
(1969) 02 PAT CK 0010

In the Patna High Court

Most. Indrasana Kuer

APPELLANT

Vs

Sia Ram Pandey and Others

RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 342, 352, 380, 383

Citation : (1970) CriLJ 647

Hon'ble Judges : B.P. Sinha, J

Bench : Single Bench

Judgement

B.P. Sinha, J.—Petitioner Most. Indrasana Kuer lodged a first information report before the police on 24-12-1965 with regard to an incident which took place on 22-12-1965. Her allegations were that on the date of occurrence the opposite party variously armed came to her house, assaulted her and forcibly took her thumb impression on several pieces of paper. When on hulla her brother Jugal and Pujari Satyadeo Ojha along with other persons arrived they assaulted Jugal and Satyadeo as well and forcibly took thumb impression of Satyadeo also on some pieces of paper. They also removed two boxes containing ornaments and cash along with other articles belonging to the informant. It appears that during the course of investigation a protest petition was filed on 4-1-1966. After completion of investigation, police submitted a final report, But on the basis of the protest petition already filed earlier, Most. Indrasana Kuer was examined on solemn affirmation on 4-12-1966. Subsequently, the subdivisional Magistrate took cognizance of the case on 14-12-1966 and the case was transferred to the file of Shri S.L. Singh, Honorary Magistrate, 1st class, Arrah, for disposal. It appears that subsequently the case was transferred to the file of Shri N.K. Singh with first class powers. After some witnesses were examined, it appears a contention was raised on behalf of the complainant that the case was one u/s 395 of the Indian Penal Code, which is exclusively triable by a Court of session. After hearing the parties, the learned Magistrate rejected the contention of the complainant by his order dated 1-1-1968. The learned Magistrate framed charges under as. 323, 342, 352, 380 and 452 of the Indian Penal Code (hereinafter

referred to as the Code) only. Being aggrieved, the complainant filed a revision application before the Sessions Judge for directing further enquiry. Having failed there the complainant has filed this revision application.

2. The contention of the learned Counsel for the petitioner is that the facts stated in the evidence of the witnesses clearly indicate that offences under Sections 386 and 395 of the Code which are exclusively triable by a Court of session, are made out in this case, and as such the learned Magistrate should have framed charges under those two sections as well, after adopting the procedure prescribed under Chapter XVIII of the Code of Criminal Procedure. The point for consideration, therefore, is whether, on the facts of this case, *prima facie* offences under Sections 386 and 395 of the Code are made out.

3. Section 386 of the Code runs as follows:-

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

"Extortion" has been defined in Section 383 of the Code as follows:-

"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." " So one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is a element of consent, of course, obtained by putting the victim in fear of injury. In extortion the will of the victim has to be overpowered by putting him in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury. The illustrations to the section given in the Code make this perfectly clear. In this connection, reference can be made to a decision of this Court in *Jadunandan Singh and Another Vs. Emperor*, . In that case also, the victims were assaulted and their thumb impressions were forcibly taken. In view of the facts, quoting the following observation in a division bench decision of this Court in *Ramyad Singh v. Emperor*, Criminal Revn. No. 125 of 1931 (Pat).

If the facts had been that the complainant's thumb had been forcibly seized by one of the petitioners and had been applied to the piece of paper notwithstanding his struggles and protests, then I would agree that there is good ground for saying that the offence committed whatever it may be, was not the offence of extortion because the complainant would not have been induced by the fear of injury but would have simply been the subject of actual physical compulsion.

It was held:-

It is clear that this definition makes it necessary for the prosecution to prove that the victims Narain and Sheonandan were put in fear of injury to themselves or to others, and further, were thereby dishonestly induced to deliver papers containing their thumb impressions. The prosecution story in the present case goes no further than that thumb impressions were forcibly taken" from them. The details of the forcible taking were apparently not put in evidence. The trial Court speaks of the wrists of the victims being caught and of their thumb impressions being then "taken" ... The lower Courts only speak of the forcible taking of the victim"s thumb impression; and as this does not necessarily involve inducing the victim to deliver papers with his thumb impressions (papers which could no doubt be converted into valuable securities), I must hold that the offence of extortion is not established.

Now it has to be seen from the evidence of this case whether the ingredients of extortion are there. Indrasana Devi (P. W. 7) has stated that the accused persons abused her and on protest accused Naulakh Pandey ordered that she be turned out from the house and her thumb impression be taken on blank pieces of paper, upon this Chanderma Pandey and Sia Ram Pandey forcibly took her thumb impression on 8 to 10 pieces of blank paper. She does not say that she was forced by putting her in fear of injury to give her thumb impression on blank pieces of paper and deliver those papers to the accused. Her statement clearly indicates that the accused persons forcibly took the thumb impression and not that she had delivered the papers containing her thumb impression to them. This is further apparent from the statement of P. W. 5 who has said that accused Chanderma caught, hold of the hand of the complainant and accused Sia Ram took her thumb impression. Therefore, the facts of this case do not indicate that the complainant was induced to deliver the papers containing her thumb impression to the accused persons, The necessary ingredient of extortion is, therefore, wanting. Hence, prima facie no case u/s 386, I. P. C. has been made out,

4. So far as the contention of the petitioner that the facts constitute offence u/s 395, I. P. C. is concerned, I see no merit in it as well. It is said that theft was one of the dominant objects of the unlawful assembly of these members of the opposite party and for the purpose of committing that theft force was used and as such the offence of dacoity is made out. Dacoity is commission of robbery by 5 or more persons. When "theft" becomes "robbery" has been stated in Section 390 of the Code thus:-

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 restraint.

From the definition, it is quite clear that there should be use of force or attempt

to use force for the, purpose of committing theft or in carrying away or attempting to carry away property obtained by theft. Mere fact that the assault and the theft took place in the same transaction is not enough. The assault must be to facilitate commission of theft.

In this connection reference can be made to a decision of a division bench of this Court in *Pati Kumhar and Others Vs. Ahiv Kumhar*, . There it was observed as under:-

It is not in every case where theft has been committed as well as assault that the transaction becomes robbery. The as-sult must be found to have been committed for the purpose of committing the theft, or in carrying away or attempting to carry away property obtained by theft." The same view has been expressed in a decision in *Maghaji v. State* AIR 1953 Sau 85. There a number of persons entered the house with the idea to take revenge and there was assault and while going away one of the culprits took away the gun of the victim. It was held that the assault was not for facilitating the commission of theft, etc., it had no relation to the removal of gun and as such the offence was mere theft. Here, from the evidence of *Indrasana Devi* it does not appear that the object of the unlawful assembly of the members of the opposite party was to commit theft by causing hurt or fear of hurt, etc. The *Mossomat* has said that accused *Naulakh* ordered that the complainant be turned out of the house and her thumb impression be taken on piece of blank paper. This was done just to wreak vengeance because of the *Mossomat* executing deed in favour of son of her brother in respect of her pro-oerty thereby depriving the opposite party of the prospect of getting it as re-versioners. She does not say that the order was to take away her property as well. There is no such allegation in the complaint petition. It appears that theft was an independent act of some of the accused persons, and it was not the dominant purpose of the unlawful assembly. Threat was not given for that purpose. That being so, no offence u/s 395 of the Code is made out on the statements of the witnesses.

5, The revision application, therefore, fails and is dismissed.