

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 472 OF 2024
WITH
INTERIM APPLICATION NO. 1682 OF 2024**

Raja @ Raju Nagesh Koli	)	
Aged- 22 years, Occu. Nil	)	
R/o. Opp. Krishna Dhaba, Kaliwat Haripur Road,	)	
Sangli, Tal – Miraj, District – Sangli at present	)	Appellant/
lodged in Kolhapur Central Prison	)...	Applicant
Versus		
The State of Maharashtra	)	
(At the instance Tasgaon Police Station,	)	
Vide C.R.No. 360 of 2020)	)...	Respondent

.....

Ms. Savvy Kolhekar a/w. Mr. Aniket Vagal, Advocates for the Appellant.
Smt. Ranjana D. Humane, APP for Respondent -State.

CORAM : SHIVKUMAR DIGE, J.
DATED : 24th OCTOBER, 2024.

JUDGMENT :

1. The appellant has preferred this appeal against the Judgment and Order passed by the learned Sessions Court, Sangli in Sessions Case No. 62 of 2021.
2. The Appellant is convicted for the offence punishable under Section 398 of Indian Penal Code, 1860 (for short “IPC”) and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.5,000/- in default of payment of fine, to undergo further rigorous imprisonment for six months.

The appellant is convicted under Section 427 of IPC and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- in default of payment of fine, to undergo rigorous imprisonment for one month.

The appellant is convicted under Section 506 of IPC and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- in default of payment of fine, to undergo rigorous imprisonment for one month.

3. It is prosecution's case that on 07.09.2020, the first informant Mr. Vijay Madgum had gone to Turchi Phata to bring back his pock-land machine, as work of that site was over. At about 10.30 p.m., he had loaded the pock-land machine on a trailer and was coming back to village Salsi, Tal. Shahuwadi, District Kolhapur. At that time, one unknown person (present appellant) had sat in the cabin of the trailer. When the informant asked the appellant why he had sat in the cabin, another unknown person who was with the appellant told the informant that the present appellant wanted to learn the driving. Thereafter, another unknown person who was on the ground tried to give a blow of scythe (koyata) on the informant. One Mr. Ravindra who was with the informant gave a kick to the assailant. Thereafter, informant Ravindra and driver of the trailer started running away from that spot. At that time, one of the

assailants caught hold the informant and another person raised koyata on him and asked him to give his mobile and the money. He also snatched gold chain of 2.5 tolas which the informant was wearing. They snatched Rs.10,000/- which were in the pocket of the informant. The assailant also broke the window glasses of the car of informant. The informant rescued himself and went to the house of one Namdev Kumbhar. However, the appellant and co-accused also went there and gave abuses to the son of Namdev Kumbhar. The appellant broke the glasses of car of Mr. Namdev Kumbhar. Thereafter the appellant and co-accused fled away from the incident spot.

4. It is contention of learned counsel for the appellant that the only role assigned to the appellant is that he head locked the first informant and co-accused took away his mobile, gold chain and cash worth of Rs.10,000/-. Learned counsel further submitted that the co-accused was carrying sickle. The appellant was not armed with any weapon. The appellant was 22 years old at the time of incident. The police had shown recovery of the knife/sickle at the instance of appellant (Exhibit-9) which is erroneous. In the said incident nobody was injured. From the evidence of the prosecution witnesses no case is made out against the appellant under Section 398 of IPC but this fact is not considered by the learned Sessions Judge and has erroneously convicted the appellant. Hence

requested to allow the appeal.

5. It is contention of learned APP that the appellant and co-accused stabbed the first informant and other witnesses with deadly weapon. The appellant caught hold the first informant whereas co-accused snatched away gold chain and mobile and Rs.10,000/- from him. At the time of incident co-accused was holding sickle. Appellant is the main accused. At the instance of appellant, police has seized koyata i.e. sickle. The learned Sessions Judge has convicted the appellant after considering evidence on record which is proper. No interference is required in the Judgment.

6. I have heard both the learned counsel. Perused the Judgment and Order and evidence produced on record. To prove its case, prosecution has examined PW-2 Vijay Magdum, the first informant. He has stated that on 07.09.2020 at around 10.30 p.m., he had gone to Turuchi phata to bring back his pock-land machine as work of that site was over. He had loaded the pock-land machine on a trailer and he was standing on road. At around 11.00 p.m. he heard the noise of someone opening the container door, at that time, he, his driver and brother Ravindra were present. He saw in cabin of container one person was sitting in driver's seat. This witness asked the said person why he sat there, the companion of that person was standing on road, that person told this witness that the person

who sat on driver's seat want to drive the vehicle. Thereafter, the said person took out sickle and assaulted this witness. At that time, brother of this witness kicked him, the said person fell down, he got up and broke the glasses of car of this witness. This witness told his brother and driver to run away. The person who had sat on the driver's seat came down and caught hold to this witness from back side. The other person snatched mobile, gold chain and amount of Rs.10,000/- from this witness. This witness rescued himself from clutches of those two people and went to one house. Those two people further followed this witness and abused. The said house was belonging to one Namdev Kumbhar. Mr. Namdev Kumbhar and his son were present in the house, the person who was standing on road, showed sickle to the son of Namdev Kumbhar and broke the glasses of car parked there. At that time, people gathered there hence both of them fled away on motor bike with third person. Thereafter this witness lodged the complaint. This witness identified the appellant as the person who was sitting on the driver's seat and who had caught hold him from back side. Nothing elicited in the cross examination of this witness to disbelieve the evidence of this witness.

In support of evidence of this witness, the prosecution has examined PW-8 Ravindra Magdum. He has stated the same fact as stated by PW-2. He identified the appellant as same person who had sat on the

driver's seat. It has come in the evidence of PW-9 Pravin Shinde, PSI, Local Crime Branch of Sangli City Police Station, that he has seized scythe from the appellant in presence of panchas by preparing panchnama. From the evidence of PW-2 and PW-8 it appears that, at the time of incident, the appellant was sitting in driver's seat and he had caught hold the first informant from back side and other co-accused snatched away mobile, gold chain and Rs.10,000/- from PW-2. The appellant has been convicted by the learned Sessions Judge under Section 398 of IPC which reads as under:

“398 . Attempt to commit robbery or dacoity when armed with deadly weapon. - If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.”

This Section applies when at the time of robbery or dacoity offender is armed with any deadly weapon.

It appears from the record that at the time of incident appellant was not holding deadly weapon, though the scythe is recovered at the instance of the appellant but PW-2 and PW-8 have stated that the appellant has not used the scythe so the appellant cannot convicted under Section 398 of IPC. The appellant was part of group who robbed the first informant. Considering theses facts appellant is entitled for the punishment for robbery under Section 393 of IPC.

7. In view of the above, I pass following order:

ORDER

- i. The appeal is partly allowed.
 - ii. The Judgment and Order passed by the learned Sessions Judge in Sessions Case No. 62 of 2021 dated 31.08.2023 is modified as under:
 - (a) The Appellant is convicted under Section 392 of IPC.
 - iii. The appellant shall suffer the imprisonment he has undergone.
 - iv. The appellant to pay fine of Rs.1,000/- in default to suffer imprisonment of eight days.
 - v. The appellant be released from the jail if not required in any other case.
8. The appeal is disposed of. In view of disposal of appeal, pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)

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