

THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
M.Cr.C. No.63513 of 2021
(Saddam @ Saddu vs. State of MP)

1	Case No.	M.Cr.C.No.63513 of 2021
2	Parties Name	<i>Saddam @ Saddu vs. State of MP</i>
3	Date of Order	30/12/2021
4	Bench constituted of Hon'ble Justice	Single Bench Hon'ble Shri Justice Subodh Abhyankar
5	Order passed by	Hon'ble Shri Justice Subodh Abhyankar
6	Whether approved for reporting	Yes
7	Name of counsel for the parties	Shri Abhishek Rathore, learned counsel for the applicant. Ms. Mamta Shandilya, learned Public Prosecutor for the non-applicant – State.
	Law laid down	<p>1. There is a clear distinction between theft and robbery, as theft is robbery when there is an element of physical injury or an attempt to cause physical injury or of fear of causing the same. It is also apparent that in the case of robbery, not only the person who <i>voluntarily causes</i> a wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint, is liable to be prosecuted under Section 392 of IPC but also an <i>attempt to cause</i> the aforesaid acts would also fall within the definition of robbery.</p> <p>2. Merely because the accused did not use any weapon while committing the offence or that he only snatched a bag from the victim's hand, would not allow him to have a spacious plea that it is a case of theft only as he never attempted to cause any harm to the victim.</p> <p>3. Whenever there is an element of surprise while committing an offence of theft in respect of an object which is being carried by a victim on his person or kept attached by him on any vehicle on which he is travelling, and such surprise has the effect of unsettling the victim or the vehicle, exposing him to imminent injury or death, or the fear of the same, it is a robbery.</p>
9	Significant paragraph	7 & 8

(Subodh Abhyankar)
Judge

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SINGLE BENCH

Coram :

Hon'ble Shri Justice Subodh Abhyankar

Shri Abhishek Rathore, learned counsel for the applicant.

Ms. Mamta Shandilya, learned Public Prosecutor for the non-
applicant – State.

Whether approved for reporting : **Yes**

ORDER

(Passed on 30/12/2021)

- 1] They are heard. Perused the case diary / challan papers.
- 2] This is the **first** application under Section 439 of Criminal Procedure Code, 1973, as the applicant is implicated in connection with Crime No.364/2018 registered at Police Station Manasa, District Neemuch (MP) for offence punishable under Section 392 of IPC and he is in custody since 19.09.2018.
- 3] The allegation against the applicant is that he robbed the complainant to the tune of Rs.1.60 lacs and from the possession of the applicant, Rs.60,000/- has already been seized.
- 4] Learned counsel for the applicant has submitted that it is not a case under Section 392 of IPC, as at the most, a case under Section 379 of IPC would be made out and considering the fact that applicant is in jail since 19.09.2018 and maximum sentence prescribed under Section 379 of IPC is three years, the applicant is entitled to be released on bail. It is further submitted that the material prosecution witnesses have already been

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M.Cr.C. No.63513 of 2021
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examined and thus, prays that the applicant be enlarged on bail.

5] Learned Public Prosecutor for the non-applicant - State, on the other hand has opposed the prayer and prays for its rejection.

6] Having considered the rival submissions and on perusal of the case diary including the deposition of witnesses, it is found that on 24.08.2018 at around 2.00 PM, when the complainants were passing through the road with a sum of Rs.1.60 lacs in the bag, at that time, applicant and other accused persons came on a motorcycle, they pushed Sajan Bai the wife of the complainant Prabhulal and snatched the bag containing the aforesaid amount of Rs.1.60 lacs and fled from the spot. On perusal of the aforesaid statements, it is apparent that applicant and other accused persons were riding a motorcycle and while doing so, they also pushed the wife of the complainant and snatched the bag. So far as definition of theft and robbery provided under Section 378 and 390 of IPC are concerned, the same reads as under :-

378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which affects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority

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M.Cr.C. No.63513 of 2021
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either express or implied.

(emphasis supplied)

S.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.*

(emphasis supplied)

7] On perusal of the aforesaid definitions, they clearly reveal that there is a clear distinction between theft and robbery, as theft is robbery when there is an element of physical injury or an attempt to cause physical injury or of fear of causing the same. It is also apparent that in the case of robbery, not only the person who *voluntarily causes* a wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint, is liable to be prosecuted under Section 392 of IPC but also an *attempt to cause* the aforesaid acts would also fall within the definition of robbery. In the case on hand, admittedly, the applicant and other accused persons were riding a motorcycle and it is a common knowledge that while riding a vehicle in speed, if a bag or other article is snatched from any person walking on the road or riding a vehicle, he actually apprehends the fear of instant injury or even death also due to falling on the ground owing to sudden attempt on his

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M.Cr.C. No.63513 of 2021
(Saddam @ Saddu vs. State of MP)

person. In fact there are umpteen number of cases wherein victims of such offences have suffered not only monetary losses but have also suffered grave physical injury and mental trauma for the rest of their lives. In such circumstances, merely because the accused did not use any weapon while committing the offence or that he only snatched a bag from the victim's hand, would not allow him to have a spacious plea that it is a case of theft only as he never attempted to cause any harm to the victim.

8] This court is also of the considered opinion that whenever there is an element of surprise while committing an offence of theft in respect of an object which is being carried by a victim on his person or kept attached by him on any vehicle on which he is travelling, such surprise has the effect of unsettling the victim or the vehicle, exposing him to imminent injury or death, or the fear of the same, it is a robbery.

9] So far as the criminal antecedents of the applicant are concerned, there are as many as 14 criminal cases registered against him including eight cases under Section 392 of IPC.

10] In view of aforesaid, this Court finds no force in the submissions advanced by learned counsel for the applicant. The application being devoid of any merits, is hereby **dismissed**.

11] Let a copy of this order be sent to all the police Stations of the State to ensure proper registration of an offence of theft or robbery.

(Subodh Abhyankar)
V. Judge

krjoshi/gp

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