

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.413 OF 2021

The State of Maharashtra,
Through: Kotwali Police Station,
Taluka and District-Ahmednagar.

...APPELLANT

VERSUS

Atul Vikram Waghmare,
Age-25 years, Occu: Service,
R/o-Shivajinagar, In Front of
Navgan College, District-Beed.

**...RESPONDENT
(Ori. Accused No.3)**

...
Mr.R.V. Dasalkar, A.P.P. for Appellant.

...

WITH

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.63 OF 2021**

The State of Maharashtra,
Through: Kotwali Police Station,
Taluka and District-Ahmednagar.

...APPELLANT

VERSUS

Ashok Narsingh Langote,
Age-52 years, Occu: Labour,
R/o-Uplai Thonge, Tq-Barshi,
District-Solapur

**...RESPONDENT
(Ori. Accused No.2)**

...
Mr.R.V. Dasalkar, A.P.P. for Applicant.
...

AND

CRIMINAL APPEAL NO.192 OF 2021

Atul Vikram Waghmare,
Age-25 years, Occu: Service,
R/o-Shivajinagar, In Front of
Navgan College, District-Beed.

**...APPELLANT
(Ori. Accused)**

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mrs. Suvarna M. Zaware Advocate for the Appellant.
Mr.R.V. Dasalkar, A.P.P. for Respondent.
...

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

DATE : 31st JANUARY, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Appeal No.413 of 2021 has been filed by the State under Section 377(1) of the Code of Criminal Procedure for enhancement of the punishment and Application for Leave to

Appeal By State No.63 of 2021 has also been filed by the State under Section 378(1)(B) of the Code of Criminal Procedure to challenge the acquittal of respondent therein i.e. original accused No.2 from the offence punishable under Section 412 of the Indian Penal Code.

2. It will not be out of place to mention here that original accused No.3, who has been convicted for the offence punishable under Sections 365 and 395 of the Indian Penal Code by the learned Additional Sessions Judge, Ahmednagar on 8th March 2021 in Sessions Case No.110 of 2017, has also preferred appeal bearing Criminal Appeal No.192 of 2021 to challenge his conviction.

3. With the limited scope, we have heard learned APP and with the able assistance of learned APP, we have gone through the evidence which was before the learned trial Judge.

4. The prosecution story, in short, was that one Rajesh Prakash Salve lodged report that on 25th November 2015, he had gone to the house of her sister at Pune. He was asked by his sister to take her ornaments with him for keeping in safe custody

and therefore, he had taken her ornaments in a pouch and went by private vehicle to Maliwada bus stand in Ahmednagar around 10.30 p.m. No bus was available for him and therefore he came out of the bus stand around 11.00 p.m. One Tavera vehicle was passing and stopped in front of him and asked him as to whether he want to go to Aurangabad and therefore, he answered in the affirmative. About eight passengers were occupying the said vehicle and it is stated that all of them were drunk. When the vehicle was passing through military area, the passengers closed the window glass and they started laughing, because of which the informant got frightened and tried to open the door of the vehicle, but two passengers from back seat caught hold of him and a passenger from the front seat throttled him. Informant was robbed of the gold ornaments which were weighing around 10 ½ Tolas and cash worth Rs.1400/-. He was left at Wambori T point by removing the battery from his Mobile. The informant then came to MIDC Police Station and lodged the report which was then transferred to Kotwali Police Station, Ahmednagar.

5. It is to be noted that there were in all six accused to the sessions case. Accused No.1 – Ashok Pandharinath Sangle expired during the pendency of the trial and therefore the case

abated against him. Accused No.4 – Vishnu Kekan, accused No.5 – Sharad Kale and accused No.6 – Santosh Kale are still absconding and therefore, the matter proceeded only as regards original accused Nos.2 and 3. Original accused No.2 is the person who was arrayed under Section 412 of the Indian Penal Code i.e. owner of Shree Jewellers, who is stated to have dishonestly received the gold ornaments though had the knowledge that it is the property after commission of the robbery. Application for Leave to Appeal By State is challenging his acquittal. Accused No.3 has been held guilty by the learned Additional Sessions Judge and has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for one month for committing the offence punishable under Section 365 of the Indian Penal Code. Original accused No.3 has been further sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for six months for committing offence under Section 395 of the Indian Penal Code. Criminal Appeal No.413 of 2021 prays for enhancement of the said punishment.

6. We do not want to go much into the details, but at this stage even as regards the quantum of sentence is concerned, we

do not want to prolong Criminal Appeal No.413 of 2021 and to make it heard together with Criminal Appeal No.192 of 2021, filed by original accused No.3, for the simple reason that quantum of punishment will have to be decided by the concerned convicting Court. Now as regards Section 395 of the Indian Penal Code is concerned, the maximum punishment is imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. It is not at all necessary that in each and every case the maximum punishment should be awarded. Here the imprisonment under that Section is seven years. Testimony of PW-1 Rajesh Salve is necessary in this respect. He has stated as per the prosecution story. He has also stated that he had identified original accused No.3 in the test identification parade. He had also identified accused No.3 in the Court. However, it is to be noted that he has not given the further details i.e. the specific role attributed to accused No.3, as to whether he was the person who stopped him from opening the door of the car i.e. out of two persons sitting in the back seat or whether he was the person who throttled him. Under such circumstance, no case is made out for enhancing the punishment. Thus, for the reasons stated above, Criminal Appeal No.413 of 2021 is liable to be dismissed.

7. The Appeal filed by original accused No.3 i.e. Criminal Appeal No.192 of 2021 lies before the learned Single Judge and only on the basis of this Appeal i.e. Criminal Appeal No.413 of 2021 filed under Section 377 of the Code of Criminal Procedure, we do not want to assume jurisdiction to ourselves.

8. As regards the Application for Leave to Appeal by State No.63 of 2021 against the acquittal of respondent herein i.e. original accused No.2 is concerned, though prosecution has examined the panch witness to the discovery panchnama, Rahul Khabiya, said discovery was by original accused No.1, who is now deceased. There is no specific evidence to show that accused No.2 had the knowledge about the dacoity and the ornaments which accused No.1 had brought were from the said dacoity. Knowledge is the main ingredient of the offence under Section 412 of the Indian Penal Code. Hence no case is made out for grant of leave.

9. Accordingly, Criminal Appeal No.413 of 2021 and Application for Leave to Appeal by State No.63 of 2021 stand dismissed.

10. Since Criminal Appeal No.192 of 2021 lies before the learned Single Bench, the same be placed before the learned Single Bench, as per its convenience.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB23