



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 576 OF 2016  
WITH  
CRIMINAL APPLICATION NO. 4406 OF 2022  
IN CRIMINAL APPEAL NO. 576 OF 2016

Abhay @ Abhi @ Abhya  
s/o Bhaskar Pore  
Aged : 34 years, Occ: Nil,  
R/o Shivajinagar, Kalyan Road,  
Ahmednagar.

... Appellant  
[Orig Accused No.2]

Versus

The State of Maharashtra  
Through the Police Station Officer,  
Ambhora Police Station,  
Dist. Beed.

... Respondent

WITH  
CRIMINAL APPEAL NO. 542 OF 2016  
WITH  
CRIMINAL APPLICATION NO. 3971 OF 2022  
IN CRIMINAL APPEAL NO. 542 OF 2016

Deepak s/o Dattatraya Jawale,  
Age 36 years, Occ : Nil  
R/o Shedi Pokhardi, Tq. and  
District Ahmednagar.

... Appellant  
[Orig Accused No.1]

Versus

The State of Maharashtra

... Respondent

WITH  
CRIMINAL APPEAL NO. 482 OF 2023

Sunil @ Gajanan Vishwambhar Ekhande  
Age : 44 years, Occ. Nil,  
R/o. Tawle Nagar, Ahmednagar.  
Tq. & Dist. Ahmednagar.

... Applicant  
[Ori. Accused No.4]

Versus

1. The State of Maharashtra  
Through : Police Station Ambhora,  
Tq. Ashti, Dist. Beed.
2. Deepak s/o Dattatraya Jawale,  
Age : 43 years, Occu. : Nil,  
R/o. : Shedi Pokhardi,  
Tq. and Dist. Ahmednagar.
3. Abhay @ Abhi @ Abhya  
Bhaskar Pore, Age : 43 years,  
Occu. : Nil, R/o. : Shivaji Nagar,  
Kalyan Road, Ahmednagar.
4. Vijay s/o Sarjerao Bade,  
Age: 36 years, Occu. : Chinchpur Pangul,  
Now R/o : Wakdi, Tq. Rahata,  
Dist. Ahmednagar.
5. Baliram s/o Arjun Ralebhat  
Age: 44 years, Occu: Nil,  
R/o. Ralebhat Galli Jamkhed,  
tq. & Dist. : Ahmednagar.

... Respondents

WITH  
CRIMINAL APPEAL NO. 57 OF 2019  
WITH  
CRIMINAL APPLICATION NO. 4424 OF 2022  
IN CRIMINAL APPEAL NO. 57 OF 2019

Vijay s/o Sarjerao Bade  
Age: 23 years, Occ: Nil,  
Resident of, Chinchpur Pangul,  
Presently residing at Wakdi,  
Ta.: Rahata, Dist: Ahmednagar,  
Maharashtra.

... Appellant  
[Orig. Accused No.3]

Versus

The State of Maharashtra  
Through, the Ambhora Police Station,  
Tal: Ashti, Dist: Beed.

... Respondent

.....  
Mr. Abhaykumar D. Ostwal, Advocate for appellant in Criminal Appeal No. 57 of 2019.

Mr. Abhaykumar D. Ostwal, Advocate (appointed) for appellants in Criminal Appeal Nos. 542/2016, 576/2016 and 482/2023.

Mrs. V. S. Choudhari, APP for Respondent-State in all appeals.

.....

**CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.**

**Reserved on : 07.11.2023**

**Pronounced on : 04.12.2023**

**JUDGMENT [ABHAY S. WAGHWASE, J.] :**

1. By way of distinct appeals, convicts for offence under Sections 392, 394, 366, 341, 354 and 376 (2)(g) r/w 34 of the Indian Penal Code [IPC] and Sections 3 (1)(ii), 3(2) of the Maharashtra control of

Organized Crime Act, 1999 [MCOCA Act] are hereby assailing judgment and order of conviction passed by learned Special Judge, Aurangabad dated 22.08.2016 in Special Case No. 02 of 2010.

Above appeals being dealt together and heard together, are decided by way of common judgment.

**PROSECUTION STORY UNFOLDED IS AS UNDER**

2. While PW6 Lalasaheb, in his private car/cab was returning towards Pune after dropping passengers at Aurangabad, he was again hired by accused persons near Ahmednagar Bus Stand to go towards Pune. After travelling short distance, when PW6 Lalasaheb halted his vehicle to purchase water bottle, accused appellants decamped with his vehicle and so, when his chase turned out futile, he lodged report. These accused persons further intercepted PW1 informant, who was travelling with his family and domestic help in his own vehicle after paying religious visit to Parali Vaijinath. After intercepting his vehicle, prosecution claims that, PW1 informant, his watchman, wife of watchman and informant's son were forced to come out of the vehicle and threatened and beaten and thereafter in his own car, his wife was abducted by two of them and after taking her to some distance, she

was raped and then abandoned on the road and car of PW1 was also taken by those two persons. Remaining two accused had driven the vehicle of PW6 Lalasaheb and they all subsequently fled. PW1 sought help of PW10 Shrikant who used his motorcycle to bring back PW2 and thereafter, PW2, who was stripped of her clothes, borrowed saree from PW5 Sunita. By that time, nephew of informant PW1 passed information to police, who accordingly reached there and thereafter PW1 lodged FIR and PW2 gave statement of being raped.

Investigating machinery swung into action and investigation revealed complicity of appellants and they were duly arrested, interrogated and on their disclosures, recovery of vehicle and ornaments etc. was caused. Detailed investigation revealed they to be committing organized crimes and therefore, along with the penal provisions of IPC, charge under MCOC Act was also applied and they were duly challaned on conclusion of investigation. Their case was tried by special Judge, who on appreciating the evidence adduced by prosecution, held the case and charges proved and passed following order:

- 1. Accused no.1 Deepak Dattatraya Jawale, accused no.2 Abhaya @ Abi @ Abhay Bhaskar Pore, accused no.3 Vijay Sarjerao Bade, accused no.4 Sunil @ Gajanan*

*Vishwambhar Ekhande are convicted under the provisions of Section 235 (2) of the Cr.P.C. for the following offences:-*

*A. U/sec. 392 of I.P.C., and sentenced to suffer rigorous imprisonment for 12 years and to pay fine of Rs.5000/- each i.d. suffer further R.I. for 01 year.*

*B. U/sec. 394 of I.P.C., and sentenced to suffer rigorous life imprisonment and to pay fine of Rs.5000/- each i.d. suffer further R.I. for 01 year.*

*C. U/sec. 366 of I.P.C., and sentenced to suffer rigorous imprisonment for 05 years and to pay fine of Rs.1000/- each i.d. suffer further R.I. for six months.*

*D. U/sec. 341 of I.P.C., and sentenced to suffer rigorous imprisonment for one month.*

*E. U/sec. 3(1)(ii) of MCOG Act and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,00,000/- each, i.d. suffer further R.I. for 03 years.*

*F. U/sec. 3(2) of MCOG Act and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,00,000/- each, I.d. suffer further R.I. for 03 years.*

2. *Accused no.1 Deepak Dattatraya Jawale and accused no.2 Abhaya @ Abi @ Abhay Bhaskar Pore are convicted under the provisions of Section 235 (2) of the Cr.P.C. for the following offences :-*

*I. U/sec. 376(2)(g) of I.P.C., and sentenced to suffer rigorous life imprisonment and to pay fine of Rs.10,000/- each i.d. suffer further R.I. for 01 year.*

*II. As they are convicted and sentenced for major offences of Section 376(2)(g) of I.P.C., no separate punishment has been imposed for offences punishable U/sec. 354 R/w. 34 of I.P.C.*

3. *Accused Nos. 1 to 4 are hereby acquitted U/sec. 235 (1) of the Cr.P.C., for the offence punishable U/sec. 509 R/w. 34 of I.P.C. and U/sec. 3(3) of MCOG Act.*

4. *Accused no.5 is hereby acquitted U/sec. 235(1) of the Cr.P.C., for the offences punishable U/sec. 216(a) of the I.P.C. and U/sec. 3(3) of the MCOG Act.*

5. *Bail bonds of accused no.5 stands cancelled.*

6. *The seized muddemal property consists of clothes of accused and victim, they being of no use be destroyed after appeal period is over.*

7. *The various cards, license and other documents, if any, of complainant, victim, and P.W.6 Mr. Dargude*

*seized during investigation be returned to them after appeal period is over.*

8. *The seized ornaments and mobile hand sets of complainant, and witnesses be returned to victim and Kushawartabai after appeal period is over.*

9. *Cool cab of P.W.06 and Spark Car of complainant are already returned to them.*

10. *Seized knives and iron rods be sold as scrap and its sell proceeds be credited to State after appeal period is over. Seized amount is hereby confiscated to the State.*

11. *All above sentences of accused nos. 1 to 4 shall run concurrently.*

12. *Accused nos. 1 to 4 are entitled to get benefit of set off of period of detention already undergone by them during investigation and pendency of trial of this case.”*

#### **PROSECUTION EVIDENCE**

4. To establish their case, prosecution seems to have adduced evidence of as many as 34 witnesses which could be categorized as and the sum and substance of their evidence is also dealt in brief which is as under:

After taking into account story of prosecution, in our opinion, evidence of PW1 informant, PW2 informant's wife, PW4 Kushavarti, PW5 Sunita, PW6 Lalasaheb and PW10 Shrikant is crucial. Rest of the witnesses are medical experts, panchas, police officers.

Going by the sequence of events which took place that night, evidence of PW6 Lalasaheb is required to be dealt at the threshold as accused had first stolen his vehicle and used the same to commit further offences of robbing, abduction and rape.

#### **First episode of theft of Indica Car**

**PW6** Lalasaheb in his substantive evidence at Exhibit 75, narrated that he initially dropped passengers at Aurangabad and while he was returning back to Pune, he was again hired by four persons at Ahmednagar bus stand to proceed towards Pune. He deposed that after reaching Kedgaon, he got down to purchase water bottle. At that time, the passengers fled with his vehicle. He reported the occurrence to Kotwali police. He has identified all the four passengers i.e. accused for stealing his car.

**Second episode of commission of offence u/s 395 IPC, abduction and rape of PW2**

**PW1** **Informant**, who is husband of PW2, a victim of rape, in his evidence at exhibit 49, narrated about his journey to Parli Vaijinath from Pune and back. According to him, while they were returning to proceed to their place at Pune, their vehicle was intercepted by a vehicle (owned by PW6 Lalasaheb which was stolen by accused persons). He has given details about he, his son, his watchman and wife of watchman being made to alight out of the vehicle, beaten and thereafter his wife abducted by two of them in his own car. He has narrated about informing motorcyclist (PW10 Shrikant) about abduction of his wife and about requesting the motorcyclist to go in search of his wife and accordingly PW10 gave a chase, thereafter they reaching Chichondi Phata by boarding a bus and there, said motorcyclist PW10 Shrikant brought his wife back. He has narrated about arrival of police and further he lodging FIR. He also deposed about statement given by his wife regarding she being raped by two accused. He identified accused persons in the court as well as his complaint.

**PW2** **Victim** also narrated as like her husband about leaving Pune to go to Parli Vaijinath in their vehicle and while returning towards Pune, their vehicle being intercepted by persons who came in Indica car. Her husband, son, watchman and his wife made to get out of the vehicle and she being taken on knife point by two persons. She has also narrated the

ordeal faced by her after being taken to some distance i.e. regarding both accused taking turns to force themselves on her in the moving car and then abandoning her on the way and speeding away with their car. She also narrated regarding she being robbed of her ornaments and left in bare clothes on the road and she meeting PW10 who brought her to Chichondi Phata. She also narrated about PW5 Sunita, a woman from the village, lending her a saree to cover herself and thereafter, on arrival of police, they going to show the spot and after reaching Nagar, she passed information of being sexually assaulted and accordingly her statement to be recorded and she to be subjected to medical examination. She also identified accused present in the court to be the perpetrators of above crime.

**PW4** Kushavarti is the wife of watchman Dnyanoba. She too was one of the co-passengers in the car of PW1 informant. In her evidence is at Exhibit 70, she too has deposed about their car being intercepted by an Indica car, four persons alighting the Indica car, forcing PW1, his son, this witness and her husband to come out of the car, giving thrashing to them and after snatching ornaments of this witness, two of them abducting PW2 in their own car and remaining two fleeing from the spot in the Indica car, a motorcyclist arriving there and on being informed about incident, he giving chase and bringing PW2 back to them at Chichondi Phata. According to this witness, at that time PW2 had put on shirt of that motorcyclist. Thereafter, she has deposed about one lady lending a saree to PW2, police approaching

and taking them to Ambhora police station, PW1 and PW2 showing the spot to police and thereafter police recording statement of this witness.

This witness too, has further deposed about Identification Parade at Ashti and she identified all four accused as well as her ornaments.

**PW10 Shrikant** Namdeo Shamgire, resident of Patoda, District Beed, deposed that on 11.04.2010, while he along with a boy were proceeding towards Ahmednagar on motorcycle, he was stopped by four persons, told about abduction of victim by thieves and was requested to bring her to them if found. He further deposed that while proceeding ahead, near Takli, a lady having only a towel on her person, stopped him and narrated the incident. According to this witness, he gave his shirt and mobile to her and she called her relatives and got their location to be at Chichondi. This witness further deposed about taking said lady to her relatives at Chichondi, her husband giving his shirt to the lady and shirt of this witness was returned to him. He also deposed about his statement being recorded by police as well as before the court.

**PW5 Sunita** w/o Dhondiram Aglave, resident of Chitondi Pati, District Ahmednagar, deposed about her house to be situated abutting the road. About the incident, she deposed that she had been to the temple of Vithal Rukhmini for attending bhajan and while she was returning home, she

saw a lady wearing a towel over her person. According to this witness, said lady demanded a sari from her and this witness provided the same. This witness claims to have heard about the incident from said lady.

**PW3 Nitin** is nephew of informant. He deposed that he had received phone call from informant in the midnight i.e. at 1.30 a.m. on 11.04.2010 and informant had narrated the the incident. He has deposed that he had forwarded the said information to police by dialing number 100.

**PW7 Bapusaheb** Kanhoji Ghemud, Branch Manager, Sonai Branch of State Bank of India, who deposed about handing over details of ATM transaction on 11.04.2010 during 2.20 a.m. to 2.30 a.m, along with CCTV footage from the camera at said ATM center.

**PW15 Namdev** Dattatraya Ralebhat, Manager of Suyog Beer Bar and relative of accused no.5 Baliram, deposed about arrival of accused persons at his hotel for meal on 10.04.2010 at 5.00 to 5.30 p.m.

**PW25 Sambhaji** Bhagwan Veer, driver of a bus, a hostile witness.

#### Medical Experts

**PW9 Dr. Satish** Raghunath Tamble, is the medical officer, who examined victim. In his evidence at Exhibit 85, he deposed that on 12.04.2010, when he was attached to District

Hospital, Beed, he examined victim aged 43 years, who was referred by Ambhora Police Station. On examination, he claims to have noticed abrasion on left side of neck, size 3x2 cm, hymen ruptured old, tear old. He has accordingly issued medical certificate Exhibit 86 which he identified.

**PW12** **Dr. Mrs. Sandhya** Munjaji Kshirsagar, who medically examined accused Deepak and Abhay and issued certificates Exhibits 96, 97 and 98, which she identified while in the witness box.

**PW18** **Dr. Nilesh** Bhagwan Pawar, who deposed about medically examining accused Deepak on 11.04.2010 at 6.10 a.m.

#### **Pancha witnesses**

**PW8** **Mahesh** Kachru Chavan, acted a pancha to seizure of clothes of accused persons. He identified Exhibits 160 to 164.

**PW11** **Ansar Khan** acted as pancha to seizure of car of Spark company, along with articles found inside it, from Shirdi.

**PW17** **Vipin** s/o Premchand Lodha acted as pancha to memorandum of disclosure Exhibit 131 at the instance of accused Abhay and seizure panchanama of ornaments Exhibit 132 He identified said panchanamas, accused as well as the ornaments.

**PW19** **Natha** Raosaheb Shelke, who acted as pancha to memorandum of disclosure Exhibit 140 at the instance of accused Deepak and seizure panchanama Exhibit 141 of white colour Indica Car, two knives and two iron rods.

### **Investigating machinery**

**PW13** Arvind Shankarrao Bolange, Naib Tahsildar, who conducted identification of ornaments. He identified Exhibits 102 and 103.

**PW14** Ramlal Mhatarba Jadhav, Thasildar, who conducted identification parade of accused Deepak, Vijay, Abhay and Sunil on 20.01.2010. He identified Exhibits 106 to 120.

**PW16** PI Bapusaheb Shantaram Mahajan, while on patrolling duty, on receipt of information on 11.04.2010 at 1.30 a.m., went to Chilcholi fata, met victim and her family members, brought and produce them API Rathod [PW21-IO] at Ambhora Police Station.

**PW20** PI Suresh Khade, who showed photographs of history sheeters to informant and other witnesses, who identified two accused person from the photographs. He arrested accused Abhay, Deepak.

**PW21** PI Anant Dhanaji Rathod is the first Investigating Officer

**PW22** PHC Bhagwat Bhanudas Waghmare

- PW23** PHC Sk. Juberoddin,  
are carriers.
- PW24** API Somnath Shivaji Kohle, who carried accused Vijay and Sunil for recording their statements.
- PW26** P. S. Sinha, Special IG, Aurangabad, who accorded prior approval for invoking provisions of MCOG Act accused.
- PW27** Sudarshan Laxmanrao Mundhe, PI, LCB, Beed, is the Investigating Officer.
- PW28** Krushipal Tarachand Raghuvanshi, Additional Director General of Police, Law and Order, Mumbai, who accorded sanction to prosecute accused under Section 23(2) of the MCOG Act on 27.07.2010.
- PW29** Deelip Wasudeorao Deshpande, Adhoc District Judge and Additional Sessions Judge, Osmanabad, who recorded verification statement of confessions given by accused persons.
- PW30** Dattatraya Yadav Mandlik, SP, Osmanabad, who recorded confessional Statement of accused Deepak and Abhay.
- PW31** Arving Harischandra Chavriya, Additional SP, Aurangabad, who recorded confessional statement of accused Baliram.

**PW32** PI Sikandar Khan took accused Deepak and Abhay from Shivaji Nagar Police Station to Beed to Osmanabad SP office for recording their statements.

**PW33** Additional SP Sanjay Bhaskar Darade recorded confessional statements of accused Vijay Bade and Sunil Ekhande.

**PW34** SDPO Sambhaji Sudamrao Kadam is the Investigating Officer

5. While exercising jurisdiction under Section 374 of the Code of Criminal Procedure [Cr.P.C.] and this being first appellate court, we undertook the exercise of re-appreciating and re-analyzing the entire evidence adduced by the prosecution in the trial court.

#### **ANALYSIS OF FIRST AND SECOND EPISODE**

6. On carefully sifting above evidence, it transpires that accused persons first robbed PW6 Lalasaheb of his vehicle and used it to commit second offence. Evidence of PW6 Lalasaheb has remained intact in spite of being cross-examined at length. His testimony about his vehicle being hired and it being forcibly taken away when he got down to purchase water bottle, has not been rendered doubtful. This witness was called to participate in TI parade and he has identified

accused persons. He is an independent witness and also in a way a victim of offence of theft of his vehicle. There is no reason for false implication. For all above reasons, first episode of stealing Indica car is cogently brought on record through evidence of PW6 Lalasaheb whose vehicle has been traced and recovered at the instance of accused persons itself.

7. So far as second occurrence is concerned, evidence of PW1 informant, PW2 informant's wife, PW4 Kushavarti, PW5 Sunita and PW10 Shrikant is of vital importance and we have already dealt and discussed their testimonies in the witness box. All these witnesses are subjected to extensive searching cross. However, what is noticed is that they all withstood the lengthy cross and actual occurrence of interception, beating to PW1 and his son, forcibly making PW4 and her husband to step out of the car and taking away PW2 forcibly on knife point has also remained intact. In fact, the manner of cross clearly suggests that there is no serious dispute about the actual occurrence. PW1 and PW2 are unanimous about their Indica car being intercepted by four unknown persons who were allegedly armed with knife and iron rods. PW4 Kushavarti, an incumbent of the car and the domestic help of PW1 and PW2 also lends support and corroborates their evidence. She has also been robbed of her

mangalsutra. She has also narrated the actual occurrence in her presence, of which she too is a victim, and she also deposed about PW2 being abducted by two accused. PW1 informant and PW4 Kushavarti are consistent about hiring a traveller vehicle to reach to Chichondi Phata and information being passed to nephew of PW1. All these witnesses are categorical and consistent about arrival of a motorcycle at Chichondi Phata and PW1 narrating occurrence to the motorcyclist who further gave chase and brought back PW2 in bare bodied condition.

8. PW2, who was abducted in her own car, has given a detail account of the ordeal faced by her after forcibly taken on knife point. She has narrated about she being stripped and raped in the rear seat of the vehicle while other accused was steering the vehicle on the road and after being raped by accused no.1, accused no. 2 occupying rear seat and he too raping her. This victim of rape has given detail account of the entire episode. She has spent almost half an hour in the company of both accused. Therefore she had ample opportunity to identify them. She has initially identified the photographs which were confronted by police who had maintained record of all history-sheets. Considering the modus operandi and nature of crime, police got a clue regarding involvement of accused who were habitual in

committing such crimes and were history-sheeters. She and her husband PW1 both have identified accused not only in the photograph but have also identified them in Test Identification parade. Medical expert, who had examined PW2 has also been examined by prosecution to establish the offence. Evidence of PW2 is also not rendered doubtful. Though she immediately did not report the occurrence, considering the nature of offence and her own status to be a married woman, a few hours delay in reporting the occurrence is insignificant. PW2, a victim of rape is also subjected to extensive cross and an unsuccessful attempt has been made to discredit her testimony but all efforts apparently went in vain as she has withstood the extensive cross by defence counsel representing accused persons. There is nothing in her cross which would render her evidence unworthy of credence.

9. We have carefully gone through the lengthy cross undertaken by each of the defence counsel, but we have noticed that numerous irrelevant questions are put to PW1 and PW2 like, for how much distance chase was given, whether there were wheel marks, whether culprits were in masked condition, whether medical treatment for alleged beating was taken, registration number of the traveller vehicle used to travel to Chichondi Phata, distance between two places, time

at which PW2 reached back to the spot at Chichondi Phata, how many times vehicle was overtaken, whether other villagers gathered and at what time report was reduced into writing and for how long PW2 was inquired with by Ambhora police and what time she was subjected to medical examination, who accompanied her, whether her statement was recorded at the hospital itself. Surprisingly, questions are posed about geographical location of the spot even when PW1 and PW2 were victims of serious offence which allegedly took place during the dead hours of night.

10. Independent witness like PW10 Shrikant, who had come to the rescue of PW2, has also stepped in the witness box. He has also lent support to the testimony of PW1 and PW2. Nothing damaging has been brought in his cross.

11. Likewise, PW5 Sunita, a villager, has also deposed about she returning after attending a religious function and seeing PW1, PW2 and others and finding PW2 in bare bodied condition, she has lent her own saree to PW2. She also corroborates the story of prosecution. Resultantly, here, there is corroboration from independent corners and these witnesses ie. PW5 Sunita and PW10 Shrikant have also sufficiently corroborated prosecution version.

12. Panchas to the recovery discovery have also supported the prosecution. Recovery of Indica car, which was stolen from PW6 Lalasaheb and used in commission of crime, is at the instance of accused Deepak and the same is proved by prosecution by examining pancha witness PW19 Natha. Seizure of informant's Spark vehicle, along with clothes of PW2 victim found in it, from Shirdi, is also brought on record through pancha witness PW11 Ansar Khan. The ornaments robbed from the informant party are also established to be recovered after short span at the instance of and from the house of accused Abhay by adducing evidence of pancha PW17 Vipin. Ornaments so robbed are also got identified through PW2-victim and PW4-Kushavarti. PW11 pancha Ansar Khan and PW2-victim have also identified clothes which were on the person of PW2 on the day of incident. PW8 Mahesh, who has acted as pancha to seizure of clothes of accused persons, has also supported prosecution.

13. C.A. reports Exhibits 258 to 261 revealed blood group of victim to be "O" and that of accused Deepak to be "B". Blood group of accused Abhay could not be detected. However, human semen of blood group "B" was detected on the underwear/nicker of rape victim as well as both accused of rape i.e. Deepak and Abhay. This evidence

in the form of C.A. reports also lends corroboration to the victim's version.

14. Therefore, on critical analysis of testimony of **PW6** Lalasaheb regarding first episode, prosecution has cogently brought on record that his vehicle was stolen by four accused and he has received his vehicle back which was seized from none other than the accused persons.

15. Testimony of PW1 informant, PW2 informant's wife and PW4 Kushavarti is consistent about their vehicle being intercepted and they along with son and PW1 informant and husband of PW4 to be beaten and forced out of the car and wife of PW1 to be abducted in their own car after ornaments of PW4 were snatched.

16. Two accused i.e. accused no. 3 Vijay and accused no. 4 Sunil seem to have parted whereas accused nos. 1 and 2 i.e. Deepak and Abhay took wife of PW1 i.e. PW2 and in moving car they seem to have committed forcible rape on her by taking turns. Evidence of PW2 is intact about she being raped in a car which was on wheels i.e. in moving condition by both accused by taking turns. She claims that she has overheard name while they both were interacting with each other.

17. PW5 Sunita, PW6 Lalasaheb and PW10 Shrikant, who are independent witnesses, have also remained steadfast in their evidence. Resultantly, their versions are supporting evidence of PW1 and PW2.

18. Therefore, here, there is not only clinching evidence but overwhelming evidence against all accused for committing highway robbery, forcefully snatching ornaments, stealing car, accused nos. 1 and 2 abducting PW2 and committed forcible rape on her. Victim of rape has also narrated the ordeal faced by her since being abducted. Medical evidence confirms sexual assault. Therefore, all charges are firmly and cogently proved. The ingredients to attract these charges are available in the evidence. Hence, penal sections viz. 392, 394, 366, 341, 354 and 376 (2)(g) r/w 34 of IPC are squarely attracted.

19. The upshot of the analysis is that evidence of PW6 Lalasaheb, PW1 informant, PW2 informant's wife, PW4 Kushavarti, PW5 Sunita and PW10 Shrikant is that prosecution version has been proved beyond reasonable doubt. Apprehended Accused are not only identified by PW1 informant, PW2 victim, PW4 Kushavarti and PW6 Lalasaheb in court but also in Test Identification parade.

20. Learned counsel for the appellants fervently submitted that there is no material to implicate accused for provisions under MCOG Act. That, even learned trial court has deviated from the accepted principles of sentencing policy. Exorbitant fine has been slapped and for all above counts, he seeks indulgence of this Court to that extent also.

21. In the light of above submissions, more particularly here, there being charge of offence under MCOG Act and specific points to that extent determined by way of point nos. 9, 10 and 11 of the impugned judgment, we have gone through the evidence of all high ranking police officers who have received directions from the Head of the Police Department of the State to record confessional statements and gather record of the crimes committed by them. Prosecution seems to have undertaken the exercise of gathering criminal antecedents of accused persons. The same are made part of record. It needs to be borne in mind that in the current offence, accused were apprehended only on the basis of photographs identified by PW1 and PW2 and further investigation unfolded their involvement beyond reasonable doubt and in the light of complete chain of circumstances which has remained consistent, intact and unbroken.

22. According to prosecution, accused no.1 Deepak is the main accused. Involvement of such accused and other co-accused has been documented, of which chart is also handed over by prosecution, and it is reflected and reproduced in the judgment of learned trial court in para 59 and 60. It transpires that documents from Exhibit 170 to 203 is a compendium of the criminal antecedents of accused documented by Police Department and further proposal was put up before Special I.G., Aurangabad Range through S.P. Beed under MCOC Act and the same is, on application of mind by such authority, approved by invoking Section 23(1-a) of MCOC Act. In pursuance to it, Additional D.G., Dy.S.P. and S.P. ranking officers have worked in co-ordination and recorded confessional statements of accused and thereafter, learned CJM, Osmanabad was approached for verification. He further seems to have recorded statements under 164 of Cr.P.C. by following the guidelines and the procedure contemplated in the statute. All such officers from Investigation Officer to Director General, have appeared and deposed before the court. Therefore, extra care seems to have been taken while invoking provisions under MCOC Act. Record gathered and maintained by police authorities finds names and involvement of present appellants in various grievous offences of similar nature which clearly suggests that the *modus operandi* is well

planned and in organized manner. Therefore, provisions of MCOC Act are rightly attracted and applied.

23. Except raising a plea before us, learned counsel for the appellants could not point out that there is false implication and that there is no material against these accused persons to face charge under MCOC Act. Police machinery has gathered sufficient material which has been meticulously considered and studied by higher police officers reflecting application of mind while granting sanction. There is nothing brought to our notice regarding deviation or non compliance of mandatory procedure. Even learned trial court has extensively dealt and appreciated available evidence adduced by prosecution. Therefore, no fault can be found for guilt recorded by learned trial court for such offence.

24. Learned counsel for appellant at the end would plead that as regards to accused Deepak and accused Abhay, there is sufficient material regarding their involvement in various cases however, as regards to remaining two accused, their involvement is shown only in two to three cases and they have already undergone more than seven years of imprisonment and hence, at least their sentence be reduced and brought down to already undergone and they be let off.

According to learned counsel, minimum sentence be imposed for all, as the period of incarceration already undergone is huge and further, recent trend in law calls for consideration of reformatory theory and so he seeks concession in the sentence awarded by trial court.

25. We have pondered over the above submission. We have also perused the list of offences involving accused produced by the prosecution, which is as under :

| Sr. No. | Case No./Crime No.                     | Police Station and Sections                     | Name of accused   | Description of documents and exhibit numbers  |
|---------|--|---|---|---|
| 1.      | RTC No. 419/2008, C.R. No. 154/2007    | P.S. Nagar Taluka, U/sec. 394, 341, 403 of IPC  | 1. Deepak Jawale and three others (who are not accused in this case)                                    | Charge Exh. 170, Chargesheet Exh. 171   |
| 2.      | Sessions Case No.180/09, C.R. No.42/09 | P.S. Nagar Camp, U/sec. 395 of IPC              | 1. Deepak Jawale<br>2. Abhay Pore<br>3. Vijay Bade and two others (who are not accused in this case)    | Chargesheet Exh. 173, Committal Order Exh. 174  |
| 3.      | R.T.C. No. 608/09, C.R. No.63/09       | P.S. MIDC Nagar, U/Sec. 394, 342 R/w. 34 of IPC | 1. Deepak Jawale<br>2. Abhay Pore and two others (who are not accused in this case)                     | Chargesheet Exh.175   |
| 4.      | R.T.C. No. 429/09, C.R. No. 65/09      | P.S. Nagar, U/sec. 399, 408 of IPC              | 1. Deepak Jawale<br>2. Vijay Bade<br>3. Abhay Pore and five others, (who are not accused in this case). | Chargesheet Exh.177, arrest panchanama of Deepak Jawale Exh.178, committal order Exh.179. |

|     |                                    |   |   |  |
|-----|------------------------------------|---|---|--|
| 5.  | R.T.C. No. 455/09, C.R. No.131/09  | P.S. Kotwali, U/sec. 379 R/w. 34 of I.P.C.                                  | 1. Deepak Jawale<br>2. Abhay Pore<br>3. Vijay Bade and six others, (who are not accused in this case).  | Chargesheet Exh.180.                                     |
| 6.  | R.T.C. No. 482/09, C.R. No. 134/09 | P.S. Kotwali, U/sec. 395 of I.P.C.  | 1. Deepak Jawale<br>2. Abhay Pore<br>3. Vijay Bade and four others, (who are not accused in this case). | Chargesheet Exh. 182                                     |
| 7.  | R.T.C. No. 117/10, C.R. No. 232/09 | P.S. Newasa, U/sec. 379 R/w. 34 of I.P.C.                                   | 1. Deepak Jawale and one another, (who is not accused in this case).                                    | Chargesheet Exh. 184, FIR Exh. 185, complaint Exh.186.   |
| 8.  | R.T.C. No. 219/11, C.R. No. 107/10 | P.S. Kotwali, U/sec. 379 R/w. 34 of I.P.C.                                  | 1. Deepak Jawale<br>2. Abhay Pore<br>3. Vijay Bade<br>4. Sunil Ekhande                                  | FIR Exh.187, Complaint Exh.188, spot panchanama Exh.189. |
| 9.  | R.T.C. No. 25/10, C.R. No. 403/09  | P.S. Tofkhana U/sec. 392 R/w. 34 of I.P.C.                                  | 1. Deepak Jawale and three others, (who are not accused in this case).                                  | Chargesheet Exh.196.                                     |
| 10. | R.T.C. No. 138/10, C.R. No. 160/09 | P.S. M.I.D.C. Ahmednagar, U/sec. 392, 341, 427 R/w. 34 of I.P.C.            | 1. Deepak Jawale and one another, (who is not accused in this case).                                    | Chargesheet Exh.197.                                     |
| 11. | R.T.C. No. 5/10, C.R. No. 117/09   | P.S. Tofkhana, U/sec. 4/25 of Arms Act and U/sec.37(1)(3), 135 of B.P. Act. | 1. Deepak Jawale and one another, (who is not accused in this case).                                    | Chargesheet Exh.197/A.                                   |
| 12. | R.T.C. No. 249/10, C.R. No. 5/10   | P.S. M.I.D.C. Nagar, U/sec. 394 R/w. 34 of I.P.C.                           | 1. Deepak Jawale and two unknown absconded accused, (who are not accused in this case).                 | Chargesheet Exh.198.                                     |

Apart from above 12 cases, prosecution has also brought on record following five cases :

| Sr. No. | Case No./Crime No.                 | Police Station and Sections                       | Name of accused  | Description of documents and exhibit numbers |
|---------|------------------------------------|---|--|--|
| 1.      | R.T.C. No. 496/07, C.R. No. 160/07 | P.S. Tofkhana U/sec. 379 R/w. 34 of I.P.C.        | 1. Deepak Jawale and two others (who are not accused in this case) | Chargesheet Exh.183.                         |
| 2.      | R.T.C. No. 178/10, C.R. No. 393/09 | P.S. Kotwali, U/sec. 379 R/w. 34 of I.P.C.        | 1. Sunil Ekhande and two others (who are not accused in this case) | Chargesheet Exh.199.                         |
| 3.      | R.T.C. No. 127/10, C.R. No. 366/09 | P.S. Kotwali, U/sec. 379 R/w. 34 of I.P.C.        | 1. Sunil Ekhande and one another (who is not accused in this case) | Chargesheet Exh.200                          |
| 4.      | R.T.C. No. 308/10, C.R. No. 368/09 | P.S. Kotwali, U/sec. 379 R/w. 34 of I.P.C.        | 1. Sunil Ekhande and one another (who is not accused in this case) | Complaint Exh.201, Chargesheet Exh. 202.     |
| 5.      | R.T.C. No. 335/10, C.R. No. 162/09 | P.S. M.I.D.C. Nagar, U/sec. 379 R/w. 34 of I.P.C. | 1. Sunil Ekhande and two others (who are not accused in this case) | FIR Exh. 203, chargesheet Exh.297.           |

26. Sentence always commensurate with the gravity of offence. Prayers are made before us that excessive sentence has been awarded and the same should be lowered. Needless to say, here, offences of highway dacoity, robbery, rape has been committed and as such, grave offences have been committed. Only in deserving cases, considering the nature of crimes, age and mitigating circumstances, powers can be exercised by appellate courts to lower the sentence. However, having taken into account the list of cases registered against

each of the above appellants, it is abundantly clear that they are hardened criminals. Repeatedly they have committed grave offences of which record has been accumulated and therefore, we are doubtful whether they at all could be reformed even if given a chance. They are involved in serious offences like under MCOC Act and it is only upon sufficiency of material, they are indicted for such serious charges. Multi-layered enquiry confirms their involvement. Therefore, we are not inclined to interfere in the sentencing policy adopted by learned trial Judge. Learned trial Judge has appreciated the evidence as required by law and sound reasons are assigned for the findings and conclusion reached at. Therefore, we do not find any fault in the sentence awarded by learned trial Judge. However, we do find that learned trial Judge has slapped exorbitant fine of Rs. 5,00,000/- and therefore, only to that extent interference is called for. Hence, we proceed to pass the following order:

**ORDER**

- I. The appeals are partly allowed.
  
- II. The conviction of all appellants/accused nos. 1 Deepak, 2 Abhay, 3 Vijay and 4 Sunil under Sections 392, 394, 366, 341 of IPC and Sections 3(1)(ii) and 3(2) of the MCOC Act and the conviction of appellants/accused nos. 1 Deepak and 2 Abhay under Section 376(2) (g) of IPC, vide judgment and order dated 22.08.2016 passed by

learned Special Judge (MCOC Act), Aurangabad in Special Case No. 02 of 2010, is maintained.

**HOWEVER**

III. The amount of fine imposed on all four appellants/accused vide clauses 1(E) and 1(F) of the operative part of the order is hereby reduced to Rs.50,000/- each.

IV. Excess fine deposited, if any, to be refunded to the appellants/accused after the statutory period.

V. Rest of the judgment and order is maintained.

VI. All the appeals are accordingly disposed off.

VII. In view of disposal of appeals, all pending applications also stand disposed of.

VIII. We quantify fees of Mr. Abhaykumar D. Ostwal, Advocate appointed to represent the appellants in Criminal Appeal Nos. 542 of 2016, 576 of 2016 and 482 of 2023 collectively to be at Rs.10,000/- which is to be paid the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]