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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1630 of 2000

Reserved on : 30.03.2026

Delivered on : 16.04.2026

1 - Praveen Kumar S/o M.S. Raju, Bhatapara District – Raipur now Bhatapara, Chhattisgarh.

... Appellant(s)

versus

1 - The State Of Madhya Pradesh (Now Chhattisgarh) Through Police Station Bhatapara (Rural), M.P. (Now C.G.)

--- Respondent(s)

For Appellant	:	Mr. Vidya Bhushan Soni, Advocate.
For State	:	Mr. Krishna Gopal Yadav, Dy. Govt. Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

CAV JUDGMENT

1. This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 25.03.2000 passed by the Second Additional Sessions Judge, Raipur (C.G.) in Session Trial No. 398/34, wherein the said court convicted and sentenced the appellant as under:-

Conviction		Sentence
U/s 398/34 of IPC	:	R.I. for 7 years and fine of Rs. 1000/- in default of payment of fine, further R.I. for 6 months.

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2. The prosecution's case, in brief, is that the complainant, Ramsahay Devangan, son of Banturam Devangan and a resident of village Jaroid, was earning his livelihood by running a tailoring shop under the name and style of "Goodfit Tailor" at Bhatapara. He used to travel daily to Bhatapara for his work. On 04.02.1995, after closing his shop at about 6:00–6:30 PM, he was returning home on his bicycle. After covering a distance of approximately three kilometers, he encountered three unknown persons coming from the opposite direction on bicycles. One of them stopped him by blocking his path and inquired about the route to Hirmi, which he explained. They then stated that they would accompany him to village Jaroid and from there proceed to Hirmi. After travelling about half a kilometer further, the same persons again stopped him and blocked his way. One of the accused took out a knife, placed it on his neck, and threatened him to hand over all his valuables. Another accused caught hold of him from behind, while the person holding the knife searched him. They forcibly took ₹1.50 in cash and a wristwatch (Rico India make) valued at ₹300. At that moment, the sound of some people approaching from nearby was heard, upon which the accused fled from the spot with the stolen articles.

3. It is further the case of the prosecution that the complainant then returned home and informed this incident to his sister-in-law Girjabai, as well as his neighbors Meghnath and Manohar. Being extremely frightened, he was unable to even eat or drink properly and could not lodge a report that night. On the following morning, he went to the police station along with Jagdev and Vishwanath from his village and

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submitted a written complaint. The Investigating Officer, B.L. Soni, inspected the place of occurrence and prepared a site map. Identification proceedings were conducted before a Naib Tehsildar/Executive Magistrate. Statements of witnesses, including Ramsahay, Girjabai, Meghnath, and Manohar, were recorded under Section 161 of the Code of Criminal Procedure. After completion of the investigation, a charge sheet was filed before the Court of the Judicial Magistrate, Baloda Bazar, and the case was subsequently committed to the Court of Session. Based on the evidence on record, charges were framed against the accused persons under Section 398 read with Section 34 of the Indian Penal Code. The accused denied the charges and claimed to be tried.

4. The prosecution, in order to bring home the guilt of the accused, has examined witnesses namely Chhote Lal (PW-1), Daharlal (PW-2), Komaldas (PW-3), Budhwar Das (PW-4), Nandlal (PW-5), Garibdas (PW-6), B.S.L. Soni, Assistant Sub-Inspector (PW-7), Santosh Kumar, SDO (PW-8), Rajendra Kumar (PW-9), Girja Bai (PW-10), Gyaneshwar Bawnagade, Naib Tahsildar (PW-11), Ramsahay (PW-12), Meghnath (PW-13) & exhibited documents namely Panchnama (Ex. P/1), FIR (Ex. P/2), Najri Naksha (Ex. P/3), memo for information about the accused (Ex. P/4), Reply (Ex. P/5). The accused was examined under Section 313 of the Cr.P.C. wherein he has denied the charges levelled against him and would submit that he has been brought from the Railway Station and using force falsely implicated in the case. The accused has not examined any witness in his support, nor exhibited any document.

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5. Learned trial Court after appreciating the evidence and material on record has held that the appellant has committed the offence with the help of other co-accused for which they have been charged vide judgment of conviction dated 25.03.2000. Being aggrieved with the judgment of conviction, the appellant has preferred this appeal before this Court mainly contending that the prosecution has not been able to prove its case beyond reasonable doubt under Section 398/34 of IPC.

6. The appellant remained in jail from 27.03.1995 to 13.11.1997, 05.11.1999 to 24.03.2000 during trial and after conviction from 25.03.2000 to 21.09.2001 on the date when he was released on bail by this Court in the present appeal.

7. Learned counsel for the appellant would submit that the accused has been falsely implicated. The incident allegedly occurred in the evening, and there is no reliable identification of the accused. The test identification parade does not inspire confidence and cannot be solely relied upon. Although the complainant stated that some persons were approaching the place of occurrence, but they have not been examined. There is delay in lodging the FIR which gives rise to the possibility of fabrication and embellishment. The alleged stolen articles, namely cash and wristwatch, were not recovered from the possession of the accused, which weakens the prosecution case. Further the prosecution has failed to prove that the accused used a deadly weapon. The knife was never recovered nor produced before the Court moreover there is no injury report to support use of a dangerous weapon. Therefore, he would pray for acquitting the accused of all the charges and allowing the appeal.

8. On the other hand, learned State counsel would submit that the prosecution has successfully proved its case beyond reasonable doubt and the accused is liable to be convicted as charged. He would further submit that complainant is the victim and an eyewitness to the incident. His testimony is natural, consistent, and trustworthy, and there is no reason for him to falsely implicate the accused. It is well settled that the conviction can be based on the sole testimony of a reliable eyewitness. The evidence clearly establishes that the accused persons threatened the victim using a knife of 7-8 Inch, and forcibly took away his money and wristwatch. A knife is a deadly weapon, and its use to instill fear and facilitate the robbery is sufficient to attract Section 398 IPC, even if no injury is caused. He would further submit that the delay in lodging the FIR has been satisfactorily explained. The complainant was in a state of fear and shock after the incident and reported the matter the next morning. Such delay is natural in case of robbery and does not weaken the prosecution case. Mere non-recovery of stolen property or weapon is not fatal when there is clear and cogent ocular evidence proving the offence. Therefore, he would pray for dismissing the appeal.

9. I have heard learned counsel for the parties and perused the documents placed on record with utmost circumspection.

10. From perusal of records, the points to be determined by this Court are:-

1. Whether the accused committed robbery of the complainant and whether at the time of committing robbery, the accused used a deadly weapon so as to attract Section 398 IPC?”

2. Whether, if the conviction is set aside by this Court, the appellant can be convicted under other offences against property as provided in Chapter XVII of the Indian Penal Code?

11. To examine the issue required to be determined, it is expedient for this Court to extract Sections 383, 384, 390, 392, 398 of IPC and evidence led by the prosecution, which read as under:-

> "**383. Extortion.—** Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".
>
> **384. Punishment for extortion.—**Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
>
> **390. Robbery.—** In all robbery there is either theft or extortion.
>
> When theft is robbery.— Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, 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 of instant wrongful restraint.
>
> When extortion is robbery.— Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.
>
> Explanation.— The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.
>
> **Section 392. Punishment for robbery.—** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.
>
> **Section 398. Attempt to commit robbery or dacoity when armed with deadly weapon.—** If, at the time of attempting to

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> 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.

12. The prosecution has examined PW-12 Ramsahay. A careful perusal of his evidence reveals that he has not specifically stated as to which of the accused persons had used the deadly weapon during the commission of the offence, as is evident from paragraph 3 of his deposition. He has deposed that he did not know the names of the accused; however, during the incident, one person addressed another by the name “Praveen,” and on that basis alone he came to know the name of the present appellant. The witness has further stated that the incident occurred during the winter season and at a time when it was dark. He has also admitted that the test identification parade was conducted after about one week of the incident, and even therein he did not specify or identify as to which accused had used the deadly weapon in the commission of the offence.

13. Thus, from the evidence on record, it is quite vivid that the victim has not identified the offender who had used the deadly weapon in the commission of the offence, which is a *sine qua non* for recording conviction under Section 398 of the Indian Penal Code, as held by the Hon’ble Supreme Court in **Shri Phool Kumar vs. Delhi Administration {(1975) 1 SCC 797}, Dilawar Singh vs. State of Delhi {(2007) 12 SCC 641** and **Ganesan vs. State of T.N. {{2022) 15 SCC634}.**

14. Hon’ble Supreme Court in **Phool Kumar (Supra)** has dealt with the term ‘offender’ and has held as under :-

> 5. Section 392 of the Penal Code provides "Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be com- mitted on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years". The Sentence of imprisonment to be awarded under section 392 cannot be less than 7 years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person : vide section 397. A difficulty arose in several High Courts, as to the meaning of the word "uses" in section 397. The term 'offender' in that section, as rightly held by several High Courts, is confined to the offender who uses any deadly weapon. The use of a deadly weapon by one offender at the, time of committing robbery cannot attract section 397 for the imposition of the minimum punishment on another offender who had not used any deadly weapon. In that view of the matter use of the gun by one of the culprits whether he was accused Ram Kumar or some body else, (surely one was there who had fired three shots) could not be and has not been the basis of sentencing the appellant with the aid of section 397. So far as he is concerned he is said to be armed with a knife which is also a deadly weapon. To be more precise from the evidence of P.W. 16 "Phool Kumar had a knife in his hand". He was therefore carrying a deadly weapon open to the view of the victims sufficient to frighten or terrorize them. Any other overt act, such as, brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of section 397 of the Penal Code.

15. Hon’ble Supreme Court in **Dilawar Singh (Supra)** has clarified that the term ‘Offender’ refers to the culprit who has actually used the deadly weapon and has held as under :-

> 20. As noted by this court in Phool Kumar v. Delhi Administration (AIR 1975 SC 905), the term "offender" under Section 397 IPC is confined to the offender who uses any deadly weapon. Use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who had not used any deadly weapon. There is distinction between 'uses' as used in Sections 397 IPC and 398 IPC. Section 397 IPC connotes something more than merely being armed with deadly weapon.

16. Hon’ble Supreme Court in its recent judgment in **Ganesan (Supra)** again dealt with the term ‘Offender’ and held as under :-

> 24. Section 392 and Section 390 IPC are couched in different words. In Sections 390, 394, 397 and 398 IPC the word used is

> 'offender'. Therefore, for the purpose of Sections 390, 391, 392, 393, 394, 395, 396, 397, 398 IPC only the offender/person who committed robbery and/or voluntarily causes hurt or attempt to commit such robbery and who uses any deadly weapon or causes grievous hurt to any person, or commits to cause death or grievous death any person at the time of committing robbery or dacoity can be punished for the offences under Sections 390, 392, 393, 394, 395 and 397 and 398 IPC. For the aforesaid the accused cannot be convicted on the basis of constructive liability and only the 'offender' who 'uses any deadly weapon....' can be punished. However, so far as Section 391 IPC 'dacoity' and Section 396 IPC - 'dacoity with murder' is concerned an accused can be convicted on the basis of constructive liability, however the only requirement would be the involvement of five or more persons conjointly committing or attempting to commit a robbery - dacoity/dacoity with murder.

17. In light of the above law laid down by the Hon’ble Supreme Court and upon appreciation of the evidence adduced before the trial Court, it is evident that the prosecution has failed to prove beyond reasonable doubt that it is the appellant who had used any deadly weapon during the commission of the offence. Consequently, the appellant cannot be termed as an “offender” within the meaning of Section 398 of the Indian Penal Code. Therefore, the conviction of the appellant under Section 398 IPC is unsustainable in law and is liable to be set aside, and is accordingly set aside.

18. The next question that arises for consideration before this Court is whether, upon holding that the conviction of the appellant under Section 398 of the Indian Penal Code is unsustainable, his conviction and sentence can be sustained for the offence punishable under Section 392 of the Indian Penal Code or not?

19. From the evidence available on record, particularly the testimony of PW-12 Ramsahay, who is the victim of the incident, it stands proved beyond reasonable doubt that the appellant, along with other accused persons, committed the offence and took away Rs. 1.50 from his

pocket and snatched a wristwatch from his wrist while putting him in fear by use of a knife. Such an act clearly falls within the ambit of extortion, and when committed under immediate threat of injury, it amounts to robbery as defined under Section 390 of the Indian Penal Code. The incident having occurred at night, when the complainant was alone and the accused were three in number, therefore on account of vicarious liability offence under Section 392 of the IPC is made out against the appellant. Hon'ble Supreme Court in the case of **Rafiq Ahmad vs. State of U.P., (2011) 8 SCC 300**, has held that when a charge of a major offence is not made out, conviction for a minor offence even in the absence of the charge for the said minor offence can be sustained. It has also been held that if an accused is charged with a grave offence but the same is not established on merit or for default of technical nature, he can be convicted and punished for a minor offence without altering of a charge. Hon'ble Supreme Court in paragraph 31 and 43 has held as under :-

> 31.With the passage of time more and more such cases came up for consideration of this Court as well as the High Courts. The development of law has not changed the basic principles which have been stated in the judgments afore-referred. Usually an offence of grave nature includes in itself the essentials of a lesser but cognate offence. In other words, there are classes of offences like offences against the human body, offences against property and offences relating to cheating, misappropriation, forgery etc. In the normal course of events, the question of grave and less grave offences would arise in relation to the offences falling in the same class and normally may not be inter se the classes. It is expected of the prosecution to collect all evidence in accordance with law to ensure that the prosecution is able to establish the charge with which the accused is charged, beyond reasonable doubt. It is only in those cases, keeping in view the facts and circumstances of a given case and if the court is of the view that the grave offence has not been established on merits or for a default of technical nature, it may still proceed to punish the accused for an offence of a less grave nature and content.

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> 43. Having stated the above, let us now examine what kind of offences may fall in the same category except to the extent of `grave or less grave'. We have already noticed that a person charged with a heinous or grave offence can be punished for a less grave offence of cognate nature whose essentials are satisfied with the evidence on record. Examples of this kind have already been noticed by us like a charge being framed under Section 302 IPC and the accused being punished under Section 304, Part I or II, as the circumstances and facts of the case may demand. Furthermore, a person who is charged with an offence under Section 326 IPC can be finally convicted for an offence of lesser gravity under Section 325 or 323 IPC.

31. Accordingly, in view of the foregoing discussion and the evidence available on record, which clearly establishes that the accused persons committed robbery by putting the complainant in fear of instant injury and dishonestly taking away his property after sunset, the appellant is convicted for the offence punishable under Section 392 of the Indian Penal Code.

32. So far as the question of sentence is concerned, upon perusal of the record, it is evident that the incident in question pertains to the year 1995. At the relevant time, the appellant was about 18 years of age, and more than three decades have since elapsed. The appellant is now a middle-aged person. It is also not in dispute that the appellant has already undergone incarceration for a period of about 4½ years. Considering that the offence under Section 392 of the Indian Penal Code is punishable with imprisonment which may extend up to ten years, but no minimum sentence has been prescribed, this Court is of the considered opinion that the ends of justice would be subserved if the sentence awarded to the appellant is restricted to the period already undergone by him. Accordingly, the appellant is sentenced to

the period already undergone by him for the offence punishable under Section 392 of the Indian Penal Code.

33. The appellant is on bail. His bail bonds stand discharged in view of the provisions of Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

34. With the aforesaid modifications, the appeal is partly allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

Deshmukh