

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23<sup>RD</sup> DAY OF JULY, 2014

BEFORE:

THE HON'BLE MR. JUSTICE A.S.PACHHAPURE

CRIMINAL APPEAL No.387 OF 2012

BETWEEN:

Vadiraja,  
S/o. Rama Kotian,  
Aged about 27 years,  
R/at Janatha Colony,  
3<sup>rd</sup> Cross, Doddanagudde,  
Shivalli Village,  
Udupi.

... APPELLANT/S

[By M/s. Amar Correa Assocs., Advs.]

AND:

State by C.P.I.,  
Udupi,  
Rep. by State Public Prosecutor,  
High Court of Karnataka,  
Bangalore.

... RESPONDENT/S

[By Sri. K. Nageshwarappa, HCGP.]

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This Cr1.A. is filed u/Section 374(2) Cr.P.C.  
praying to set aside the Judgment dt. 22.03.2012

passed by the Dist. & S.J., Udupi in S.C. No.104/2010 - convicting the appellant/accused No.2 for the offence p/u/S.392 IPC.

The appellant/accused No.2 is sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- in default of payment of fine, he shall undergo R.I. for two months for the offence p/u/S. 392 IPC.

The appellant/accused prays that he be acquitted.

This Crl.A. coming on for Hearing, this day the Court delivered the following:

#### JUDGMENT

The appellant has challenged his conviction and sentence for the offence punishable under Section 392 IPC., on a trial held by the learned Sessions Judge, Udupi.

2. The facts reveal that on 13.12.2009 Nikethana-P.W.1 and her daughter Shalika-P.W.5 had been to Mulki village to attend a family function. On that day at 6.15 p.m., they alighted from the bus at Udupi and were proceeding to their

residence at Brahmagiri and at about 6.40 p.m., when they were proceeding on the road, near the Lions Bhavan, two boys were sitting on a motorcycle and one amongst them alighted from the said motorcycle and approached P.W.1-victim and with his two hands suddenly pulled the "Mangalya chain" surrounding the neck. She suddenly covered the ornament, which was on the neck portion, inside the saree, tried to resist and cried for help. Meanwhile, the said accused held the "Mangalya chain", as a result, a portion of the said chain remained in her hand and the accused snatched the other portion of the ornament went along with the other accused on the motorcycle, giving description of the accused and also the jewelry that was snatched, she submitted a complaint-Ex.P1 to Udupi Police and it came to be registered in crime No.428/09 for the offence punishable under Section 392 IPC.

During the course of the investigation, the spot mahazar-Ex.P2 was held in the presence of P.W.2 and another. Their statements were recorded and the accused were arrested on 18.07.2010. Identification parade was held by P.W.13-Tahsildar as per Ex.P3 and P.W.1 identified the appellant/accused. His voluntary statement was recorded. After the arrest and interrogation, the accused produced M.O.1-gold ingot and it was seized under mahazar-Ex.P10 in the presence of P.Ws.7 and 8. The accused also shown the scene of occurrence and mahazar was drawn as per Ex.P6. On completion of the investigation, the charge sheet was laid against the accused for the offence punishable under Section 392 Cr.P.C.

During the trial, the prosecution examined P.Ws.1 to 14 and got marked the documents Exs.P1 to 25 and M.O.1. Statement of the appellant/accused was recorded under Section 313 Cr.P.C. No defence evidence was led.

The trial Court after hearing counsel for the parties and on appreciation of the evidence on record, convicted the accused for the offence punishable under Section 392 IPC and ordered them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000-00, with default sentence. Aggrieved by the conviction and sentence, the present appeal is filed.

3. I have heard learned counsel for the appellant and also learned High Court Government Pleader.

4. The point that arises for my consideration is;

Whether the appellant has made out any grounds to warrant interference in his conviction and sentence for the offence punishable under Sections 392 IPC?

5. Learned counsel for the appellant would submit that the material placed on record is insufficient to frame the charges under Section 392 IPC and except the interested version of P.W.1, there is no other material on record to prove the offence. He submits that at the most the offence may fall under Section 394 IPC and the sentence awarded is extremely on the higher side. On these grounds, he has sought for setting aside the conviction and sentence.

On the other hand, learned High Court Government Pleader has supported the impugned Judgment and Order and submits that there is acceptable material on record to confirm the conviction and sentence.

6. At the time of the incident, it is only P.W.1 and her daughter-P.W.5-Shalika, who were present and are the eye-witnesses to the incident. Shalika-P.W.5 is a child, approximately 11 years

of age and she has not identified the accused as the person, who snatched the jewelry. Her evidence is of no help to the prosecution to prove the incident of robbery.

7. The scrutiny of the evidence of P.W.1 reveals that on the date of the incident at 6.55 p.m., P.W.1 alighted from the bus at Udupi and was proceeding with her daughter-P.W.5-Shalika. They saw two boys were sitting on the motorcycle and one amongst them came near the victim-P.W.1, brought his hands near her neck. The victim sustained fear and also her daughter. In the circumstances, when the accused tried to snatch the jewelry i.e., "Mangalya chain" and a "coral chain", to resist, the victim held portion of the ornament and in the effort, the accused snatched one portion of the ornament and the other portion was remained with the victim-P.W.1. Thereafter, the petitioner ran away and later both the accused

escaped in their motorcycle from the scene of the incident with the portion of the "Mangalya chain".

8. It is at the time of the incident P.W.1 as the victim, observed the features of the accused. Those features have been mentioned in the complaint-Ex.P1, the incident is in the month of December 2009 and within 2 months, the accused were apprehended by the Police. In the identification parade held by P.W.13-Prasanna Kumar, the victim-P.W.1 had identified the appellant as the person, who snatched the gold jewelry. There are no reasons to disbelieve the evidence of P.W.13.

9. So far as the identification parade is concerned, the accused was mixed with many other persons with different clothes and P.W.1 was asked to identify. She was successful in identifying the accused in the identification parade. The scrutiny of the report and the evidence of P.W.13



would reveal that proper procedure was adopted by the Tahsildar in holding the identification parade. That apart, the victim has identified the accused. The evidence of identification is corroborated by that of P.W.13-Tahsildar and also Ex.P3 as the incident has occurred in the day time. There are no reasons to disbelieve the evidence of P.W.1-Nikethan.

10. P.W.5-Shalika is the daughter of P.W.1, aged about 11 years at the time of the incident. She was not able to identify the accused. That itself is not a ground to reject her version so far as the incident of snatching the ornaments is concerned. She supports her mother's evidence. To this extent of proof of the incident, her evidence is relevant.

11. There are no incriminating circumstances in the spot mahazar-Ex.P2. Hence, the evidence of P.W.2 is not relevant. P.W.3 is examined to prove

that accused No.1 has sold the motorcycle, which was used at the time of the incident. I do not find any relevancy of this evidence also. P.W.4 is the attesting witness for the mahazar-Ex.P6, wherein the accused said to have shown the place of the incident. No incriminating material is available in the evidence of P.W.4 and also the mahazar-Ex.P6. P.W.6 is a co-pancha for Ex.P6.

12. P.Ws.7 and 8 are the attesting witnesses for the mahazar-Ex.P10, under which M.O.1 was seized from the possession of accused No.3. On the arrest of the accused, accused No.3, who led the Police and the attesting witnesses to his house and produced the gold ingot-M.O.1. As the ornaments of the victim were melted, there was no question of identifying them and I do not think any relevancy in the evidence of P.Ws.7 and 8 as well. As the recovery is not of a jewelry, which was snatched, the evidence of P.W.9 is not relevant for the reason that he speaks sale of

Tata Sumo to accused No.1. P.W.11 is the Police Officer, who registered the complaint of P.W.1 and sent the FIR to the Magistrate. P.W.12 is the PSI., who apprehended the accused, whereas P.W.14 is the Investigating Officer. Though the victim-P.W.1 is an interested witness and as she is a person, who lost the property, the scrutiny of her evidence reveals that it is consistent and cogent. Nothing is elicited in the cross-examination to disbelieve her evidence and there are no reasons to discard her evidence to affirm the conviction.

13. The perusal of the evidence of P.Ws.1, 13 and other material placed on record would reveal that accused No.2 i.e., the appellant herein after causing severe threat to the victim, snatched her jewelry and thereby committed the offence punishable under Section 392 IPC.

14. The scrutiny of the material would reveal that the appellant has not caused any

injury to the victim. Anyhow, taking into consideration the nature of the offence, the punishment provided and the age of the appellant, I think it would be just and proper to modify the sentence to rigorous imprisonment for 5 years with the fine as ordered by the trial Court. Hence, the point is answered in partly affirmative and partly negative.

Consequently, the appeal is allowed in part, affirming the conviction of the appellant for the offence under Section 392 IPC. The sentence is modified. The appellant is ordered to undergo rigorous imprisonment for 5 [five] years and to pay the fine of Rs.5,000-00, in default to undergo the imprisonment as ordered by the trial Court. He is entitled to the set off under Section 428 Cr.P.C.

Sd/-  
JUDGE.

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