

(2014) 03 DEL CK 0197

In the Delhi High Court

Case No : Crl.A. 144/2006

Tasim and Others

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 428

Penal Code, 1860 (IPC) — Section 34, 383, 387, 393, 397

Citation : (2014) 03 DEL CK 0197

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Pankaj Kumar, Advocate for the Appellant; Fizani Husain, APP, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Indermeet Kaur, J.—The appellants are aggrieved by the impugned judgment and order of sentence dated 28.01.2006 and 30.01.2006 respectively wherein they have been convicted under Sections 387/34 of the IPC and have been sentenced to undergo RI for two years and to pay a fine of Rs. 2000/- In default of payment of fine to undergo SI for 3 months. The appellant Tasim has been additionally convicted u/s 25 of the Arms Act and had been sentenced to undergo RI for a period of 1 year for the said offence. The sentences were to run currently; benefit of Section 428 of the Cr.P.C. had been granted to them. Nominal rolls of the appellants have been called. They reflect that as on the date of the grant of bail Tasim had suffered imprisonment for about 11 months and 6 days out of the total period of incarceration of 2 years awarded to him. Mohd. Hasan and Mohd. Irfan has undergone a period of 4 months and 29 days as on the date of their release from the jail.

2. Record shows that the incident had occurred at 9.45 a.m. on 22.2.2005. Mohd. Irshad-complainant (PW-1) had filed his complaint on the same day

pursuant to which the present FIR had been registered. His version was that on the fateful day when he was ready to go to his office and had opened the back door of his house, he noted that it was very cold. He asked his wife Abida Begum (PW-8) to bring his cap; he continued to stand at the door; at that time three boys came from the side of the park and all of a sudden surrounded him; they were between the age group of 25-30 years. Out of them Tasim gave him push; he took out a knife from his apparel and extorted him to hand over all the articles which he had; meanwhile his wife (PW-8) reached also the spot; his son Mohd. Javed (PW-2) who was inside the house also came out. The other two persons namely Mohd. Hasan and Mohd. Irfan took out kattas and pointed them at the complainant party asking them to remain silent. PW-2 and PW-8 started crying loudly; Mohd. Hasan and Mohd. Irfan attempted to fire their kattas but they could not succeed; they thereafter fled away; accused Tasim who was armed with the knife was apprehended by PW-1 with the help of his wife and son. Neighbours and other public persons gathered.

3. This complainant PW-1 reiterated his version on oath in court. In his cross-examination, he stuck to his stand; he deposed that his son had not gone to school on that day as he was preparing for his examination. This part of the examination of PW-1 was reiterated by PW-2 and PW-8 as well. PW-1 further reiterated that his complaint was recorded by the investigating officer on 22.02.2005. Police had been informed by the PCR who reached the spot; the knife which was in the hand of Tasim was taken into possession; he was arrested at the spot. PW-1 reiterated that the accused Mohd. Hasan and Mohd. Irfan had aimed the katta on them; none had however received any injuries; no articles were also robbed from their persons. He denied the suggestion that Tasim had come to their house to collect a payment and he has been falsely implicated in the present case.

4. PW-8 the wife of the complainant has toed the version of PW-1 and has deposed on the same lines. She reiterated that Tasim was arrested at the spot. He was having a "Chhura" with him. She denied the suggestion that the accused has been falsely implicated and he had come to collect a payment which was due to him for purchase of clothes.

5. Mohd. Javed (son of PW-1 and PW-8) has been examined as PW-2; his version is also to the same effect as that of PW-1 and PW-8. He also reiterated that no article was robbed from them and none of them received any injuries.

6. Inderjeet an independent witness has been examined as PW-4. His deposition is to the effect that on the fateful day at 10.00 a.m. he heard a noise in his house and came out; he saw PW-1 had apprehended one man; he had a knife in his hand. His wife was also present there. In his cross-examination he admitted that he is a neighbor of PW-1; they have a common wall. Relevant would it be to state that this witness is an independent witness and there is no reason for the Court to disbelieve him and rightly so as admittedly he being a close neighbour and in natural course heard a commotion and on coming out saw PW-1 holding

Tasim who was having a "Chhura" in his hands; he then learnt about the incident.

7. Investigation was marked to ASI Vikram Singh (PW-10). He has prepared the site plan; he had also sent Tasim for his medical examination as at the time of his apprehension he was beaten up by the public persons; this has been reiterated in the oral version of PW-1 and PW-2 as also PW-10. The MLC of Tasim has also been perused. This shows that he had been taken to Guru Teg Bahadur Hospital for a medical check up on that day at 11.20 a.m. and was accompanied by constable Vinod; this is also the version of the PW-10. The history of the patient notes that he had been beaten up by public. This document is unrebutted and unchallenged.

8. PW-10 has further deposed that the other two co-accused i.e. Mohd. Hasan and Mohd. Irfan had been arrested on 24.02.2005 i.e. two days after the date of incident which was on the pointing out of co-accused Tasim. Their arrest memos were proved as Ex. PW-7/C and Ex. PW-7/D. Both were found in possession of a loaded katta with a live cartridge which were taken into possession. The fact that they had refused TIP on 03.3.2005 is an undisputed fact. Their refusal proceedings have also been proved in the version of the investigating officer.

9. On the basis of the aforementioned evidence collected by the prosecution both oral and documentary the trial court had convicted the appellants for the offence u/s 387/34 of the IPC. Accused Tasim had been separately convicted u/s 25 of the Arms Act as well for being in illegal possession of a knife.

10. On behalf of the appellants arguments have been addressed in detail. It is pointed that PW-1, PW-2 and PW-8 are interested witnesses and there is every reason for them to have falsely implicated especially accused Tasim as a dispute had arisen when he asked for his money from PW-1; this was the reason for this false implication. Attention has been drawn to the versions of PW-1, PW-2 and PW-8 to substantiate this submission. It is pointed out that Mohd. Hasan and Mohd. Irfan were also arrested later at the pointing out of Tasim; their identity has not been established. It is submitted that even otherwise the offence is very old and appellants have already undergone a substantial portion of the sentence which has been awarded to them; leniency accordingly be awarded in the sentence.

11. Arguments have been refuted by the learned public prosecutor. It is pointed out that on no count does the impugned judgment suffer from any infirmity. Leniency should also not be granted in the sentence as admittedly accused Tasim was armed with a knife and the threats to the complainant party are writ large.

12. Record has been perused and arguments have been heard.

13. The trial judge has convicted the accused for the offence u/s 387 read with Section 34 of the IPC. Section 387 reads herein as under: "387. Extortion by putting a person in fear of death or grievous hurt-Whoever commits extortion by putting any person in fear of death or of grievous hurt or 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."

14. This section necessarily entails the ingredients of extortion which have been defined in Section 383 of the IPC. Section 383 reads 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".

15. There are four illustrations appended to this section. All of them show that there must be a delivery of a property or a valuable security or anything signed or sealed which may be converted into a valuable security. Thus to complete the offence of extortion the person who was put in fear must have been induced to deliver a property. In other words, to constitute extortion, it is not enough that the wrong doer had done his part; it must produce the result also. If it fails to produce the requisite effect, the act would remain only at the stage of attempt. In AIR 1953 Sau. 42 Labhshanaker Vs. State; Chief Justice Shah and Judge Baxi in this context had observed that the essence of the offence of extortion is in the actual delivery of possession of the property by the person put in fear and the offence is not complete before such a delivery. Tested on this touchstone testimonies of PW-1, PW-2, PW-4 and PW-8 have been scrutinized. PW-1 and PW-2 have categorically stated that in this incident none of them received any injury and their articles were also not stolen; admittedly there was no delivery of any property by the victims. Threat had undoubtedly been extended by the accused persons and out of the three accused, accused Tasim was armed with a "Chhura". This version of PW-1 and PW-2 is in fact the version of the prosecution. The essential ingredients of the offence of extortion which encompasses not only intentionally putting a person in fear of death or injury but also dishonestly inducing that person by putting him in fear to deliver to any person any property or valuable security is an ingredient which is missing. It is clear from the version of PW-1 and PW-2 that they were threatened by the accused at the point of knife but no theft or robbery had taken place in the incident and no loss had accrued to them. The ingredients of Section 387 of the IPC having not been fulfilled the conviction of the appellants under this Section is not sustainable.

16. Criminal intimidation which has been defined u/s 503 of the IPC has many ingredients which are common with extortion. Section 503 IPC reads herein as under:

503. Criminal intimidation-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to

do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

17. Section 503 contemplates threatening another with any injury to his person, reputation or property or to the person or reputation of any one in whom the person is interested, with an intention to cause alarm to that person or to cause that person to do an act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as a means of avoiding the execution of such a threat.

18. In this case, the accused persons had threatened PW-1 at the point of knife to hand over to him whatsoever was in his possession; Tasim at that point of time was armed with a knife; the other two persons namely Moh. Irfan and Mohd. Hasan had kattas. The intent of the accused was to cause injury to his person asking him to deliver whatsoever was with him which he was otherwise not legally bound to do.

19. This Court is thus of the view that the conviction of the appellant is called for u/s 503 of the IPC. The Apex court in Romesh Chandra Arora Vs. The State, had an occasion to deal with ingredients of both Section 383 and 503 IPC and in this context it had noted that as far as Section 503 of the IPC is concerned, it is mentioned in two parts. It had observed as follows:

...the first part refers to the act of threatening another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories: one is intent to cause alarm to the person threatened and the second is to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. On the findings arrived at against the appellant, the first part of the section is clearly fulfilled; and as to the intent, it comes more properly under the second category, that is, to cause X to do any act (in other words, to pay hush money) which he was not legally bound to do, as a means of avoiding the execution of the threat. It is perhaps correct to say that the threat of publication of the photographs must have also caused alarm to X; but the real intention of the appellant appears to have been not so much to cause alarm only as to make X pay "hush money" to him. It is not unoften that a particular act in some of its aspects comes within the definition of a particular offence in the Indian Penal Code, while in other aspects, or taken as a whole, it comes within another definition. There are obvious differences between the offence of extortion as defined in s. 383 and the offence of criminal intimidation as defined in s. 503. It is unnecessary to dilate on those differences in the present case. All that we need say is that on the finding of the learned Magistrate, which finding was affirmed by the High Court, the appellant was clearly guilty of the offence of criminal intimidation. We, therefore, hold that the conviction of the appellant under s. 506 is correct. We further agree with the High Court that no prejudice was caused to the appellant

by reason of the defect, if any, in the charge as to the intent of the appellant. He was fully aware of the case made by the prosecution and had full opportunity of rebutting the evidence given against him.

20. The charge in the present case had been framed against all the accused persons u/s 397 and Section 393 of the IPC. They had been convicted by the Sessions Judge u/s 387 of the IPC noting that the ingredients of Section 397 and Section 393 of the IPC had not been fulfilled. This court is of the view that the conviction of the appellant for the lesser offence u/s 506 of the IPC (which is lesser than Section 383 of the IPC) is fully sustainable. The penal provision for a conviction u/s 503 of the IPC is contained in Section 506 IPC. This offence is punishable with imprisonment which may extend to 2 years or with fine or with both.

21. The conviction of accused Tasim u/s 25 of the Arms Act is also maintained; that offence stands fully proved. Accordingly for the offence u/s 503 of the IPC each of the accused are sentenced to undergo RI for a period of 1 year and to pay a fine of Rs. 500/- in default of payment of fine to undergo SI for 5 days. The sentence of Tasim u/s 25 of the Arms Act is unaltered. As noted supra the appellant Tasim has undergone a period of 11 months; Mohd. Irfan and Mohd. Hasan have undergone 4 months and 29 days; the offence is old relating back to the year 2002 i.e. almost 9 years ago. All the appellants were present in the court on the date of hearing. This court has been informed that Tasim is aged about 35 years; Mohd. Hassan as on date is in his late 20s and so also Mohd. Irfan; all are married they have settled life with settled jobs and settled families. As rightly pointed out by learned counsel for the appellants no useful purpose would be served in sending the appellants back to jail. Accordingly, noting the fact that the fine amount stands paid; the period of incarceration already suffered by each of the appellants shall be treated as the sentence imposed upon them. Appeal is disposed of in the above terms. Bail bonds cancelled. Sureties discharged.