

MHPU080015362022  Received on : 17-10-2022 Registered on : 17-10-2022 Decided on : 27-09-2024 : Year Month Day 01 11 10	<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS (COURT NO. 2) AT KHADKI, PUNE.</u> <u>Present : P. S. Apte</u> [27/09/2024] [R.C.C. No.470/2022] Exh.No.44	
	<u>Details of FIR</u> Crime No. - 206/2022 Police Station - Vishrantwadi	
Complainant		The State of Maharashtra, Through In-charge of Police Station Vishrantwadi, Pune.
REPRESENTED BY		Smt. V. R. Bakal, A.P.P. for the State.
ACCUSED		Rushikesh Sanjay Dede, Age:-21 years, Occ.:- Labour, R/o. Alandi Mhatobachi, Chorage Vasti, Kunjirwadi, Tal. Haveli, Dist. Pune.
REPRESENTED BY		Mr. L. S. Nalawade, advocate for accused.

Date of offence	30/05/2022
Date of FIR	19/09/2022
Date of Chargesheet	17/10/2022

Date of Framing of Charges	19/11/2022
Date of commencement of evidence	12/01/2023
Date on which judgment is reserved	-
Date of the judgment	27/09/2024
Date of the Sentencing Order, if any	27/09/2024

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Rushikesh Sanjay Dede	18/08/2022	23/06/2023	392 r/w. 34 of the Indian Penal Code.	Convicted for offence under Section 379 of IPC and acquitted from offence under Section 392 r/w. 34 of IPC	3 months rigorous imprisonment	10 months

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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PW-1	Mansi Mahesh Bagwe, (Exh.09)	Informant
PW-2	Jaywant Baban Gosavibharti (Exh.12)	Panch witness
PW-3	Chaitali Balasaheb Gapat, (Exh.25)	Police witness
PW-4	Saddam Altaf Sayyad, (Exh.38)	Panch witness
PW-5	Ratana Atmendra Sapkale, (Exh.39)	Police witness

B. Defence Witnesses, if any : Nil

C. Court Witnesses, if any : Nil

A. Prosecution Exhibits :

Sr. No.	Exhibit Number	Description
1	PW-1 Exhibit no.10	Complaint
2	PW-1 Exhibit no.11	Supplementary statement of the informant
3	PW-2 Exhibit no.13/P	Spot panchnama
4	PW-3 Exhibit no.26/P	Verified copy of panchnama
5	PW-3 Exhibit no.27/P	Report
6	PW-3 Exhibit no.28/P	Verified copy of report

B. Defence Exhibits : Nil

C. Court Exhibits : Nil

D. Material Objects :

Sr. No.	Material Object Number	Description
1	PW-4 Exhibit no.M.O-1	Mobile phone

JUDGEMENT**(Delivered on 27/09/2024)**

1. Accused is tried for the offences punishable under Sections 392 r/w. 34 of the Indian Penal Code, 1860.

2. **Prosecution's case, in short, is as under:**

On 30/05/2022 at about 8.00 p.m. in front of Deccan College on the road of Alandi-Vishrantwadi the informant Mansi Mahesh Bagwe was talking on her mobile phone of Samsung Company Model No.A-50S of white colour, the accused Rushikesh Dede came on a motor bike along with one more unknown person and he grabbed the mobile from the possession of the informant. Hence, the informant lodged a report at Vishrantwadi Police Station on 08/08/2022 against unknown persons.

3. On above information concerned police officer of police station, Vishrantwadi has registered a Crime No.163/2022 for the aforesaid offences. The police have visited spot of incident and prepared spot panchnama, recorded statement of witnesses and after complete investigation, charge-sheet has been filed in the court.

4. Accused appeared in the case and the predecessor of this court had framed a charge at Exh.7 against accused along with his separate pleas at Exh.8. The charge was read over and explained to the accused in his vernacular, to which he pleaded not guilty and claimed to be tried.

5. I have recorded statement of accused under Section 313 of the Criminal Procedure Code at Exh.43. The defence of the accused is of total denial and of false implication.

6. I have heard Smt. V. R. Bakal, APP for the State and Mr. L. S. Nalawade, counsel for accused.

7. On the basis of material available on record I have framed the following points for determination in this case, alongwith my reasons and findings thereon as under:

Sr. No.	POINTS	FINDINGS
1.	Whether the prosecution proves that, on 30/05/2022 at 8.00 o'clock at Deccan College, Alandi-Vishrantwadi road accused with the help of other unknown person in furtherance of their common intention, have grabbed the mobile of Samsung Company Model No.A-50S from the possession of informant and thereby committed an offence of theft ?	<u>Yes.</u>
2.	Whether the prosecution proves that, on the aforesaid day, date, time and place, accused with the help of other unknown person in furtherance of their common intention, in order	<u>No.</u>

	to the committing of theft or in committing the theft or in carrying away property obtain by the theft voluntarily caused hurt or wrongful restraint or fear of instant hurt or of instant wrongful restraint and thereby committed an offence of robbery punishable U/s. 392 r/w. 34 of the Indian Penal Code?	
3.	What order ?	<u>As per final order.</u>

REASONS

AS TO POINT NO.1 & 2 :-

8. PW-1 Mansi Mahesh Bagwe is the informant. She has deposed that, on 30/05/2022 at about 8.00 p.m. the informant was talking on her phone in front of Deccan College on Alandi-Vishrantwadi road, two unknown persons came from her behind on motor-cycle and grabbed mobile from the possession of the informant. Hence, the informant informed her husband. Thereafter, on 08/08/2022 she lodged the FIR. On 19/11/2022 the police called her at the police station. They showed her the said mobile and the informant identified the same. She was informed by police that, the said mobile was stolen by Rushikesh Dede and one more boy named Kamble. She has further deposed that, she can not identify the accused. The police recorded her supplementary statement and she showed the spot to the police. During her testimony she identified the mobile phone which is at M.O. No.1 and particularly stated that, the said mobile belongs to her.

9. During her cross-examination she has explained the reason of

delay that, the IMEI number of her mobile was not available with her after the incident. Hence, this caused delay in lodging FIR. Further, she has admitted that, she did not give the purchase receipt of mobile to which she also voluntarily stated that, the said mobile was purchased online. She also admitted that, she could not see the accused at the time of incident.

10. PW-2 Jaywant Baban Gosavi Bharati has stated that, on 08/08/2022 Vishrantwadi police called him for spot panchnama at Shivshankar Mandir, Vishrantwadi Service Road. The police prepared the spot panchnama in his presence and the informant showed the spot.

11. PW-3 Chaitali Balasaheb Gapat has stated that, in the year 2022 she was designated as API in Crime Branch, Pune. On 17/08/2022 during her patrolling duty in Hadapsar, she got the information that, Rushikesh Dede and his companion were about to arrive at DP Malwadi along with the stolen mobile phones. Hence, as per the order of senior officers the said witness and other police persons accompanied with two panchas reached at the informed location. Accordingly, Rushikesh Dede was found and he was selling the mobile phones to the people on that place. Rushikesh Dede tried to abscond but the police stopped him and asked his name. He was found with 6 mobile phones among which one mobile of Samsung Company A-50 of white colour was from the Crime Registered 206/2022 of Vishrantwadi police station. He did not give proper account of mobile in his possession. Thereafter, the Angzadati panchnama and seizure panchnama were prepared in presence of two panchas. This witness also identified the said seized mobile phone. On the date of her testimony the accused was absent and his exemption was

allowed on the undertaking of not challenging his identity. The said witness also particularly stated that, she can identify the accused.

12. PW-4 Saddam Altaf Sayyad is a panch witness of Angzadti panchnama. He has deposed that, on 17/08/2022 the police called him at Hadapsar DP road, near Canal for panchnama. The police had detained Rushikesh Dede. They took accused's Angzadti in his presence and they found 6 mobile phones, 3 each in each pocket of his pant. Those mobile phones were seized and the seizure panchnama was prepared before him. When the mobile phone seized in this case shown to the witness during his deposition he identified the same and further submitted that, there were one Samsung mobile phone of white colour, another Redmi mobile phone of black colour in the seized mobile phones. Out of which he was shown the white mobile in black cover. He identified the said mobile and deposed to have recovered from the accused. During his cross-examination he has specifically stated that, the mobile cover was found from the pocket of accused and therefore, the said mobile was without cover at the time of panchnama.

13. PW-5 Ratana Atmendra Sapkale is investigating officer. She has deposed that, CR No.206/2022 has been investigated by her. During investigation she obtained the FIR and the statement of the informant. On 09/08/2022 she prepared a spot panchnama which is at Exh.13 in presence of two panchas. She obtained mobile phone sent by the Crime Branch Unit-5 along with the certified copy of Angzadti pannchnama and also the seizure panchnama. In her cross-examination she has admitted that, no independent identity parade had been done in presence of the informant.

14. All the prosecution witnesses have corroborated each other. In this case, the Angzadti panchnama filed at Exh.28 is important. On the perusal of the same, it is seen that in total 6 mobile phones have been recovered from the accused. There are different FIR registered regarding the theft of all these mobiles. The accused has not challenged this Angzadti panchnama nor has denied the recovery of said mobile phones from the possession of the accused. Among these mobiles the mobile phone of Samsung Company Model No.A-50S of white colour is the muddemal which is produced before the court vide M.O. No.1. The PW-1 who is the informant, has identified the said mobile as belongs to her. Further, the PW-4 who is the panch witness of Angzadti panchnama has also identified the said phone and specifically deposed that, it was recovered from the accused. The PW-3 is the police witness who has seized the said mobile phone in Angzadti of accused. She has also identified the said mobile. From these, it is established that the mobile phone at M.O. No.1 was recovered from the accused. Moreover, it is nowhere challenged by the accused that the said mobile phone was not recovered from him. He has only denied the same. Further, he also has not given any account for the mobile phones recovered from him as to how they came in his possession and for what purpose. Therefore, considering the said fact the suspicion is raised against the accused.

15. Now, it is necessary to see whether the accused grabbed the mobile phone from the possession of informant or not. On perusal of testimony and the FIR of the informant it is clear that she had not seen the accused at the time of incident. In this type of sudden occurrences it is not expected from the informant to see the face of the person who grabbed his property. Therefore, not identifying the accused before the

court by the informant does not much affect the prosecution's case. In such cases, the identity of the stolen property by the informant and its recovery from the accused are relevant facts. In the case before me, the informant has identified her mobile phone of Samsung Company Model No.A-50S which is produced at M.O. No.1. In her cross-examination the accused has raised a defence regarding the ownership of the said mobile phone contending that the informant did not produce its purchase receipt. However, in offence of theft the ownership is immaterial and it is only necessary to prove that the movable property is moved away out of the possession of any person without his consent. In the case before me, the accused has nowhere objected the possession of the said mobile phone with the informant. Therefore, it is proved that the mobile phone was in the possession of the informant.

16. In offence under Section 390 of IPC it is necessary to prove following ingredients;

- (a) if in order to the committing of theft or
- (b) in committing the theft or
- (c) in carrying away or attempting to carry away property obtained by theft
- (d) the offender for that end
- (e) voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint.

17. In the case before me, no weapon is used while committing the alleged crime. There is no overt act on record that while grabbing the mobile phone from the informant the accused caused any hurt or

wrongful restraint or put the informant into the fear of instant death or instant hurt or fear of wrongful restraint. According to the informant, as soon as the mobile phone was grabbed the accused along with other unknown person ran away on motor-cycle. Here, there is no incident of causing hurt or wrongful restraint to the informant nor it's fear. Therefore, the said incident can not be said to come within the purview of robbery as defined in Section 390 of IPC. All the ingredients therein have to be read conjunctively to establish offence of robbery.

18. As discussed earlier, the recovery of mobile phone from the accused and identifying the same by the informant before the court is duly proved. Therefore, it is sufficient to establish the fact that the accused grabbed the mobile phone out of the informant's possession. Hence, the process of moving any movable property out of the possession of any person without his consent is clearly established. This has automatically established the ingredients of theft. Therefore, considering all the record before me, though the offence of robbery is not established but the offence of theft is clearly established.

19. As per the provisions of Section 222 sub section 1 of Cr.P.C. when a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a minor offence and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it. Further, sub section 2 provides that, when a person is charged with an offence and facts are proved which reduce it to a minor offence he may be convicted of minor offence, although he is not charged with it. In the case before me, the offence of robbery under Section 390

consists of combination of several particulars i.e. in committing theft or in carrying away the property obtained by theft, when any person causes death or hurt or wrongful restraint or put him in the fear of instant death or instant hurt or instant wrongful restraint. Among these particulars only the fact of theft by accused is established and the remaining particulars regarding causing hurt or wrongful restraint or putting in the fear of instant death or instant hurt or instant wrongful restraint is not established. Therefore, the offence of robbery is not proved but the offence of theft punishable under Section 379 is duly proved against the accused. Therefore, he is guilty of offence punishable under Section 379 and deserves conviction under the same. Hence, I answer point no.1 in affirmative, point no.2 in negative.

AS TO POINT NO.3 :-

20. So far as regards to accused, here I stop to hear the quantum of sentence.

(P. S. Apte)

Judicial Magistrate F. C.

Date:- 27/09/2024

(Court No.2) Khadki Court, Pune.

21. Ld. APP argued that offences are serious in nature and he is habitual offender. Hence, it is prayed for maximum punishment.

22. Ld. Advocate for accused argued that accused is only earning member of his family. He is right now working in Path Laboratory. If he will be put behind bar then his family will strive for their daily livelihood.

Hence, he prayed for minimum punishment.

23. Heard both the parties. This accused has two other cases for similar offences pending before this court from which his habitual nature comes before the court. Considering the age of the accused, the period during which the trial was held, the conduct of the accused I am not inclined to give the accused the benefit of the provisions of probation of offenders Act. Hence, I am inclined to sentence the accused to the rigorous imprisonment for 3 months for the offence punishable under Section 379 of IPC. Further, as discussed earlier the offence of robbery against accused is not proved. Hence, it would be proper to acquit him from the offence punishable under Section 392. Hence, in answer to point no.3 I pass following order :-

ORDER

1. Accused Rushikesh Sanjay Dede is hereby convicted vide Section 248(2) of the Criminal Procedure Code for the offence punishable under Section 379 of the Indian Penal Code and shall undergo rigorous imprisonment for 3 months.

2. Accused Rushikesh Sanjay Dede is hereby acquitted for the offences punishable under Sections 392 r/w. 34 of the Indian Penal Code vide Section 248(1) of the Criminal Procedure Code.

3. The bail bonds of accused are hereby surrendered.

4. The mobile of Samsung Company Model No.A-50S be returned to the informant after the appeal period.

5. Accused is allowed to claim set off under Section 428 of Cr.P.C.
6. Copy of this judgment be provided to accused free of costs.
7. Pronounced in open Court.

(P. S. Apte)

Judicial Magistrate F. C.

Date:- 27/09/2024

(Court No.2) Khadki Court, Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same word to word, as per the original Judgment.

Name of the Stenographer	: S. S. Gupte,
Name of the Court	: P. S. Apte, J.M.F.C., Court No.2, Khadki, Pune.
Date	: 27/09/2024
Judgment signed by the Presiding officer on	: 27/09/2024
Judgment uploaded on	: 30/09/2024