none of the entries or pages were in his handwriting. He also deposed that there was no pressure on him while giving the evidence in Court. However, he voluntarily stated that after arrest of Daddy, he was summoned by police continuously for 3 months in police station & was also thrashed. 5 to 6 months after that arrest, police had taken him to the Magistrate twice for recording his statement. Before the magistrate, because of threats by the police, he gave the statement as directed by police. On second occasion, the Judge & he were the only persons present & the judge did ask him to state whatever he wished & he was not administered any oath.

245. The trial court then declared him hostile & permitted Special PP Shri Thakre to cross-examine him. Sealed cover containing his statement recorded u/S 164 CrPC by the metropolitan magistrate was then opened. Vishwanth stated that he and the magistrate were the only persons present when his



statement was recorded, the magistrate put him questions which he answered & the answers were recorded & then he signed it. (After he identified his signature, this statement was given the exhibit number 308.) He was then produced before the same magistrate on 22.7.2008 when same procedure was followed. He accepted that when the magistrate inquired, he told him that he was not having any fear in the mind. Vishwanth volunteered that police who had told him that they would come to know immediately, were then just outside the court of the Magistrate & hence, he did not complain to the magistrate. He signed each page of his recorded statement & initialed the corrections in Ex. 308. He did not complain from 22.7. 2008 till that date to anybody against the police.

246. He stated that he was not knowing any Sada Pawle or Suresh Patil. He did not identify Suresh Patil in Court when shown. He stated that he was not knowing that Arun Gawali came out of jail on bail in 1998. He stated that portion mark A in his statement dated 12.7.2008 was not stated by him to police. He also stated that he did not tell police that Suresh Patil was maintaining the accounts of income of Arun Gawali & he was assisting Suresh in said work. He denied to have made statement at portion "B & C".



He denied to have known Motiram Mahadik, Sudhir Ghorpade and Babu Dige. He was not aware that Arun Gawali provided financial assistance to the families of those who were killed in police encounter or gangwar. He denied the statement as recorded at portion "D". He could not explain why these portions "A to D" appeared in his police statement. He denied that the diaries at Art. 3 were in his handwriting. He denied that police had obtained his specimen handwriting. According to him only signatures were obtained. He did not complain to superior police officers at any time about the treatment or threats by police .

247. He was on cordial terms with his neighbours in Dagadi Chawl & subject of arrest of Arun Gawali becomes talk of Dagadi Chawl. He denied that Arun Gawali is dreaded gangster & people are afraid of him He denied that because of said fear, he was not giving evidence. He denied that when Gawali is in jail, Sunil Ghate looked after the gang affairs & he (Vishwanath) was afraid of Sunil.

248. He has been cross-examined and stated that there were 7 buildings in Dagdi Chawl. After arrest of Arun, police had continuously summoned him and 30 persons from Dagdi chawl to crime branch unit III. He was beaten up & asked to give the statement against Arun Gawali. He was taken to the Metropolitan



Magistrate against his will & he gave statement there due to fear of police and also did not complain. After 2 months of the commencement of trial, Shri Dhamankar had asked him to come to office of crime branch with preparation to stay for two days and accordingly, he stayed there. During that period he was asked not to leave that office & a person by name Gharkar was also there. (Ankush Gharkar is PW-10). He was asked to leave the office of crime banch 10/11/2010. He thereafter received the summons in the case on 03/03/2011. Portion marked "A" to "D" in his police statement militate with his denial thereof as noted supra. His statement under S. 164 CrPC at Ex. 308 shows that he was cautioned fully by metropolitan magistrate on lines as adopted while recording confession of the accused u/S/ 18 of MCOCA and then he was given time till 22.7.2008 to think & make up his mind again. On next day he was again made aware about the consequences and to ward off wrong influence or misconceptions, if any on him. This statement under S. 164 CrPC by him is in consonance with the story put by Spl.P.P. Shri Thakre to him during his cross-examination.

249. Ex. 308 shows that Sada Pawle was a goonda of Arun Gawli who arranged for his employment and employment of



Suresh Patil (accused 15) with APMC. Monthly wage of Rs. 3500 to 4000/ was being received by them without reporting to APMC. In return, both of them used to do household work of Sada Pawle. In 1998, Arun Gawali was released from jail and boys in Dagdi Chawl started sitting on gate as “watchers” ie as guards. He & Suresh Patil learnt that said boys might be getting Rs. 1000/ to 1500/ as salary, hence they also started sitting on gate. However they were not paid salary for two months. In absence of Arun Gawali, Sunil Ghate used to look after the gang work. Arun Gawali then gave work of managing financial affairs of the gang to Suresh Patil. As asked for by Suresh Patil, he started helping him. Entry of name of person giving money was written in the small diaries Accounts of income & expenditure were written. Arun Gawali was residing with family on third floor of Gitai building and had his office on 4th & 2nd floor Office of ABS was in ground floor & party affairs or monetary transactions were carried out in it. There were two rooms in the name of Arun Gawali & Sunil Ghate which were joined together to form a “Bhajanachi Kholi” ie room for singing prayers. Builders, Cable operators & Merchants were threatened to fix the quantum of monthly protection money in that room.

250. Goondas of Arun Gawali by name Motiram Mahadik and



Sudhir Ghorgade used to bring the ransom from builders and person by name Lallya used to help them. Sunil Ghate & Babu Dige used to collect extortion amount from cable operators. Pappu Sawal & Jaya Bhagat used to assist Gawali gang financially through Motiram Mahadik & Suhas Rege. In “navrartri celebration” & “Dahihandi kala”, large sums were extorted from traders as contribution. Out of fund so collected, the goons & families of those killed, were given help. Expenditure on festival, salaries of staff, watchmen, of ABS branch presidents, purchase of new cars, funds spent on fuel etc. was written in diaries by them. Arun Gawali used to inspect those diaries. On 12th July, 2008, Shri Dound of Crime branch, Unit 3 called him & diaries 1 to 12 already seized were shown to him. He then identified his & Suresh's handwriting in it. Shri Dound then inquired whether he (Vishwanath) would disclose whatever he told to him in court & Vishwanath agreed.

251. PW-9 Amrut is witness on discovery after disclosure by accused 15 Suresh Patil u/S. 27 of the diaries containing the accounts from custody of PW-10 Ankush. Accused 15 has in presence of PW-9 volunteered to handover the bag containing the accounts & documents of Arun Gawali gang which was left by him



with his friend PW-10 Ankush. PW-9 Amrut proves memorandum of disclosure at Ex. 183, fact of accused 15 leading them to PW-10 Ankush at room no. 11 of Gitai building & then Ankush handing over the bag on direction of accused 15 which contained documents of accounts maintained by accused 15. There were 10 to 12 diaries and some loose papers as also two cell phones. Diaries were numbered serially as also the loose papers. Pages of diaries were also counted. The other formalities were done & the panchanam was signed by PW-9 as also PW-10 Ankush. PW-9 identified all articles shown to him. PW-9 identified accused 15 Suresh & proved seizure panchanama Ex. 183A. Trial Court marked the cell phones, 11 small diaries and other documents. We find that cross examination of PW-9 Amrut does not in any way derogate from his oath & on the contrary proves his visit to the Gitai building and putting various signatures as a part of exercise of seizure, in Giatai building only. He does not state that he was forced to sign on some other date or at some other place. This material therefore supports the confessional statement of accused 15 Suresh.

252. Deposition of PW-10 Ankush Gharkar reveals that since 8 years he was residing at room no. 11 & worked as security guard



for 18 years. He has turned hostile & deposed on same lines as that of PW-25 Vishwanath. He claims that he was not knowing any neighbour and though he knew accused 1 Arun Gawali as M.L.A., relations with accused 1 were not like neighbour. However he also states that whenever he needed some favour like school admission of a child, he met Arun Gawali, he assisted him in election work and not in domestic work. He did not identify accused 15 Suresh but knew accused 20 Sunil Ghate as ex-corporator but was not aware who managed affairs of accused 1 when he was in jail. He stated that police had asked to sign him on bunch of papers. His cross examination by Spl PP after he was declared hostile, does not show material difference than that with cross-examination of PW-25. This witness however accepted his signature on recovery panchanama Ex. 183A relating to discovery of the diaries and explained that police threatened & forced him to sign without reading it. But then the material looked into by us shows falsehood in his allegation of police forcing him to sign. The document like entry pass to Mantralaya at Exhibit 461. expose PW-25, PW-10 Ankush & accused 15 Suresh. It proves that they all know each other & worked together.

In **C.B.I. vs. V. C. Shukla, (1998) 3 SCC 410, at**



page 420, the trial court ordered that the charges for offences under Section 120-B IPC and Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 be framed against all the accused namely, L.K. Advani, S.K. Jain, J.K. Jain, B.R. Jain and N.K. Jain, further charges for offence under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 be framed against the accused L.K. Advani and further charges for offence under Section 12 of Prevention of Corruption Act, 1988 be framed against accused S.K. Jain, J.K. Jain, B.R. Jain and N.K. Jain. Assailing this order/charges the respondents moved the High Court through petitions filed under Section 482 CrPC, which were allowed by a common order and the proceedings of the above two cases were quashed and the respondents were discharged. The order of the High Court was under challenge in appeals at the instance of the CBI. In paragraph 17, the Hon. Apex Court has explained that -

"From a plain reading of the section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business.

From the above section, it is also manifest that even if the above requirements are fulfilled and the entry becomes



admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed."

This precedent shows that the diaries must be shown to be books of account & regularly maintained in the course of business. In said precedent, the issue has been addressed at the stage of framing of charge while here the issue has been answered after recording the evidence on merits. The entries in the diaries are not required to be appreciated to recover any dues or amount or to reach the finding on murderers. Fact that such accounts were being maintained at the instance of accused 1 Arun Gawali & he inspected the entries in diaries, has been established here. This ruling therefore can not help the accused persons. There are 7 entries mentioning payment by Hetal. Though there is no separate entry about Ashish cable, entries showing consolidated payments by accd. 20 Sunil Ghatge appear in these



diaries. We find that the diaries can be relied upon to record a finding on CULA. Objection that diaries or loose papers were not sealed is not supported by the panchanama. Even otherwise, fact that signatures were obtained on loose pages & diaries when coupled with the fact that neither PW-9 Amrut nor PW-10 Ankush complain of police taking their signatures at some other place or on some other date, in effect takes away the merit from this objection. The contention that nobody has proved contents of these diaries /papers is equally misconceived & unwarranted. Entries about affairs of ABS headed by accused no. 1 are seen in these diaries discovered under S. 27 at the instance of accused 15 Suresh & he had kept the same with PW-10 Ankush Gharkar. This material therefore proves beyond reasonable doubt the activities of ABS & accused no. 1 Arun Gawali.

253. Deposition of Addu (PW-4) is the clinching material which connects the accused 10,12,13 with accused 2 to 5. PW-4 Addu @ Abdul Raheman Ashiq Ali Khan reveals that he knew Pratap Godse (A-12), travel business by name 'Amit Travels' at Chandivali Studio where he cleaned the vehicles. Pratap Godse (A-12) & Ajit Rane (A-13) were the partners in the said business. PW-4 Abdul Raheman knew that deceased Kamlakar Jamsandekar



of Shivsena was Corporator of their area. Ajit Rane (A-13) contested the election of 2007 against the deceased Kamlakar as a candidate of Akhil Bhartiya Sena. PW-4 Abdul Raheman was also knowing Babu Gurav (A-10) as he was the election officer of Ajit Rane (A-13). After the 2007 election, Pratap Godse (A-12) asked PW-4 Abdul Raheman whether he would do a work for him. PW-4 Abdul Raheman enquired him about the nature of work and he told him to point out Kamlakar and his residence to the persons shown by Pratap Godse (A-12). Ajit Rane (A-13) was present during the said talk.

254. Accordingly, PW-4 Abdul Raheman went there on next day. At that time Pratap Godse (A-12), Ajit Rane (A-13), Babu Gurav (A-10) and four other persons were present. One of the four persons was known as 'Kandi' i.e. Narendra Giri (A-4). Pratap Godse (A-12) asked him to take those four persons with him and point out Kamlakar and his residence to them. Accused Babu Gurav (A-10) gave key of the motorcycle to one of those four persons. Thereafter, he, Kandi @ Narendra Giri (A-4) and Anil Giri (A-5) went to Asalpha on the motorcycle. They stopped at one pan-stall on Link Road. Then they went towards the chawl & PW-4 Abdul Raheman pointed out that chawl to them. At that time



Kamlakar was not at his residence. Then they returned to the motor bike. After some time, Kamlakar got down from auto rickshaw and PW-4 Abdul Raheman pointed him out to Kandi @ Narendra Giri (A-4) and Anil. PW-4 Abdul Raheman also explained that Kamlakar always applied "Lal tikka" ie red tilak on his forehead. They all then returned back to the office of Amit Travels where PW-4 Abdul Raheman informed Pratap that he had shown Kamlakar and his residence to Kandi (A-4) and other person. After 10-15 days, PW-4 Abdul Raheman learnt that Kamlakar had been murdered. PW-4 identified Kandi @ Narendra Giri (A-4) & Anil Giri (A-5).

255. During his exhaustive cross-examination, this witness & testimony has not been shaken. PW-4 Abdul Raheman was not asked to attend the TI Parade but he had ample opportunity to watch Kandi @ Narendra Giri (A-4) and Anil Giri (A-5) & hence, there was no scope for any mistaken identity. Moreover, PW-4 Abdul Raheman identified Kandi @ Narendra Giri (A-4) as well as Anil Giri (A-5) in the Court. He also identified Shrikrishna @ Babu Gurav (A-10). Though he was prosecuted for an offence of rape, he clarified that it was a false charge and for it, he was in jail for 35 days. Even assuming that to be so, it does not falsify his



evidence. This deposition supports the position emerging from confessional statements which we have already appreciated.

256. It has been argued that pictures of Kamalkar Jamsandekar were available and on display in hoardings for canvassing, in the ward as he had contested the election. However, that does not mean that strangers like accused 2 to 5 should have been asked to identify the subject after viewing the posters. Moreover, they were also to be shown his residence.

257. The procurement of a country made handgun from village Vilaye through accused 10 Shrikrishna @ Babu from accused 8 Surendra Panchal by accused no. 12 Pratap, accused 13 Ajit need not detain us since it is not an essential part of the “organized crime” under consideration. Deposition of PW-11 Ramchandra Gurav & PW-8- Narendra Panchal sufficiently corroborate the confessions under S. 18 MCOCA in this respect. Arguments that PW-11 deposed falsely that he was paid Rs. 25,000/ not to depose or then delay in making complaint at Ex. 188 about it or complaining to a far off police station at Kanakavali are not material here.

258. Next question Involved is whether there is retraction?



Having considered the part II of the confessional statements and the corroboration, it will be proper to consider whether the procedure mandated in MCOCA has been adhered to and whether any of them has been retracted & what is the effect thereof.

259. We may point out here that none of the confessing accused has challenged the actual procedure followed while recording it. Only attempt made by some learned Counsel is to urge that when the accused were, after recording Part-I of their statement, given time to deliberate, prosecution has not established that they were placed in a neutral custody. In other words, they are not shown to be not in custody of the Investigating Officer. The other argument is of surprise over sudden change of heart after the approval to invoke MCOCA Act was granted on 20/5/2008. Accused rely upon material on record to urge that till then accused persons were unwilling to give any confession and after 20/5/2008, suddenly within a period of next four weeks material confession statements have been recorded. This according to them militates with its voluntary nature. They have also urged that when after recording Part-II confession statements, they were produced before the Court, at the earliest possible opportunity they have withdrawn the so-called confessions. They



have then complained of highhandedness and pressure. This fact has been overlooked by the Special Court. It is further submitted that the recording authority has at the end of confession, certified the steps or procedure & voluntary nature of the statement and below such certificate also, it should have obtained the signature of the accused whose confession it purports to be.

260. We find that the argument on situation prevailing prior to 20/5/2008 or then after recording Part-II statements need not detain us here. The question whether procedure in terms of section 18 of MCOC Act and Rule 3 of the Rules framed for that purpose has been followed or not is the cardinal question. Limited challenge to proceedings ie procedure adopted while recording confession is also mentioned by us supra.

261. The procedure followed is more or less identical in all cases. There is a change of only dates or words ie language. The steps taken are in same chronology and can be appreciated together. This procedure is so designed that if followed scrupulously, it will not permit the officer following it to record any confessional statement which is not voluntarily made. It shows an opportunity to the confessing accused to object & protest at every stage.



262. To avoid confusion, we find it proper to consider documentation in this respect in case of accused No.10 Shrikrishna @ Babu Tukaram Gurav. The Chief Metropolitan Magistrate has on 29/5/2008 addressed a communication to Special Judge under M.C.O.C, Act pointing out that accused No.1- Babu Gurav was produced before him by Mahim Police Station. He has stated that PSI of Mahim Police Station also produced letter addressed to Chief Metropolitan Magistrate along with one sealed envelope stating that it contained confessional statement made by accused in Part-I and II in compliance with section 18 of MCOC Act recorded by Shri D. N. Fadtare, Deputy Commissioner of Police, Zone V, Mumbai.

263. Part-I of the statement is recorded on 27/5/2008 by Shri Fadtare in Marathi. It mentions that the accused in arrested Crime No.69/2008, of D.C.B., C.I.D. (Sakinaka Police Station Crime No.82/2007) under sections 452, 302, 120-B 34 of IPC read with sections 3, 5, 25 and 27 of Arms Act and 37(1), 135 of Bombay Police Act with sections 3(1)(i), 3(2), 3(4) of MCOC Act was produced for recording confession by Crime Detection Branch, Mumbai through PSI Subhana Pomana Naik at 17.10 hours in his office on 27/5/2008. Name of that accused is Shrikrishna @ Babu



Tukaram Gurav & Joint Police Commissioner (Crime) Brihan Mumbai had by letter dated 26/5/2008 instructed to record his confession.

264. Officer who recorded confession ie Shri Fadtare, has written that PSI Naik and his team were sent out of his office. He, accused Shrikrishna were the only persons in his office. He then called police constable Ganesh Chabukswar and told him to close the door and instructed him not to send anybody in unless he expressly directed. He then decided to converse in Marathi with accused.

265. He disclosed his name, post and designation and also informed accused that he was not connected in any way with the offence allegedly committed by him. He inquired from accused whether he had understood it. Accused accepted to have understood it. He then explained to him that he was not in custody of police force which had arrested him and inquired whether accused understood it. Accused stated that he understood it. He then inquired whether police staff and officers arresting him had misbehaved in any manner with him. Accused disclosed that there was no such misbehaviour.



266. Then this officer proceeded to ask name and education of accused and then inquiry was made with accused why he was being produced before the officer. Babu had answered that he was aware that since he had expressed desire to give confession, he was brought before said officer for recording it. He was then asked whether he was giving the statement. He stated that in 2007 Shivsena Corporator Kamlakar Jamsandekar from Sakinaka was murdered and he was giving confession in relation to that murder. He also answered the question disclosing that he was not threatened and was not put under any fear to give such confession. He was then asked whether any assurance or promise was given to him by any police or any other person for giving such confession. He has answered it in negative. A specific question was asked whether police or such other person had assured of making him a prosecution witnesses by discharging from crime if he gave confession and he again answered it in negative. Next question put to him pointed out that confession being made by him could be used as evidence against him in trial and he could be punished on its basis; whether he was aware of this and he has answered that he was aware of this position. He was then informed by officer recording statement that if he did not give confession, he would not be sent to officer arresting him and



Investigating Officer. Similarly it was not obligatory for him to give confession. He was asked whether these facts communicated to him were understood and he has answered that he understood it. He was then put a question whether after gathering all this, he was still willing to give confessional statement. He has also answered this question in affirmative. He was asked whether he wanted his advocate or any other person to remain present when his confession would be recorded and he has answered that question in negative.

267. Last question informs him that he was being given time of 24 hours before actually recording his confession. During that period he would be in custody at Mahim Police station under said officer. He was asked to think over again peacefully whether to give confession or not. He agreed to it.

268. Shri Fadtare, officer after completing this preliminary exercise for recording confession then has mentioned that all questions were put to accused in Marathi and answers were written as per reply given by him. It was read over to him and then time of 24 hours i.e. till 28/5/2008 was given to accused to think over and to make up mind. After informing this to him, he was taken in custody by Shri Fadtare from the Crime Detection Unit,



Section-3 and he was informed that he was to be kept in his custody.

269. Recording of this Part-I statement began at 17.15 hours on 27/5/2008 and it was over at 18.40 hours. At the end of this statement signature of accused with date below it appear on right hand side. On left hand side signature of Shri Fadtare with his name and designation appears. He has also put date below his signature. In between these two signatures, round seal of office of Deputy Commissioner of Police appears.

270. After this seal, Shri Fadtare has again certified that questions and answers recorded above were read out to accused and explained to him. He was explained that it was not obligatory for him to give any confession. Answers are recorded as per replies given by accused to questions. He was intimated that time of 24 hours was given to him for thinking. He was informed that he was in custody of Dy. Commissioner of Police, Circle 5 and was being placed in custody at Mahim Police Station. No Police officer or Investigating Officer was to be allowed to meet him at Mahim Police Station and orders were accordingly issued to all concerned. Direction was given that he be produced before Shri Fadtare on 28/5/2008 at 19.30 hours. After mentioning this it is reiterated that



recording commenced on 17.15 hours and was over on 18.40 hours. Again there is a round seal and on its left, Deputy Commissioner of Police has placed his signature, date and seal.

271. Part-II statement has been recorded on 28/5/2008 by Shri Fadtare only. Shri Fadtare (PW-19) after mentioning in preamble, the events till production of accused before him , proceeded to record Part-II statement. Shri Fadtare asked police officer and Investigating Officer to go out. He ensured that in his chamber/office he and accused Shrikrishna @ Babu were only present and nobody could have seen them or overheard them. He again ascertained that accused was not under any pressure. He then started asking questions in Marathi and answers given by him were again recorded as it is.

272. By first question he was asked whether time of 24 hours given to him for deliberation was sufficient and he answered in affirmative. He was then asked whether he needed more time to think whether to give confession. He answered this question in negative. He was then asked whether he was still willing to give confession and he answered in affirmative. Question whether any police officer or investigating officer had come to contact him when he was in custody of Deputy Commissioner of Police was put



and he answered that question in negative. He was again pointed out that no law mandated and forced him to give such confession and whether he was aware of it. He did answer the question in affirmative. He was then asked whether any allurement or promise was extended to him or any threat was given to him for giving confession and he answered in negative. He was asked whether police assured him to make him a prosecution witness and to discharge him from the offence if he gave such a statement. His answer to this question is in negative. He was then informed that if he gave confession, it would be reduced into writing and would be used as evidence in Court and he could be punished on its basis. He answered that he was aware of this position. The question whether he needed any relative or advocate to remain present while the statement was being recorded, and again he answered it in negative. He was asked why he wanted to give confessional statement. He answered that as he was repenting he wanted to give confession statement.

273. After these questions-answers, Deputy Commissioner of Police Shri Fadtare has recorded his satisfaction that after hearing answers given by accused to his questions and after watching accused, he felt assured and satisfied that accused



was giving confession statement voluntarily without any pressure from anybody. Therefore he decided to record his confession and explained to accused whatever accused would disclose would be taken down in writing and then Shri Fadtare has mentioned that he started recording the confession statement.

274. Thereafter, DCP PW-19 Shri Phadtare has recorded the confession statement in Part -II. At the end of such confession statement it is recorded that said statement was read by accused and he found that it was correctly recorded. Hence, he has placed his signature upon it. Recording of this confession statement commenced at 19.40 hours on 28/5/2008 and continued upto 22.30 hours. At the end of this confession statement on right hand side there is date, name and signature of accused No.10. On left hand side, Shri Phadtare has signed with date and designation and in between these two signatures there is round seal of Office of Deputy Commissioner of Police.

275. At the end after these signatures there is certificate which mentions that it is as per section 18 of MCOC Act. In this certificate proved as Ex. 251-B, fact that accused was a suspect under MCOC offence and was produced for recording confession on 28/5/2008 finds mention. Certificate then records the move of



recording authority to explain the position to accused pointing out that it was not mandatory for him to give such confession. The fact that said confession would be used as evidence against him was pointed out to accused. Satisfaction that the confession was voluntarily given is also recorded. It is mentioned that while recording confession statement except accused No.10 Babu nobody else was present with Deputy Commissioner of Police. It is also recorded that confession was recorded in handwriting of Deputy Commissioner of police as per say of accused. It was given to accused for reading, who read it. As it was recorded as per his say and it was correct and true, accused also told accordingly and then placed his signature. At the end, it is again recorded that this confession statement was recorded between 19.35 hours to 22.30 hours on 28/5/2008. On right hand side of this certificate there is signature, name and designation of Shri Phadtare. On left hand side of this signature there is round seal of office of Deputy Commissioner of Police.

276. At the end of confession of Ashok Jaiswar, Deputy Commissioner of Police, Zone IX, Mumbai Shri V.K. Choube (PW-17) has issued similar certificate Ex. 227-A dated 29.5.2008. This officer recorded part -I statement on 28.5.2008 and at its end ,



there is similar certificate. Shri Choube has however on 29.5.2008 also after this certificate mentioned that he then drafted a letter to the Chief Metropolitan Magistrate, Mumbai informing him about it & forwarded the accused & confession in sealed envelop with Bandra police to that Court. The accused was to be taken in veil & it appears that on 28.5.2008, he instructed that police to escort the accused & to produce him in veil only.

277. Procedure followed by PW-29 D.C.P. Brijesh Sinh, Zone - 1, Mumbai is same as that of Shri Phadtare. The date at the top of Ex. 324 & 324-A mentioned as "27/05/2007" is an obvious error since other dates & developments mentioned below are of year 2008 & accused Sandip was arrested on 15.5.2008 only. Certificate at the end Ex. 324-B is without any date but then it follows that it could not have been issued prior to 28.5.2008. Accused Sandip was produced before the CMM on 29.5.2008 where his confession was read out to him & he has accepted the same to be correct.

278. PW-23 Vijay Singh Jadhav, D.C.P. (HQ-1) has recorded the confession of accused no. 5 Anil Giri & it appears that accused was produced before him in veil only. Par-I of his statement is recorded on 4.6.2008 & part -II on 5.6.2008. Shri Jadhav has followed the same procedure as that of Shri Fadtare. However he



records that the accused was sent in veil to enable him to ponder in next 24 hours over the decision to give the confession. His statement is recorded on computer and for that purpose computer operator Smt. Patil was the only third person present during the recording. He has mentioned it in certificate Ex. 289-B issued on 5.6.2008.

279. PW-18 DCP zone VI Shri Dilip Sawant has recorded the confession of accused Suresh Raghunath Patil on 13.7.2008 & 15.7.2008. Suresh thus got time of 45 hours to deliberate & he accepted the same to be enough. Procedure followed by him is as that of Shri Phadtare. Certificate Ex. 241-A issued by him on 15.7.2008 is on same lines.

280. DCP Shri Y.P. Dhum, Port Zone, Mumbai-PW-20, has recorded the confession of accused no. 11 Dinesh Narkar on 4.6.2008 & 5.6.2008 on computer. Procedure followed by him is same.

281. PW-15 DCP Shri Rajendra Dabhade of LA-2 Bruhnmumbai has recorded the confession of accused Narendra @ Kandi on 4.6.2008 & 5.6.2008 on computer. This officer has



adopted the same procedure & certificate issued by him is on same lines.

282. It is important to note what these 7 accused have done when they were produced before the Chief Metropolitan Magistrate, Esplanade, Mumbai. They are all produced before the same learned CMM.

283. On 29.5.2008, Babu @ Shrikrishna Gurav has stated at Ex. 259 that he gave his statement before Shri Fadtare after fully thinking & told him whatever was known to him. All details were disclosed by him & in court, he did not want to add anything more. He was married & has two sons who were staying with him, He was working as auto-driver. He was repenting about whatever happened & wanted to free himself from wrong done. Hence, he disclosed everything. He has thus stood by the confessional statement.

284. On 29.5.2008 itself, as per Ex. 325 accused Sandip Gangan was also produced before the CMM & he also accepted the statement read out to him to be correct. He disclosed that he is educated upto 12th standard & Marathi is his mother tongue. He



did not wish to say anything more. This accused therefore has accepted his confession.

285. As per Ex. 231 on 30.5.208 before the CMM the confession was read out to Accused Ashok Jaiswar who then stated that he was visiting Mulund & Bhandup area with Narendra. Narendra had given to him Rs. 4000/ as loan. He was a carpenter not knowing anything about the murder. As his parents were to go to Gorakhpur, he had borrowed that money & he was to return it. His statement was recorded in presence of Shri Choubey & whatever was read out to him, was incorrect. He did not give any such statement to Shri Choubey. His signature only was obtained on said statement. He knew Narendra since childhood. He was arrested from his home at Bhandup & he was not aware of any "SAMAN". Since he happens to be friend of Narendra, his name was added by mistake & he had done no crime. We will comment on this statement before learned CMM little later.

286. Accused Dinesh @ Dinya Narkar was produced with his confession on 5.6.2008 before the CMM. Ex. 271 shows that he has stated that he has no relation with the offence & did not know anything about it. He did not tell anything before DCP & only his signatures were obtained on papers already written. He did not



state anything on lines read out to him as part I & II. He did not commit any offence.

287. Ex. X-13 shows that accused 4 Narendra @ Kandi was produced before the CMM on 5.6.2008. He tells that he does not know anything about the murder & was apprehended in Dahisar. He is a rikshaw driver. Statement before DCP read out to him was wrong. He never gave any such statement to DCP & only his signature was obtained. He has not committed any crime.

288. Accused Anil Sherbahadur Giri was presented as per Ex. 296 before the learned CMM with his confession on 6.6.2008. He has then stated that he did not give any statement to DCP. Vijay Giri is his uncle. He stayed in Goregaon since childhood & studied upto 10th standard in Mumbai. He was not knowing anything about murder of late shri Kamlakar Jamsandekar, Shivsena corporator. He did not receive Rs. 1000/- from anybody, especially from Vijay. Vijay his uncle was staying in Dahisar. He (Anil) works as assistant to cameraman in Balaji Telifilms. His signatures were taken on papers already written & he had not given any statement. He did not know anything about the crime & he did not commit any offence.



289. Ex. 245 shows that Suresh Patil was produced with confession before the CMM on 15.7.2008. He stated that he was residing in Dagadi Chawl with his parents since birth. His elder brother is a taxi-driver while younger brother worked in ICICI bank. His father worked in Kahtau mills & mother is a house wife. A 10 ft. X 12 ft. Room belonged to them. He himself is a mathadi worker earning Rs. 2500/ to Rs. 3000/ pm. He then states that whatever was read out & told to him about the offence, he was not knowing anything. He was not knowing anything about the murder of corporator Jamsandekar. He does not work with Arun Gawali gang, knows nothing about it & was not knowing the office bearers of Akhil Bhartiya Sena. He was falsely implicated in the matter. He never had any financial dealing with Arun Gawali gang. He never worked with Sunil Ghate & he never entrusted him the work of writing the accounts. He has no concern with the offence & he was innocent.

290. These separate reports of CMM therefore show that accused 10 Shrikrishna & accused 9 Sandip Gangan did not retract from their confessional statements but stood by it. 5 others, though have retracted; they do not point out any pressure or torture or allurement or other promise made to induce them to go



to the office of DCP. Accused Suresh, Dinesh, Narendra, Ashok or Anil do not state at the earliest possible opportunity that under some threat or coercion, they were forced to state lies. They do not point out the specific or particular threat or coercion. None of them explains why they signed on papers already written and did not protest. They do not say that part I & part II of their respective statements were recorded on same day i.e. they were not produced on second occasion before the concerned DCP. None of them also states that they were not placed in neutral or safe custody when time of 24 hours or more was given to them to re-think over their decision to give confession & to make up their mind. They also do not point out any attempt by the investigating officer to contact them while they were placed in the neutral custody.

291. Contention that fact of their actual placement in the custody of some body other than the investigating officer is not proved by producing the supporting documents like station diaries does not appeal to us here. The accused could have made that grievance before the CMM & they have not even whispered a thing on these lines. The respective DCPs who are the responsible highly placed officers have vouched for it. Similarly the argument that respective DCPs should have obtained the signature of confessing



accused at the end of certificate appended after part-II statements also, is misconceived. The contents of this certificate are already mentioned by us supra. No legal provision has been shown to us to support this argument.

292. All these certificates at the end of respective part II statements of accused mention necessary compliances & record the subjective satisfaction also of all the DCPs. Same are in conformity with the legal provisions.

293. This discussion therefore shows that the prosecution has established that the all the confessional statements are made voluntarily & recorded in free & fair manner. These 7 accused persons have not come up with any trustworthy case to urge that their confessional statements are not voluntarily made & they were forced by threats, torture or any promise to give it. Thus law explained in *State of Maharashtra v. Bharat Chaganlal Raghani MANU/SC/0360/2001 : (2001) 9 SCC 1*, is squarely applicable & we are referring to it little later.

294. Now we proceed to appreciate the case law relied upon on confession or its retraction. In **AIR 2013 SC 2687-- Sanjay Dutt (A-117) vs. State of Maharashtra**, Hon. Apex Court also



appreciates the confessions recorded under MCOCA and quotes with approval its view in **Mohd. Farooq Abdul Gafur vs. State of Maharashtra (2010) 14 SCC 641** as under--

"36. In Mohd. Farooq Abdul Gafur vs. State of Maharashtra (2010) 14 SCC 641, this Court has upheld the conviction, inter alia, relying upon the confession of the accused, as well as the confession of the co-accused in determining the guilt of the accused. The relevant observations in the judgment are as under:-

"76. The confessional statements of Accused 5 and 6 are also relevant to prove and establish the involvement of Accused 1 with the incident. In the said confessional statement, Accused 5 had stated that on 2-3-1999, Faheem informed Accused 5 on the phone that he would be sending two pistols with Accused 1. In fact, Accused 1 came to the house of Accused 5 to deliver the said pistols."

"77. It has also come out in the said confessional statement (of Accused 5) that out of the two pistols one was not in order and so the same was returned to Accused 1 and that on 5-3-1999 Accused 5 called Accused 1 who informed him that he (Accused 1) has spoken to Chhota Shakeel over the phone and informed him about the incident on the previous day."

"78. Accused 5 has also stated in his confessional statement that Accused 1 informed him that Chhota Shakeel had asked Accused 1 to pay Accused 5 some money. Thereupon, Accused 1 paid Rs.20,000 to Accused 5 at Vakola



and Accused 5 and 6 together informed Accused 1 that they were going to Kolkata."

"81. *The High Court disbelieved the aforesaid confessional statements of Accused 5 and 6 on the ground that the said confessional statements were inadmissible in evidence thereby it reversed the findings of the trial court. The High Court came to the aforesaid conclusion on the basis that there is no evidence to show that any preliminary warning was given prior to the recording of the confessional statements and that in the absence of proof of the fact that a warning was given prior to the recording of the confessional statements, the same were inadmissible in evidence. In our considered opinion the High Court ignored the fact that there is evidence of PW-64, the typist who had deposed that the preliminary warning was in fact given which was so recorded on 23-7-1999."*

"82. *Considering the facts and circumstances of the case we find no reason not to accept the said statement of PW-64, the typist. We also hold that the aforesaid confessional statement of the co-accused could be the basis of conviction under the provisions of MCOCA."*

"83. *We, therefore, hold Accused 1 guilty of all the charges which were already found to be proved and established by the trial court and affirmed by the High Court. So far as the sentence is concerned we, however, uphold and confirm the sentence passed by the High Court and also restore the punishment awarded by the trial court under Section 212 read with Section 52-A read with Section 120-B IPC."*



"84. So far as the conviction (of Accused 1) under MCOCA is concerned, it is quite clear that conviction could be based solely on the basis of the confessional statement itself and such conviction is also permissible on the basis of the confessional statement of the co-accused which could be used and relied upon for the purpose of conviction."

"85. In *State v. Nalini*¹ it was held by this Court in the context of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (now repealed), which is *pari materia* with Section 18 of MCOCA that the evidence of a co-accused is admissible as a piece of substantive evidence and in view of the non obstante clause, CrPC will not apply."

37. It is clear that a confessional statement duly recorded by a Police Officer is a substantive piece of evidence and the same can be relied upon in the trial of such person or of the co-accused, abettor or conspirator if the requirements of Section 15 of TADA, and the rules framed thereunder are complied with. The police officer, before recording the confession, has to observe the requirement of Section 15(2) of TADA. A voluntary and truthful confessional statement recorded under Section 15 of TADA requires no corroboration. However, as a matter of prudence, the court may look for some corroboration if confession is to be used against co-accused. It is made clear that whether such confession requires corroboration or not is a matter for the court to consider such confession on the facts and circumstances of each case. If the confession made by an accused is voluntary and true, it is admissible against co-



accused as a substantive piece of evidence and minor and curable irregularities in recording of confession, such as omission in obtaining the certificate of the competent officer with respect to the confession do not affect the admissibility of the said evidence."

295. In same judgment in para 31, earlier judgment in **Jayawant Dattatray Suryarao vs. State of Maharashtra, (2001) 10 SCC 109**, on the evidentiary value and admissibility of a confessional statement recorded under Section 15 of TADA is pointed out. Hon. Court there held that it is settled legal position that a confessional statement recorded by a police officer is in fact, substantive evidence, and that the same can be relied upon in the trial of such person or of a co-accused, an abettor or a conspirator, so long as the requirements of Section 15 and of the TADA rules are complied with. It was observed that irregularities here and there would not make such confessional statement inadmissible in evidence. If the legislature in its wisdom provided after considering the situation prevailing in the society that such confessional statement be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under



duress or was not recorded truly by the officer concerned in whom faith is reposed.

296. In said judgment ie **AIR 2013 SC 2687-- Sanjay Dutt (A-117) vs. State of Maharashtra**, Hon. Apex Court also considers the law on retracted confessions & it observes--

"47. *In State of Maharashtra v. Bharat Chaganlal Raghani- (2001) 9 SCC 1, this Court mainly relied on the confessional statements of the accused which were also retracted. It was held that there was sufficient general corroboration of the confessional statements made by the accused. The Court found sufficient corroboration in the testimony of the witnesses and the recoveries pursuant to the statements given by the accused. It was also held that once the confessional statements were found to have been made voluntarily, the test identification parade was not significant. It was further held that corroboration is not a rule of law but a rule of prudence."*

297. Hon. Apex Court also observes from para 48 onwards that in **Devender Pal Singh vs. State of NCT of Delhi, (2002) 5 SCC 234**, this Court was considering, among other things, whether the accused making the confessional statement can be convicted on the basis of the confession alone without any corroboration. It was held that once it is found that the



confessional statement is voluntary, it is not proper to hold that the police had incorporated certain aspects in the confessional statement which were gathered during the investigation conducted earlier. It was held that the so-called retraction by the appellant, was made long after he was taken into judicial custody.

298. In **Ravinder Singh vs. State of Maharashtra, (2002) 9 SCC 55**, Apex Court held that a confession does not require any corroboration if it relates to the accused himself. It was further held that there was enough evidence to provide general corroboration to the confessional statement. It was also held that minor contradictions in the statements of the accused were of no consequence once the confessions were held to be reliable.

299. In **Jameel Ahmed vs. State of Rajasthan, (2003) 9 SCC 673**, the position of law was summed up by this Court as follows:

"35. ... (i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.



- (ii) *Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.*
- (iii) *In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.*
- (iv) *The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.*
- (v) *The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case*



whether such direct transmission of the confessional statement in the facts of the case creates any doubt as to the genuineness of the said confessional statement."

300. In facts at hand, all 7 confessing accused viz. Shrikrishna, Sandip, Suresh, Narendra, Anil, Ashok & Dinesh were sent to same CMM and he has submitted his report. We have referred to that report separately. However said report nowhere points out the complaint of any torture or threat or coercion. The respective DCPs recording the confessional statements have pointed out how the procedure has been fully followed & proper opportunity was given to each of the 7 accused to reconsider their decision to record the confession. Two accused have stood by their confessions. None of the learned Counsel for accused have even urged any inconsistency inter-se between these confessions. Only at belated stage at the end of trial, during S. 313 CrPC questioning, an attempt to disown these confessions has been made, which is obviously by way of an afterthought & half-hearted. In such matters, if the confessional statements recorded as per law are required to be discarded without any valid reasons, the legislative object in enacting S. 18 itself would be defeated. Here the burden to show that their confessions were not



voluntarily made did shift to accused Suresh, Dinesh, Narendra, Anil & Ashok. They have failed to discharge it.

301. In **State of Maharashtra v. Bharat Chaganlal Raghani** MANU/SC/0360/2001 : (2001) 9 SCC 1, this Court while setting aside the judgment of acquittal recorded by the designated TADA Court, observed as under :

“58. There is no denial of the fact that the judicial confessions made are usually retracted. Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law Corroboration of the confessional statement is not a rule of law but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case.”

Thus the retracted confession is also admissible if found to be made voluntarily and recorded after following due procedure.

302. Hon. Apex Court in **MANU/SC/0017/2013-- (2013)10SCC 192-Hema vs. State** observed that while dealing with the cases of omission and commission, in *Paras Yadav v. State of Bihar* it has enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the



prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. We do not notice any occasion to use this precedent in present matter.

303. MANU/SC/0451/1996-- **(1996) 4 SCC 659-- State of Maharashtra & others. vs. Som Nath Thapa & Others** shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. Hon. Apex Court explains that to put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. We again do not find this authority useful.



304. To us, it is equally important to note that though the MCOCA trial here is for organized crime dated 2.3.2007, the other charges are also there. The confessions not relating to murder, but about CULA are also admissible here.

305. We may add that the prosecution has examined in all 37 witnesses. PW-1-Komal Jamsandekar is the widow of deceased Kamlakar. She has been examined in an attempt to bring on record motive or role of accused No.6-Sahebrao Bhintade and accused No.7-Sadashiv Surve; PW-2-Nilkantha Bane is the secretary of deceased Kamlakar, who spoke in tune with PW-1-Komal Jamsandekar; PW-1 and 2 are examined to bring on record motive. PW-3-Ramesh Balu Patil is a panch witness to panchanama of the scene of offence (Exhibit 165 colly.) He is examined to bring on record the scarbutt lying in room of deceased Kamlakar; PW-4-Abdul Raheman @ Addu is the witness who talks about accused No.12-Pratap Godse asking him in presence of accused No.13-Ajit Rane, to show deceased Kamalakar Jamsandekar and his house to accused Nos.4-Narendra Giri and accused No.5-Anil Giri; PW-5-Pradeep Shinde is the witness who turned down the offer of Rs.2 Lakhs and a revolver given by accused No.12-Pratap Godse for eliminating Kamlakar Jamsandekar, (he in consultation with



accused No.11-Dinesh Narkar refused the offer as the consideration offered was inadequate), PW-6-Arun Kumar Singh is the cable operator and a victim of extortion by members of the organized crime syndicate headed by accused No.1-Arun Gawali @ Daddy operating from Dagadi chawl, Byculla. He brought on record payment of ransom amount regularly to accused No.1. PW-7-Manali Chavan/Hire is the complainant and eye witness who identified the assailants viz. accused No.2-Vijay Giri and accused No.4-Narendra Giri in test identification parade held by PW-24-SEO Dattaram Kambli as well as in the Court. She did not participate in TIP conducted on 31/5/2007 and 1/6/2007.

306. PW-8- Narendra Panchal is the brother of accused No.8-Surendra Panchal who talks about accused No.8 Surendra Panchal's business of repairing and dealing in arms; PW-9-Amrut Patil is panch witness on recovery of diaries containing the accounts details of organized crime syndicate of Arun Gawali recovered under section 27 of the Evidence Act at the instance of accused No.15-Suresh Patil from the house of PW-10-Ankush Gharkar; PW-10-Ankush Gharkar is a resident of Dagadi chawl from whose house the diaries of the accounts of organized crime syndicate were recovered at the instance of accused No.15-Suresh



Patil. He is a hostile witness. It is proved by prosecution that he had entry pass to Mantralaya.

307. PW-21-Motiram Kasar is the investigating officer at Sakinaka. PW-7 Manali did not become available to him for TIP and sketch of accused persons drawn by him was not shown to PW-7 or Smt. Shah or Mayuresh Tandel; PW-11-Ramchandra @ Dhaktya Gurav is a relative of accused No.10-Shrikrushna @ Babu Gurav who arranged for the weapon used in the crime (Article 5) from accused No.8-Surendra Panchal at Rajapur at the instance of accused No.12-Pratap Godse and is the witness who identifies accused No.12-Pratap Godse, accused No.13-Ajit Rane, accused No.8-Surendra Panchal, accused No.10-Babu Gurav and accused No.11-Dinesh Narkar in the Court; PW-12-Motilal Chaudhary is the owner of Kamla Aahar Gruh at Asalfa Village near the residence of deceased Kamalakar Jamsandekar who identifies accused No.2-Vijay Kumar Giri, accused No.3-Ashok Kumar Jaiswar, accused No.4-Narendra Giri and accused No.5-Anil Giri as the persons who used to come to his hotel during February 2007 till murder of Kamalakar Jamsandekar on 2.3.2007; PW-13-Shridhar Munj is the witness who proved CA report regarding handgun ie weapon used in the commission of murder as also scarbutt (Article 1) to be part



of said handgun (article 5). PW-14-Anjali Badade is the witness who examined and opined that the scarbutt (Article 1) matches and fits exactly with the Handgun (Article 5), PW-15-Rajendra Dabhade is the DCP who recorded voluntary confession statement of accused No.4-Narendra Giri (Exhibit 214); PW-16- Sadanand Rasam is the witness who filed the previous two charge-sheets against accused No.1-Arun Gawali in the year 2004(Exhibits 218 and 219) which are considered as previous chargesheets for invocation of MCOCA; PW-17-Vinoy Kumar Choubey is the DCP who recorded voluntary confessional statement of accused No.3-Ashok Jaiswar (Exhibit 227); PW-18-Dilip Sawant is the DCP who recorded voluntary confessional statement of accused No.15-Suresh Patil (Exhibit 241); PW-19-Dyaneshwar Phadtare is the DCP who recorded voluntary confessional statement of accused No.10-Babu Gurav (Exhibit 251); PW-20-Yadav Dhum is the DCP who recorded voluntarily confessional statement of accused No.11- Dinesh Narkar (Exhibit 264); PW-21-Motiram Kasar is the investigating officer of Sakinaka Police station who drew the panchanama of scene of offence (Exhibit 165) recovered scarbutt (article 1) and obtained the photographs (Exhibit 163 colly.) of the scene of offence and filed the initial chargesheet against seven accused persons; PW-22-Dr. Bansude is the medical officer who performed



the post mortem on the dead body of Kamlakar Jamsandekar and who simultaneously took the photographs (Exhibit 282 colly.); PW-23-Vijay Jadhav is the DCP who recorded voluntary confessional statement of accused No.5-Anil Giri (Exhibit 289) and also accorded sanction under the Arms Act (Exhibit 297).

308. PW-24-Dattaram Kambli is the SEO who conducted TI parade in which witness PW-7-Manali Hire identified accused 2 & 4 and PW-12 Motilal Chaudhary who identified accused No.2 Vijay Giri, accused No.3-Ashok, accused No.4-Narendra Giri and accused No.5-Anil Giri; PW-25-Vishwanath Hinge is the resident of Dagadi chawl who used to write the account books recovered under panchanama (Exhibit 183) from the house of PW-10-Ankush Gharkar at the instance of accused No.15-Suresh Patil. He is also a hostile witness. PW-26-Asnish Shukla is a panch witness to the recovery of handgun without scarbutt (article 5) and other articles from the possession of accused No.2-Vijay Giri, accused No.3-Ashok Jaiswar and accused No.4-Narendra Giri and accused No.5-Anil Giri under panchanama (Exhibit 311); PW-27-Ajay Joshi is the officer who arrested accused No.2-Vijay Giri, accused No.3-Ashok Jaiswar, accused No.4-Narendra Giri and accused No.5-Anil Giri and drew said panchanama in which handgun without scarbutt (article



5) was recovered from possession of accused No.2-Vijay Giri; PW-28-Mahesh Shah is the owner of Hetal Photo Studio who used to pay ransom amount to the members of organized crime syndicate headed by accused No.1-Arun Gawali operating from Dagadi chawl, Byculla, from whom the ransom was being regularly collected by members of gang of Arun Gawali; PW-29-Brijesh Singh is the DCP who recorded voluntary confessional statement of accused No.9 Sandip Gangan (Exhibit 324); PW-30-Charls Daniel is the nodal officer of Vodafone who produced the original customer application forms of mobile No.9819251750 in the name of accused No.10-Shrikrushna Gurav (Exhibit 408 colly.); PW-31-Ramesh Bhokare is the constable who was the member of raiding party arresting accused No.2 to accused No.5, in which raid, handgun without scarbutt (article 5) was recovered from the person of accused No.2-Vijaykumar Giri. This witness gave his FIR (Exhibit 314) and made station diary entry (Exhibit 316 colly.).

309. PW-32-Arun Kirtawade is the officer attached to Sakinaka Police Station at relevant time who recorded FIR of PW-7 Manali Hire (Exhibit 177); PW-33-Diwakar Shelke is the initial investigating officer of Crime Branch before applying MCOCA. He is the witness who sent a proposal and obtained prior approval



(Exhibit 421); PW-34-Prashant Gorde is the witness from Tata Teleservices (Maharashtra) Ltd. who produced CDR which reflects communication between accused No.2-Ashok Jaiswar, accused No.5-Anil Giri, accused No.8-Surendra Panchal, accused No.10-Babu Gurav, accused No.12-Pratap Godase and accused No.13-Ajit Rane as also their tower location at relevant time. PW-35-Shekhar Palande is the nodal officer of Tata Teleservices who produced compact disk (CD) containing electronic data of cell site ID address of respective Cell ID numbers (mobile tower locations) of Tata Teleservices Customers (Exhibit 436) and original customer Application forms of accused No.12-Pratap Godase, accused No.3-Ashok and in respect of mobile No.9224770420 used by accused No.8-Surendra Panchal, (Exhibits 432 to 434 colly.); PW-36-Hasan Gaffur is the Commissioner of police who accorded sanctions under section 23(2) of MCOCA (Exhibits 439 to 441) and PW-37-Ashok Duraphe is the main investigating officer.

310. Though not necessary in the light of above findings on the acceptance of confessions & corroboration, CDR is the additional material which can be looked into to verify the truth. We are concerned with the following mobile numbers while considering the call data records. These calls give credence to the



narration in confessional statements about the same being made and also to the presence of the accused at the spot/place relevant for this crime. These mobile numbers are--

- (i) Phone no. 9223202133 is of Pratap Godse. (A-12)
- (ii) Phone no. 9833873756 is of Ajit Rane. (A-13)
- (iii) Phone no. 9819251750 is of Babu Gurav. (A-10)
- (iv) Phone no. 9224770420 is of Surendra Panchal (A-8).
- (v) Phone no. 9323709336 is of Anil Giri. (Used by A-2/5)

The data of call records with tower location attempts to throw light on respective calls made by the accused persons in relation to procurement of the handgun & also on their movements prior to 02.03.2007 & thereafter. These CDR are brought on record by PW-30 Charles Daniel of Vodafone, PW-34 Prashant Gawade & PW-35 Shekhar Palande of Tata Teleservices, referred to as Tata hereafter. Most of the learned advocates for the accused persons have not advanced any arguments to doubt the authenticity of the entries in the CDR. Learned Counsel for accused 2 to 5 has urged that the data relating to tower location at Ex. 435 is produced for the first time during the trial & its late production was objected to. It is not with any seal or signature. It



is contended that location of accused 3 Ashok Jaiswar in area of tower no. 1363 is doubtful since each tower is expected to cater to area within 5 kms. radius & when one tower is fully engaged, the call automatically shifts to other available tower in said periphery.

311. We find it proper to begin with PW-34 Prashant Gawade who worked as Assistant Manager Vigilance with Tata from September, 2007 to June, 2010. He procured the details in relation to mobile nos. 9224676768. Though there is faint effort to argue that he did not have control on main server, validity of certificate issued under S. 65B of the Evidence Act is not in dispute. There is nothing to show that the data at Ex. 434 extracted from main server & used in trial had been or could have been interpolated in any manner. Mere possibility of accused 3 Ashok being at other place within said area of 5 kms. does not cast a shadow of doubt since, the confessions mentioned supra nail him down to Asalpha village and relevant site. CDR at Ex. 434 is therefore the corroborative piece. Ex. 435 is the list of tower addresses and its belated production has not caused any prejudice to accused.

312. The murder of Kamalakar Jamsandekar has taken place after about 4.45 PM on 2.3.2007. At 14.15.53 hrs., phone no. 9223202133 of Pratap Godse gave a call to 9833873756 of Ajit



Rane which mentions tower location to be 1363. Again at 16.48.17 hrs. a call has been made from phone no. 9224676768 of Ashok to 9223202133 which carries this tower address. Prosecution has pressed total 16 calls made between 11.42.47 to 22.52.20 hrs. to demonstrate tower location of accused 3 Ashok, accused 12 Pratap & other accused persons on 2.3.2007 ie the day on which the murder took place. There is no dispute about the other 15 calls. We therefore find this objection without any merit.

313. The CDR indicating location of accused No.3-Ashok Jaiswar and accused No.12-Pratap Godse brings on record movement of other accused persons also on that day. As per prosecution story Kamlakar was shot at about 16.45 hours. Call No.11 at 16.48.17 hours from mobile No.9224676768 is made by mobile of accused No.3-Ashok Jaiswar to No.9223202133 which is of accused No.12-Pratap and it lasted for about 74 seconds. This call shows the location of accused No.2-Vijay, accused No.3-Ashok and accused No.4-Narendra at Tilak Road, Ghatkopar (E). In confession, these persons have stated that they ran away by using Narayan Galli, Ghatkopar and the tower location supports it. Thus, this call at Serial No.11 is made immediately after murder. After receipt of that call accused No.12-Pratap at 16.50.08 hours talked



with accused No.13 Rane and at 17.06.08 hours talked with accused No.5. Accused No.12-Pratap called accused No.3 at 17.14.49 hours and Ashok then had gone upto Navapade lane, Kurla (w). Accused No.12-Pratap then called accused No.10-Shrikrushna at 18.12.58 hours. Shrikrushna had called Pratap at 22.22.20 hours. These movements therefore show the truth in confession about the route, mode and manner in which after committing murder, accused persons escaped.

314. In order to consider issue of continuing unlawful activity & organised crime, a look into CDR Ex. 427 in which nine calls on 27.7.2006, 7.8.2006, 7.8.2006, 14.8.2006, 14.08.2006, 15.8.2006 & 15.8.2006 between accused 12 Pratap & accused 8 Surendra Panchal appear, becomes essential. These calls & CDR are for the period during which the handgun was procured from PW-8 Surendra at Vilaye and Kharepatan. The tower location of towers outside the Mumbai is also seen there as tower address of accused 8 Surendra is recorded as 28402 ie not in Mumbai state. Location of mobile number of accused Surendra can be seen at Rajapur and STD code in Ex. 427 in landline is 02353 ie of Rajapur. However when two calls are made by PW-8 Surendra to accused 12 Pratap, Pratap's tower location is 19441 ie at the junction of



Ghatkoper & Andheri road. We need not dwell more on this aspect since nobody has objected to this CDR. It supports the travel details in confessional statement of accused 10 Babu Gurav and accused 9 Sandip Gangan which have not been retracted.

315. As per confessions, the amount of Rs. 30 lak was paid to accused no. 1 Arun Gawali in middle of the December, 2006 when accused 12, 13 and accused 6 & 7 visited the Dagadi Chawl. 8 calls made by accused 12 Pratap & 1 call made to him as reflected in Ex. 427 between 13.51.51 to 15. 18.26 on 15.12.2006 support this position. The CDR is pointing out the presence of accused 12 Pratap and hence, location of the number called (dialed) is not appearing there. At 13.57.04 hrs & at 14.16.57 hrs. Pratap has called accused 13 Ajit Rane, however in said CDR location of Ajit Rane has not been mentioned. No effort is made by accused no. 13 Ajit Rane to come with any defence witness or to summon the CDR showing his presence elsewhere. On the contrary, this supports confession of the accused No.9-Sandeep Gangan wherein he states that Ajit Rane did not accompany accused 12,6 & 7 to the office of accused 1 Arun Gawali but stayed back. Sandip Gangan has stood by his confession.



Moreover, this CDR also supports the disclosure by accused 15 Suresh Patil which is almost on same lines.

316. One chart prepared from Ex. 427 by learned Spl. PP shows presence of accused 12 Pratap at Dagadi Chawl on 8.1.2007 when he received Rs. 60,000/ from accused 1 Arun Gawali as confessed by accused 9 Sandip & accused 15 Suresh Patil. Two calls made by him to accused 10 Babu also figure in it. This amount was given to him by accused 15 Suresh upon instructions from Arun Gawali & is paid by accused 9 Sandip Gangan personally to accused 12 Pratap.

317. The tower location of accused 3 Ashok Jaiswar regarding his presence nearabout Asalfa village where deceased Kamalakar resided when he & other 3 accused were keeping an eye on Kamalakar & waiting for a chance to kill him is collected from Ex. 426 & 427 respectively. There are total 50 calls relied upon by the prosecution for this exercise. Calls between accused Ashok & accused 5 Anil as also accused 10 Babu @ Shrikrishna are in Ex. 426. Calls between these on one side & accused 12 Pratap Godse on the other side are in Ex. 427. This data supports the case of prosecution that during period from 15.2.2007 till



1.3.2007, accused 3 Ashok & his colleagues were moving in or around Kamalakar in Asalpha village.

318. Other equally important CDR is in relation to date of murder of Kamalakar Jamsandekar ie 2.3.2007. It supports story of presence of Ashok, Narendra & Vijay at Asalpha on that day. The call made by accused Vijay Giri using mobile of accused 3 Ashok to accused 12 Pratap at 16.48. 17 hrs. can be seen in Ex. 426 as also Ex. 427. This CDR supports the confession of accused 3 Ashok Jaiswar.

319. 6 calls made from number of accused 5 Anil to accused 3 Ashok on 3.3.2007 also support their confessions. Chart prepared from Ex. 426 containing the same is made available by the learned Special PP. These calla show the travel undertaken by Ashok from Vikroli to Borivali(East) where he was invited by Vijay. Similarly calls made by Ashok to Anil on 11.3.2007(2) , by Anil to Ashok on 12.3.2007(2), by Ashok to Anil 16.3.2007(2), by Anil to Ashok on 17.3.2007 & by Ashok to Anil on 23.3.2007 are also pressed into service to point out the conduct after the arrest of accused 12 & accused 13.

320. Since the facts emerging from the CDRs &



corroboration therefrom to the respective confessional statements has not been made the bone of contention (except to the very limited extent noted supra), we need not delve more into the CDRs. Charts made available by learned Special PP Shri Chimalkar & his team are not disputed by anybody & we also feel that the elaboration of this data by the learned Trial Judge need not be reiterated here. As we have found the confessions voluntarily made, consistent with each other & sufficient corroboration (though not necessary) in support from other material on record, the same can be used to the detriment of all participating accused. But then none of the confessions bring on record knowledge with accused 2 to 5 or information to them that they were hired by an organized crime syndicate by name Akhil Bhartiya Sena or by accused no. 1 Arun Gawali or that the payment was being made by ABS. On the contrary, the accused 2 to 5 appear to be under impression that accused 10 Babu ie Shrikrishna is paying them.

321. Shri Gupte, learned senior advocate relied upon(2005) 11 SCC 600- **State (NCT of Delhi) vs. Navjot Sandhu** to explain how the retracted confessions need to be used. There the Hon. Apex Court points out in paragraph 40 onwards the provisions



contained in Evidence Act and in para 48, Section 30 thereof. We need not dwell more on this facet since in paragraph 42, the said judgment itself takes note of a different procedure followed in other legislation. In para 42, Hon. Court observes -

“42. Following the path shown by its predecessor, namely, the TADA Act, POTA marks a notable departure from the general law of evidence in that it makes the confession to a high-ranking police officer admissible in evidence in the trial of such person for the offence under POTA.”

Apex Court, in paragraph 44 considers S. 15 of the TADA Act and its earlier judgment in **State vs. Nalini (1999) 5 SCC 253**. Views expressed by the Hon. 3 Judges there are also looked into & in next para reference to its decision in **Jameel Ahmed v. State of Rajasthan--(2003) 9 SCC 673** a case arising under TADA. We need not delve more into these judgments since the later more direct judgments in case of **Sanjay Dutt (A-117) vs. State of Maharashtra & Mohd. Farooq Abdul Gafur vs. State of Maharashtra** (supra) are already looked into by us and there its earlier judgments are already considered. We also, with respect, do not find it necessary to elaborately consider the precedents cited viz. **AIR1959 SC 1-Ram Prakash v. State of Maharashtra** on corroborated



confession of co-accused, **AIR 1968 SC 832-Haroom v. State of Maharashtra, (2007)12 SCC 230- Alope Nath v. State of WB** dealing with S. 164 Cr.P.C. & retracted confession or involuntary confession & Ss. 24 to 30 of the Evidence Act, **AIR 1953 SC 131-Kalawati v. State of H.P.** on little value of the retracted confessional, **(1998) 7 SCC 337-Suresh Kalani @ Pappu Kalani v. State of Maharashtra** dealing with S. 30 of the Evidence Act & the evidentiary value of confession of a discharged co-accused, **(2004) 7 SCC 779-Paramananda Pegu v. State of Assam** which considers a retracted confession & S. 24 of the Evidence Act, **AIR 1963 SC 1094-Pyare Lal Bhargava v. State of Rajasthan** considering S. 164 Cr.P.C. & Ss. 24/28 of the Evidence Act in retracted & involuntary confessions, **AIR 1979 SC 1761- C. Chellapan v. State of Kerla** which looks into evidence of accomplice witness, need of holding TI parade when the accused is not named in FIR & declaring direct identification of such accused in court valueless.

322. It is clear that fact of payment of Rs.30.00/ Lacs by Sahebrao Bhintade (A-6) and Bala Surve (A-7) to Arun Gawali (A-1) who accepted *supari* to kill Kamlakar Jamsandekar stands established. The steps taken by accused 12 & 13 as also accused



10 to hire accused 2 to 5 to give effect to that design have also been established. Use of office of Amit Travels for keeping weapons, as a meeting point, steps taken by them to achieve their goal & the help extended by them to accused 2 to 5 to eliminate Kamlakar & payment in part therefor has also been proved. Actual execution of said design & killing of Kamlakar has also been proved beyond reasonable doubt.

323. Now, it will be appropriate to consider the other or independent material against the accused 2 to 5. It is not in dispute that they were arrested on 26.4.2008 ie more than 13 months & 24 days after the murder of Shri Jamsandekar. CIU ie Crime Investigation Unit (CIU) asserts that on 26.4.2008 at 1.30 Pm., through an intelligence source, it learnt that 5 persons are likely to gather to give effect to a dacoity. According to defence, that person / source did not give description of the suspects or the name of jeweler's establishment likely to be robbed while according to prosecution he gave relevant details & was also present at the spot. But then the fact that accused 2 to 5 were apprehended from the spot disclosed by said source is not in dispute. These accused persons have not come up with any other place from which or date on which they were taken in custody. It



is not in dispute that the competent court has convicted them for said offence of attempted dacoity.

324. PW-31 Ramesh Bhokare attached to DCB, CID, CIU Mumbai received the secret information about dacoity planned near Govinram Lachhiram Vegetarian Snacks & Thali Restaurant. In his cross examination, fact that the secret informer was also present at the spot of trap has come on record. This person had earlier also given important information & traps laid were successful. He deposes about the secret intelligence & its sharing with superiors & laying of a trap as per directions of PSI Sandbhor. After the 4 suspects arrived, upon confirmation from the informer, he entered the above restaurant and sat behind them. He heard their plan that Pintu should go in Prakash Gold Palace with his "saman" , he, Kandi & Ashok would follow with their "saman" and after job got over, he would reach motorcycle with Pintu's "saman" and then they would all meet at Dahisar. One of the 5 persons came out & proceeded towards Prakash Gold Palace. Other 4 also came out of restaurant but somehow they sensed the presence of police & started separating. PI Sandbhor gave signal & these 4 were trapped. One offender being followed by PW-31 could not be caught hold of by PW-31. While taking search of accused 2 Vijay



Giri, the raiding party found a gun with wooden handle concealed near waist. It was loaded with live red coloured cartridge having “special 65 mm Agnisham Factory, Khadki” inscribed upon it. Word “KF 12” was embossed on its metal cap. Driving license, a badge, Nokia mobile handset cash of Rs. 70/ was also found with him. 12 inch knife with 7 inch blade with compass on handle & cash of Rs. 40/ was found with accused 3 Ashok. A 12 inch knife with 3 inch metal strip at the end of its handle, yellow wallet, pan card bearing name of one Satyendralal B. Srivastav, a telephone diary, a pink attendance card, a key of motor bike and cash of Rs. 30/ was found with accused 4 Narendra Giri. Accused 5 Anil Giri was found with 11 inch knife, a black rexin purse, identity card of film studio mazdoor union, few visiting cards, 50 grams chili powder, a string (sotal ie jute), cash of Rs. 50/, key of motorbike and a nokia handset & sim card of Hutch company with number 9920596508.

325. Motor bike MH-03-AL 8044 on which the two accused had arrived & its key with accused 4 Narendra were also taken in possession. Articles were separately sealed in separate packets and this process is witnessed by PW-26 Ashish Shukla. PW-31 Shri Bhokare identified these 4 accused persons in ST no. 482/2008. In dacoity trial, PW-31 describing the handgun as a revolver in



deposition Ex. 327 there, does not improve the situation for accused 2 to 5 in MCOC trial. In later trial, PW-31 Bhokare has described the same article as a home made gun. Accused could have invited his attention to this variance (if any) & then could have pressed it by pointing out the that weapon in dacoity trial was different. Objection here is rendered merely academic since the weapon there & in MCOC case is same.

326. Effort has been made to create confusion by pointing out that scarbutt was sent even before this trap on 26.4.2008 by Sakinaka police by pointing out that the label on scar but is found in the sealed packet containing the handgun received from the FSL. Relevant part of evidence of Pw-29 Diwakar Shelke shows that he was an investigating officer in DCB CIU case of the attempted dacoity dated 26.4.2008. By said date, the Sakinaka police had already sent the scarbut to FSL. CIU requisitioned it from Sakinaka police on 8.5.2008 & it was received on 10.5.2008 vide Ex. 419 from the FSL in sealed condition. It appear that the handgun recovered on 26.4.2008 was already sealed by the DCB CIU & after receipt of the scarbut, DCB forwarded the gun & the sealed scarbut to FSL. Thus label put by FSL while returning the scarbutt to Sakinaka police on scarbut remained as it is. FSL then carried



out test through PW-14 Anjali Badade to match & fit the scarbut on the hand gun. Expert PW- 14 proves that the scarbut was part & parcel of the handgun seized from the accused 2 to 5 on 26.4.2008. Thus finding of a label with date 2.3.2007 shows that the scarbut was recovered by the Sakinaka police on the date of murder of Kamalakar Jamsandekar & it strengthens the prosecution case. It implies that DCB did not open the sealed scarbutt at all. This position does not help the accused in any way. Photographs taken on spot on 2.3.2007 which show scarbutt lying in room of Kamalakar Jamsandekar are also admitted by accused on 18.10.2010 vide Ex.163(colly.)

327. This also proves that investigation into crime 82/2007 by Sakinaka police was incomplete. There is no material to show that Sakinaka police sent scarbut to DCB CIU on 26.4.2008 & arguments on these lines advanced by Adv. V. Sharda are unsustainable.

328. Case 702/2008 at Shivaji Nagar, Pune was renumbered as 52 of 2008 by DCB CIU. 4 accused in said case are the accused in present matter. Accused 10 Shrijrishna was arrested in that matter on 18.4.2008. He was arrested in crime no. 69 of 2008 on 16.5.2008. Ex. 415 is the letter sent by DCB about Sakinaka crime



82 of 2007 on 28.4.2008 pointing out that the accused arrested by it in crime 52/2008 are involved in it. Ex. 418 is the letter dated 8.5.2008 pointing out the orders of Deputy Police Commissioner (Detection) dated 29.4.2008 Ex. 416 (year wrongly typed therein as 2007) & re-registering Sakinaka offence as 69/2008 and requesting the scarbut for forensic analysis. In reply thereto, the Sakinaka police has vide Ex. 419 dated 12.5.2008 sent the scarbut as sealed by FSL.Vide Ex.420 dated 19.5.2008, it also requisitioned handgun seized in crime no. 66/2008 dated 26.4.2008 from CIU.

329. Accused 2 to 5 urge that the Sakinaka papers were called for by DCB CIU even before the FIR in relation to alleged attempted dacoity was registered. They rely upon Station diary entry 18 recorded at 16.40 hrs. by Sakinaka police which shows that papers in relation to crime 82/2007 were taken to DCB CIU where the same were retained. However earlier entry no. 17 shows that PSI Salvi carried those papers at 11. 30 hrs on same day to DCB office. Entry no. 26 at 15.45 hrs on 29.4.2008 records that those papers were brought back to Sakinaka police. Next entry at sr. no. 27 at 16.10 hrs reveals that the papers were made over to DCB for further investigation. Crime was registered at LT Marg police station at 19.15 hrs on 26. 4,2008 itself. These entries



therefore do not suggest any malice on part of investigating agencies and in any case, does not support any tampering with the scarbut or the handgun. Learned Special PP Shri Chimalkar has argued that the papers were needed by Sr. PI of Dound police station for considering crime registered against accused Ajit Rane at Dound. Mere movement of the papers does not in any way advance the case of these accused persons. They have not urged that no such case was registered against Ajit Rane at Dound police station.

330. On the contrary earlier deposition of Ramesh Bhokare in Sessions Trial 482 of 2008, particularly paragraph 11 shows that the wrapper/label of scarbutt with date 2.3.2007 was found in sealed wrapper sent by FSL. This wrapper containing the handgun was opened in Court & the other sealed wrapper ie of scarbutt was found in that wrapper. This other wrapper carried a paperslip with date 2.3.2007 indicating that paperslip was of the scarbutt. This other wrapper was marked Art. 5A. This other wrapper can not be used to create any confusion as the scarbut was not an independent property in ST 482 /2008 but used to connect the handgun with murder of Kamalakar and as such was affixed on the handgun itself as its integral part.



331. Accused 10 Shrikrishna @ Babu was already in custody of police in crime 118/ 08 and on 29.4.2008, prior approval to invoke MCOCA was obtained. Trial in 118/2008 is still pending. After interrogation of accd. 10, accused 6 Sahebrao & accd. 7 deceased Bala were arrested on 29.4.2008. On 5.5. 2008, accused 8 Surendra was arrested. Proposal to apply MCOCA was moved on 16.5.2008 & the approval was given on 20.5.2008. Exhibit 218 (C.R. 77/2004) Exhibit 219 (C.R. No.189/2004), Exhibit 464(CR No.164/2004) and Exhibit 465 (CR No.159/2005) are the four chargesheets relevant for this purpose. The submission that only two charge-sheets are exhibited or are admissible, is therefore unsustainable. Accused 1 Arun Gawali was arrested in this connection on 20.5.2008. The paper label with date 2.3.2007 therefore does not affect anybody prejudicially. It proves that the scarbut as received in sealed condition by Sakinaka police was, in fact, forwarded as it is in MCOCA investigation to FSL.

332. PW-26 Ashish Shukla, a passer by agreed to act as pancha on 26.4.2008 at the request of police. He is the witness / pancha on recoveries from these accused 2 to 5 at the place opposite Vitthalwadi Mandir in at Kalbadevi Road where they were apprehended. He has pointed out that the persons overpowered



were searched & from them weapons, cellphones & money was seized. Weapon is the gun 1 foot in length & one bullet. He also points out that the seized articles were sealed. It is true that there is no station diary entry of the sealing material being taken out of the police station and to the spot, but that by itself is not fatal to the case of prosecution in present case relating to an organized crime. The gun & the empty has been connected with these accused & they have been convicted under S. 399 IPC in SC case 482 of 2008. Contention that the alleged intelligence as also station diary entry at Ex. 316 is vague and the accused were not sent to LT marg police station in crime 118 of 2008 does not therefore advance the case of the accused. Cross examination of PW-31 does not dilute the stand of the prosecution at all. Fact that the accused were produced for the first time in front of DCP also does not mean that the prosecution has fabricated any story.

333. This PW-26 Ashish Shukla, in Court has proved that panchanama & articles seized by the police from the 4 accused persons including the foot long gun with barrel recovered from accused 2 Vijay. Though he could not name that accused, he mentioned that it was from waist of that person. He identified the articles seized & sealed and also signatures on paper labels. He



identified the Gun article 5. He also identified other articles & proved panchnama Ex. 311. In Court, he could not identify these 4 accused persons. This failure does not mean that there was no arrest or panchanama on 26.4.2008. Even in confession, accused Narendra @ Kandi has accepted that he was arrested on 26.4.2008. PW-26's cross examination does not bring on record any material omission or fact so as to discredit him. Fact that earlier he had been to Crime Branch Office or LT Marg police station does not disqualify him from acting as a witness.

334. We are here not concerned with attempted dacoity. The handgun seized from accused 2 Vijay is the material piece of evidence here. The station diary entry Ex. 316 has been made at 13.45 hrs. & PW-31 then lodged the FIR Ex. 314. The non mention in Ex. 316 of carrying seals to the spot does not in any way vitiate this recovery of handgun from accused 2 Vijay.

335. State did examine PW-27 Ajay Joshi (API) who was part of raiding team. He caught hold of accused 5 Anil & also dictated the text of panchanama Ex. 311 & he also identified Art. 5 -the gun.

336. Sakinaka police had already charge-sheeted 7



persons as accused in connection with the murder of Kamalakar & CIU was not concerned with it & had no reason to fabricate any evidence or to add the accused to Sakinaka charge-sheet. Even the attempted dacoity was not perceived as an organized crime by it. The missing scar but of Art. 5 could not then be co-related with the Sakinaka crime immediately. Accused caught on spot were not then even suspected of association in murder of Shri Jamsandekar.

337. PW-7- Mrs. Manali Chavan is the eye witness to incident of murder. She got married on 15/5/2010 and at the time of incident her maiden name was Manali Keshav Hire. She was residing with Komal Jamsandekar, wife of deceased as she happened to be her maternal aunt. She has deposed that on 2.3.2007 she returned home from college at 1.30 in the afternoon. Sayali daughter of Komal, this witness and Komal wife of deceased Kamalakar were at home. At 4.00 p.m. Komal left house and at that time deceased Kamalakar was watching TV. He was sitting in chair near the door of room and this witness was in kitchen. She heard sound like bursting of a cracker and turned around. Two unknown persons were present near the door of room and neck of Kamalakar had leaned to one side, blood was oozing from left ear.



She rushed towards Kamlakar shouting to help him. Both unknown persons ran away towards left side of their residence. Neighbours gathered and someone contacted police. Police took Kamlakar to Rajawadi hospital. Police recorded her statement and she learnt at spot that Kamlakar passed away. According to her one of the unknown persons was with round face, straight nose and somewhat black complexion. He was about 5.2” in height and about 25 years old. Other person had a height of about 5.4” with similar complexion and medium built & between 25-30 years of age. She proved FIR Exhibit 117.

338. She then pointed out test identification parade conducted on 20/6/2008 at Arthur Road jail. Total 14 persons were exhibited and in first round she identified one as a person who fired upon her uncle i.e. accused No.2-Vijay Giri. In second round again 14 persons were paraded and she identified accused No.4 Narendra Giri. Her cross-examination shows that during funeral procession of Kamlakar, the people were whispering that accused No.6 and accused No.7 might have committed the murder. This witness then has referred to accused No.6 as uncle Bhintade. She has further stated that after police recorded her statement, she realized that she forgot to state some facts to police. She stated



that Sayali and she herself were the only persons present in house at the time of incident. She has stated that on either side of their room and in front of their room there are rooms of other persons. On the right side, there is pipe line Road while on left, there is link road. Three rooms separated their room and pipe line road while only one room existed between their room and link Road. Left side lane is narrow and only one or two persons can pass at a time. She accepted that the lane takes a turn and its width is about 3 to 4 feet. She accepted that person entering the lane can not be seen from entrance of their room. She stated that when she was cleaning utensils she heard atom bomb (a fire cracker) like sound and she turned and saw two persons running away. She stated that her statement was read over by police before she signed it. She stated that she did not tell police that when she turned around, she saw two unknown persons by the side of uncle. She denied that she did not go towards her uncle. She accepted that she did not tell police that one of the two had a fire arm in his hand. She accepted that while she gave description of these two persons, she did not describe clothes worn by them. She stated that police arrested some persons on doubt but nobody asked her to go to police station for identification. She denied that Sakinaka police called her for identification but she did not respond.



339. Manali has denied that first Sayali raised cry to help her father and then she came out. She has further stated that Sudhakar, brother of Kamlakar resides at a distance of 100 ft. She stated that in her statement recorded after holding TIP, she did not inform police that the accused first identified by her had fired on Kamlakar. Witness clarified that she told police that said suspect was armed with fire arm. She further stated that she did not inform SEO that suspect identified by her had fired shot. She then pointed out letter received asking her to report at Crime Branch Unit-III for test identification parade. She accordingly reported with her aunt only on 20/6/2018.

340. Her cross then is about proceedings of TI parade and nothing material to discredit her has come on record. On the contrary, her cross examination shows that 7 persons out of 14 were having similar features while remaining 7 had similarities amongst themselves. She further stated that all 14 persons did not look similar to each other. She has stated that when she was alone before second round of test identification parade in a room, nobody had visited that room. In later test identification parade, she realized that 7 persons out of 14 had a different look. During test identification parade contents of her complaint were at the



back of her mind. First suspect identified by her in test identification parade was shorter but slim while the other was of medium built. It appears that both accused persons i.e. accused No.4 Narendra Giri and accused No.2 Vijay Giri were then made to stand side by side and Trial Court noticed as also witness accepted that accused No.4 Narendra was taller than Vijay. Witness could not say why Vijay appeared to be 5.6 ft. in height and she denied that he was not having a square face.

341. Though some arguments have been advanced on this differences in height, we find that a slim person might have appeared to be of more height to said witness as he was closer to her and the chair of deceased. She had a look at him and other person for short time and the slim body built in that situation may have caused that impression. This witness has not, in her police statement initially recorded, stated that she could identify the accused persons but nothing turns upon it.

342. FIR initially registered and chargesheet filed by Sakinaka police thereafter shows that PW-7 had lodged complaint and in final report accused No.13-Ajit Rane, accused No.12-Pratap Godase, accused No.21-Ganesh Salvi, accused No.16-Subhash Upadhyay, accused No.18-Mohd. Saif Mohiddin Faruqi @ Bobby



and accused No.19- Badrealam Badruddin Faruqui were shown as accused. Two more persons viz., Santosh @ Bablu Singh and Shivprakash @ Babu Upadhyay were also accused in that charge-sheet. These two persons were not arraigned as accused in MCOCA charge-sheet and accused No.16-Subhash was discharged.

343. After this charge-sheet Exhibit 275, the matter had gone to the Trial Court having jurisdiction in relation to IPC offences. In short, MCOCA charges were not then levelled. Exhibit 470 is the document of Test identification parade conducted on 31/5/2007 and another test identification parade was conducted on 1/6/2007. Neeta Shah and Mayuresh Tandel then did identify the accused persons in chargesheet Exhibit 275.

344. After invoking provisions of MCOCA, test identification parade was conducted on 20/6/2008 and in it accused Nos.2 and 4 were identified by PW-7-Manali. It is true that Neeta Shah and Mayuresh who had participated in earlier parades did not participate in this test identification parade. However, Manali pointed out accused persons seen by her in the house (room) of her uncle deceased Kamlakar. Test identification parade dated 2/6/2008 is conducted by PW-24 and nothing fruitful has been



brought out in his cross examination to disbelieve either him or the proceedings of the test identification parade.

345. Apart from Manali, PW-12-Motilal Choudhary also participated in test identification parade dated 20/6/2008. He is hotelier by profession and the room of deceased Kamlakar is situated at 5-7 minutes walk from his hotel. He has deposed that four unknown persons, not his regular customers used to come to his hotel in morning for about 20 days prior to murder of deceased Kamlakar. They used to take breakfast and then proceed towards stop of Bus No.340. They stopped visiting his hotel from the next day after murder of Kamlakar. He then pointed out proceedings of test identification and how he identified initially two out of these four persons and then in second test identification parade, remaining two accused persons. Court has taken note of fact that he identified accused No.5-Anil Giri in Court and all accused persons were then not brought to the Court by police. Later on he also identified other three accused persons. His cross examination shows that he took a walk down the memory lane and after recollecting the facts, decided to tell it to police. His statement under section 161 CrPC is recorded on 17/6/2008. He has also described accused persons in cross examination and it is not the



case of any accused before us that this identification by him or description given by him is incorrect.

346. It is to be noted that accused No.4 Anil Kumar and accused Narendra as also accused No.3-Ashok have given confessions and later on attempted to resile from it. Their confessions also disclose regular visits in said period to the hotel of PW-12.

347. Evidence of PW-21 Motiram Kasar shows that in March 2007, he was PI at Saki Naka Police Station and he has investigated into the murder of Kamlakar. He had gone to scene of offence and also taken photographs. When he reached the house of Kamlakar, its entrance door was closed. He pushed it open and entered inside. He found Kamlakar seated in plastic chair with back towards entrance door and head leaning on left. His left temporal region had bleeding injury. He arranged to take photographs and also identified the same before the court. He also pointed out a Scarbutt of fire arm lying on the spot. At 6.35 hrs he got the information that Kamlakar had passed away.

348. PSI Nalawade recorded the statement of Manali Hire at the hospital and crime came to be registered vide C.R. No. 82 of



2007. The spot panchanama was also drawn and he found one letter on the stool in front of the chair. He took that latter in possession.

349. After arrival of the sniffing dog, the dog was given smell of Scarbutt and set out on trail. He returned back after about 25 minutes. Finger prints were obtained from the cupboard and scarbutt. He wrapped the scarbutt in khaki paper after putting it in a plastic bag and then attached the labels bearing signatures of panchas. He identified the Scarbutt and also signatures on paper slip "1A".

350. During the enquiry, he met Nita Shah and Mayuresh Tandel. He recorded Nita's statement on 11.30 pm on the same day. Mayuresh Tandel informed the control room about the incident and his statement was recorded after midnight. He forwarded the cloths of the deceased, Scarbutt and bottle containing blood sample to FSL.

351. During the investigation, he found that the murder was committed since accused no. 12 Ajit Rane lost the municipal elections. ACP arrested Ajit Rane, Pratap Godse and Ganesh Salve. This witness also proved their arrest forms.



352. After some information, four persons namely Subhashchandra Upadhyay, Mohd. Saif Mohiddin Faruqee @ Boddy, Badre Alam Badruddin Shaikh and Santosh Rajendra Singh came to be arrested. Certain telephone numbers were kept under observation. Print outs of CDR were obtained. The phone numbers of accused no. 6 Sahebrao Bhintade, accused no. 7 Bala Surve, accused no. 10 Shrikrishna Gurav and several other persons were kept under observation. Specific question was put to him whether during the investigation he got any material sufficient to arrest any of the persons and the witnesses stated that he did not get sufficient material against other accused persons except accused no. 21 Salvi, accused Ajit Rane and accused Pratap Godse. He filed chargesheet as the period of 90 days was getting over. He identified said chargesheet with the signature of Senior P.I. Wadkar.

353. Cross examination of PW-21-Motiram Kasar shows the arrest of accused Ajit Rane, Pratap Godse and Ganesh Salvi who were in police custody for 15 days after their arrest on 1/7/2007, & that they were thoroughly interrogated. Accused Upadhyay was arrested on 1/4/2017 while Mohd. Saif and Badrealam were arrested on 4/4/2007. Santosh Singh was arrested on 12/4/2007.



They were all in police custody for 15 days and thoroughly interrogated. He himself prepared a brief summary of case of prosecution at last page of charge-sheet. That brief summary has been marked as Exhibit 275.

354. He also states that accused No.6 Sahebrao Bhintade and accused No.7-Bala Surve were also interrogated. He was not aware whether their statements were recorded on it. He was not aware whether statements of Shrikrishana Gurav, Madhav Zha, Nilesh Patil, Pravin Marathe, Suman Surve, Manoj Agarwal, Jeevan Gawali and his father Babu, Ashok Kavatekar, Prakash More, Sanjeev Singh, Jakir Ahmad and Smt. Ajara were recorded by police officers. He had interrogated Shrikrishna Gurav but he did not record his statement as he did not find it necessary. He also then found it not necessary to arrest accused No.10. He then pointed out that while leaving police station for investigation, entries are made in station diary. He proved Entry No.31 dated 2.3.2007 at Exhibit 276 and Entry No.39 at Exhibit 277.

355. This witness PW-21-Motiram has also been cross examined in relation to diary entry dated 26/4/2008 particularly entry No.17 and 18 of that date and Entry Nos. 26, 27 and 29 dated 29/4/2008. He produced station diary entries (xerox copies)



which have been marked collectively as Exhibit 278. He had no personal knowledge that investigation papers were called for by DCB CID Unit-III. He stated that papers were kept with Police Inspector (Crimes). He was not aware that papers were received back in police station. He was not told by PI Crime that papers were called for by DCB-CID Unit-III.

356. About entry 26 dated 29/4/2008, he has deposed that papers were brought back from DCB CID office by Shri Salvi. Entry No.27 revealed that those papers were again submitted to DCB CIR Unit-III office. He stated that papers were called back by DCB CID within an hour. He did not peruse letter dated 26/4/2008. He was not knowing whether articles submitted along with charge-sheet had been returned to police station.

357. He admitted contents of Exhibit 276. As regards entries in Exhibit No.277, he stated that its contents were correct. He denied that when he reached to the spot deceased Kamlakar was already rushed to hospital. He stated that till completion of spot panchanama, he did not go to hospital. He accepted that portion marked "A" in Exhibit 277 was not correct. In portion marked "A" in Exhibit 277 it is recorded that Kamlakar was already taken to Rajewadi hospital and when he reached Rajewadi hospital, he



learnt that Kamlakar had already expired. He has then identified photographs taken at spot. He stated that these photographs were not submitted to Court along with charge-sheet inadvertently. His attention was invited to portion marked as “B” in Exhibit 277 which records that direction was issued to investigate. He accepted portion marked as Exhibit “B” to be correct.

358. His cross examination shows that portion marked as “B” in Exhibit 277 regarding taking in possession clothes of deceased and portion marked Exhibit “E” are also shown to him. This witness has stated that portion marked “C” in this document is not correct. He accepted that FIR Exhibit 177 does not indicate that it was recorded at hospital.

359. He pointed out that motive behind the murder was ascertained after making inquiry with family members of deceased. Family Members of deceased were reluctant to give their statements but he made no record about it. Widow of deceased, his PA and associates did not voluntarily come to police station. When they were summoned by Police Station, they did not give any material information about motive. However, no record of this fact has been made. PW-2-Neelkanth Bane and Shankar Baikar



were summoned but he did not record their statements since they did not give any useful information. He further stated that sketch of accused was prepared as per description given by Neeta Shah. However, no statement of Neeta Shah was recorded after preparing sketch. That sketch was shown to Mayuresh Tandel and Neeta Shah. Effort was made to show that sketch to PW-1 and PW-7 but, they did not see that sketch. No note in support of fact that though widow Komal, Sayali and Manali were asked to come for test identification parade, they did not come has been prepared. He stated that Sayali and Manali were not summoned to police station and sketch was not shown to them as instructed by PW-1-Komal. He stated that description given by witnesses some what matched with physical appearance of arrested suspects.

360. On 11/3/2007 for the first time he realized that Kamlakar was murdered because of defeat of Ajit Rane in corporation election. He has accepted that he does not know number of votes secured by each candidate. He also pointed out that team of police officers investigated to find out whether there was any property dispute. He was not aware of police record of quarrel between Mr. Bhanushali and deceased in 2002 elections. He was not aware whether in 2007 elections there was any bogus



voting. He accepted that during investigation he found that Kamlakar liked hunting. He was not aware whether Kamlakar frequently used to go to Konkan. He did not investigate into the type of weapon/s with deceased for hunting. He did not find any weapon or objectionable article in the search of his house. He denied that Ajit Rane, Pratap Godse and Ganesh Salvi were arrested in a false case.

361. The change in complexion of the crime after 26.4.2008 and the investigation into murder as an organized crime considered supra, is not prejudiced or affected in any manner by this cross-examination of PW-21 Motiram Kasar.

362. For constituting continuing unlawful activity ie CULA, it is not necessary to prove the past crime, but only the fact that more than one chargesheets in preceding 10 years has been filed in respect of such crime, that the crime bears `a punishment of three years or more and that the Court has taken cognizance of that crime. An association or group facing two or more chargesheets of such nature must be therefore shown at the base as perpetrator of an organized crime. The actual criminal ie person giving effect to crime, may not have been party to its



earlier unlawful activities but then he must be shown to be a person indulging in organized crime & therefore must have knowledge of existence of such a syndicate or its business ie CULA. This flows from requirement that the criminal has knowledge or intention that “his crime” is a organized crime. “ His crime” here means the organized crime for which he is being prosecuted.

363. Material on record shows existence of an association or an organization by name Akhil Bhartiya Sena (ABS). Accused 1 Arun Gawali is its founder & head, & was elected as MLA with banner of ABS. This organization or syndicate had an office within mantralaya when accused 1 was MLA & also at Dagadi chawl. Dagadi Chawl, is guarded by the watchman or guards. It had staff or members to collect the information of the prospective sources for extortion & to summon the heads thereof to “Bhajanachi Kholi” to fix the monthly protection money ie extortion amount. This room was formed by merging rooms belonging to accused 1 Arun Gawali & accused 20 Sunil Ghate. Need of the weapon like gun & efforts made to procure it leading to the handgun are also proved by the prosecution. System of maintaining the accounts of the amount extracted, expenditure incurred & responsibility to write



the accounts on accused 15 Suresh & PW-25 Vishwanath has come on record. Funds were used to purchase & run the vehicles, to pay the salaries of the staff, to assist the dependents of gang members in jail or injured etc. Diaries discovered under S. 27 of the Evidence Act show maintenance of accounts & regular business as extortionist. Accused 13 Ajit Rane contested the election of Corporation as representative of ABS, participation in & effort to disturb MTNL elections, preparations made to attack gang-rival Solanki, help of Rs. 60,000/ to family of Accd. 12 Pratap are the facts also brought on record. Thus an establishment with criminal inclination having a systematic activity & an office has been shown. The activities included locating the possible victims for extortion, calling them to Bhajanachi Kholi & threatening them to agree to pay the monthly installments, charge-sheets looked into in approval order dated 20.05.2008 all prove an organized crime syndicate. This syndicate has its office bearers at taluka as also ward level. Thus there is systematic activity through which the crimes continue leading to organized crime of murder of Kamalakar Jamsandekar on 2.3.2007. This association or syndicate thus encourages & harbours its criminal members. Shri Gupte, the learned Counsel had urged that Anita Ghaywat, sister of Ajit Rane who used to sit in the office has not been examined by the



prosecution. We find that it was not necessary for the State to examine her or to record her S. 161 CrPC statement. If the accused so desired, nobody prevented them from examining her as defence witness. Similarly the argument that scarbutt on the spot, could have been of the gun of Kamalakar himself is misconceived.

364. As already discussed above, the knowledge of all convicted accused persons, except accused 2 to 5; of the existence of Akhil Bhartiya Sena and its criminal activities, steps taken by them to further or advance the goals of ABS & their participation in its affairs are all on record. However, the fact that accused 2 to 5 had knowledge of existence of said ABS, of its objects & activities or fact that accused no. 2 to 5 participated in any such activity has not been proved by the prosecution. Accused 2 to 5 here go to office of Amit Travels and from said office, work of Bhartiya Kamgar Sena of Accused no. 1 is also done. However, the prosecution could not bring on record knowledge to them that person to be killed was a rival corporator Kamalakar or then knowledge to them that they were eliminating Kamalakar on behalf of ABS or accused 1 Arun Gavali. They have/had no knowledge that accused 1 Arun Gawali was to pay



them the agreed amount or ABS was to be the beneficiary of their crime. The material on record shows that they were looking at accused 10 Shrikrishna @ Babu as source of payment. They were “one time hired” killers to execute the supari or job accepted by the ABS. Their contact with accused 10,12 & 13 was the first occasion and the contract was a one time event and as such, the prosecution has not proved that they have indulged in any CULA. The offence of murder dated 2.3.2007 is different in nature or content for them when compared with its nature as against the other accused persons. Qua others, the murder dated 2.3.2007 is an organized crime which surfaced as such on or after 26.4.2008. Prosecution foiling attempt of dacoity dated 26.4.2008 & arresting the accused 2 to 5 in connection therewith, does not change the situation for accused 2 to 5 since attempted dacoity is not an organized crime at all. Charge-sheet or cognizance in the matter of attempted dacoity has not been urged as relevant event here while according the approval on 20.5.2008. This discussion shows that trial & punishment under MCOCA can be only for an organized crime by an organized crime syndicate & not only for CULA which occurred in past, if the organized crime is not proved. Conviction therefore under Ss. 3(3) to (5) may be possible only when trial on the basis of such organized crime succeeds. However, it is not



necessary to conclusively answer this issue since it does not arise in this case. Accused who happen to be the members of such organization can also be punished under S. 3 of MCOCA for the organized crime as also under its Ss. 3(3),(4) & (5). Such of the accused who did not participate in murder dated 2.3.2007 but have assisted the organization or syndicate in its functioning or affairs or CULA, can be punished and their confessions recorded under S. 18 of MCOCA are also admissible. Question if in trial on earlier chargesheets relevant for constituting CULA, the competent court ultimately acquits the accused therein, whether the present trial or conviction under MCOCA would still stand, therefore does not arise. MCOCA does not envisage any punishment for such offence and it permits punishment only in situations envisaged in Ss. 3(3),(4) & (5).

365. The involvement of accused 1 Arun Gawali in the murder of Kamalakar Jamsandekar has been proved by the prosecution beyond reasonable doubt. Similarly fact that he is leader of organized crime syndicate and party to CULA stands established. Hence, his conviction can not be faulted with because accused 11 has been acquitted by the Special Court. Contribution of other accused persons leading to CULA has also come on



record. Hence, submission that PW-2-Neelkanth Bane did not bring any threat perception of deceased Kamlakar Jamsandekar on record is not decisive here. When in law, conviction is possible only on the strength of the confessions recorded under S. 18 of the MCOCA, in present matter, where the independent corroboration is seen, the conviction of the others by the Trial Court can not be faulted with. Hence, the following order.

ORDER

- (1) CR. APPEAL NO. 1095 OF 2012 is partly allowed & part of Judgment convicting Vijay Giri (A-2), Ashokkumar Shivakant Jaiswar (A-3), Narendra @ Kandi @ Lalmani Giri (A-4) and Anil Sherbahadur Giri (A-5) for the offences punishable under Section 3(2) of MCOC Act, 1999 sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.5.00 Lacs each, and in default thereof, to suffer rigorous imprisonment for three years, is set aside.
- (2) CR. APPEAL NO. 1095 OF 2012 is partly allowed & part of Judgment convicting them under Section 3(1)(i) of the MCOC Act, 1999 and sentencing each to suffer rigorous imprisonment for life and to pay a fine of Rs.1.00 Lac each, and in default to suffer rigorous imprisonment for three years, is set aside.



- (3) Part of Judgment in CR. APPEAL NO. 1095 OF 2012 convicting Vijay Giri (A-2), Ashokkumar Jaiswar (A-3) and Narendra Giri (A-4) for the offence punishable under Section 452 read with Section 34 of Indian Penal Code and sentencing each to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5000/- each, and in default to suffer rigorous imprisonment for one year, is maintained
- (4) Similarly Part of Judgment in CR. APPEAL NO. 1095 OF 2012 convicting Vijay Giri (A-2), Ashokkumar Jaiswar (A-3), Narendra Giri (A-4) and Anil Giri (A-5) for the offence under Section 302 read with Section 34 read with Section 120-B of the Indian Penal Code and sentencing each to suffer rigorous imprisonment for life is maintained.
- (5) Remaining part of the common Judgment and Order dated 31st August 2012 delivered by the Special Judge, MCOC Act, Gr. Mumbai in MCOC Special Case No.7 of 2008 is maintained. Accordingly the conviction of all the other appellants ie accused persons & punishments inflicted respectively upon them are upheld.
- (6) Accordingly Criminal appeals 1061 of 2012, 1066 of 2012, 1076 of 2012, 1077 of 2012, 1093 of 2012, 1094 of 2012 and 1157 of 2012 are dismissed.



- (7) All pending miscellaneous criminal applications (interim applications) ie Cr. APP 144 of 2019, 1406 & 1534 of 2018 are also dismissed.

(MRS.SWAPNA JOSHI, J.)

(B.P.DHARMADHIKARI, J.)