

PETITIONER:
GURSHARAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 10/09/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (8) 189

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. Mukherjee.J.

By his judgment and order dated June 12, 1993 the Additional Judge, Designated Court, Amritsar convicted and sentenced the appellant under Section 387 and 392 IPC and Section 3 of the Terrorist and Disruptive Activities (prevention) Act, 1987 ('TADA' for short). Aggrieved thereby the appellant has preferred this appeal under Section 19 of TADA.

The case of the prosecution is as under:

2(a). Nirmal Singh carries on business in silver ornaments and lives with his wife Kuldip Kaur in Gali No.1, Tej Nagar, Amritsar. Formerly the appellant was a resident of the same locality and was known to Nirmal Singh. IN or about the month of June 1990 Nirmal Singh received a letter from the appellant demanding a sum of Rs. 2 lacs for purchase of weapons for the terrorists and threatening that in case the money was not paid he (Nirmal Singh) would have to face dire consequences.

Nirmal Singh talked with his wife over the demand and went to meet the appellant who had by then shifted to Gali Beghwali and was running a wheat bran depot. The appellant took away the letter from him and told that he would meet the members of the group at whose instance he had written that letter. A few days later the appellant came to the house of Nirmal Singh and asked him to accompany him to settle the amount to be paid in terms of his letter. Along with the appellant when Nirmal Singh went to the depot of the former he found a man sitting there with a revolver in his hand. That man asked Nirmal Singh after putting him in fear of death, whether he was prepared to pay the amount demanded. On his expressing inability to pay the demanded sum a bargain was struck whereunder Nirmal Singh was to pay Rs.70,000/- to the appellant within three days. Within the stipulated time Nirmal Singh however could collect only Rs.50,000/-; and accordingly with the notes wrapped in a

polythene bag and accompanied by Manohar Singh, Nirmal Singh went to the depot of the appellant and handed over the same to him and undertook to pay the balance of Rs.20,000/- with in two months. The appellant told him to that in case he reported the matter to the police he would be killed. Though, owing to the threat so meted out, Nirmal Singh did not lodge any complaint with the police about the extortion, Gurmit Chand, Inspector of Police (Operation), Amritsar got that information on August 1,1990 and, on that basis, registered a case against the appellant and one Balwinder Singh.

(b) after registering the case Gurmit Chand took up investigation and randed the house of the appellant on August 2,1990 and arrested him. On interrogation he made a statement that he had kept concerned currency notes worth Rs.20,000/- under bundles of wheat bran in his deposit: and pursuant thereto two bundles of currency notes each containing Rs.10,000/- were recovered therefrom. Gurmit Chand seized those bundles of currency notes in the presence of Manohar Singh (P.W.2), who had accompanied the police party. On completion of investigation he submitted the charge sheet against the appellant.

3 To prove its case the prosecution examined five witnesses, namely Kuldip Kaur (P.W.1), Manohar Singh (P.W.2) Nirmal Singh (P.W.3), inspector Gurmit Chand (P.W.4) and inspector Rattan Lal (P.W.5). Of them P.W.1) wife of Nirmal Singh, did not fully support the prosecution case and Manohar Singh (P.W.2) To all for which both of them were declared hostile.

4. The case made out by the appellant, earlier pleaded not guilty to the charges levelled against him and claimed to be tried, in his examination under Section 313 Cr.P.C. was that Nirmal Singh was a habitual during and frequently best his wife. A few days before his arrest, Nirmal Singh had beaten his wife while under the influence of liquor and he issue he had a quarrel with Nirmal Singh and his father in course of which they exchanged blows. Offended by his such interference in their family affairs Nirmal Singh and his father got the case falsely registered against him with the help of a retired police officer, in support of his above defence the appellant examined Surinder Singh (D.W.1)

5. On perusal of the impugned judgment we find that the trial judge has discussed the entire evidence on record and given detailed reasons for accepting the case of the prosecution in preference to that of the defence.

6. We have the learned counsel appearing for the parties at length and gone through the entire evidence on record. From the evidence of Nirmal Singh we find that he reproduced the prosecution case detailed earlier and that though he was cross examined at length, the defence could not succeed in discrediting him in any way. Though Kuldip Kaur (P.W.1), turned hostile she partly supported the prosecution case and corroborated the evidence of her husband when she stated that she had found her husband disturbed and when asked the reason therefore, he disclosed that he had received a letter demanding money form him. She however did not state that her husband had told the name of the person who made the demand but, later on she testified that Gursharan Singh (the appellant) had come to their house and that her husband had a talk with the appellant. Her further evidence on being cross examined by the prosecution, is that her husband had told him that he had paid ransom to the appellant.

7. To prove the alleged recovery of Rs.20,000/-, out of the amount of Rs.50,000/- paid to the appellant form his depot the prosecution relied upon the evidence of the two

Inspectors of Police as Manohar Singh who was a signatory to the recovery memo, turned hostile. The oral testimonies of the above two witnesses coupled with the contemporaneous documents which they prepared in respect of the disclosure statement of the appellant (Ext.PD) and the recovery of the currency notes (Ext.PE) pursuant thereto fully support the prosecution case and we find no reason to disbelieve their evidence. It is, of course, true that in the absence of any marks of identification on those currency notes in order to connect them with the notes which were handed over by Nirmal Singh to the appellant, it cannot be said that the prosecution case stands conclusively proved solely on the basis of the above recovery, but the disclosure statement made by the appellant and the recovery pursuant thereto substantially and the recovery pursuant thereto substantially corroborates the testimony of Nirmal Singh.

8. Coming now to the defence case and the evidence of Surindar Singh in support thereof, we find from the uncontroverted evidence of Kuldip Kaur, that at the material time the appellant had shifted his residence from their locality and the other evidence on record shows that he was then a resident of Gali Baghwali. There was, therefore, no opportunity for the appellant to see Nirmal Singh and his wife fighting in their house and consequently the question of his intervention therein could not have arisen. It must therefore be held that the defence story as given out by D.W.1 is untrue.

9. For the foregoing discussion we are of the opinion that the trial judge was fully justified in concluding that the prosecution succeeded in proving its case. The trial Judge however was not justified in convicting the appellant both under Section 387 and Section 392 IPS, as Section 390 IPC lays down that in all robberies there is either theft or extortion: and that necessarily means that a person cannot be convicted both for extortion and robbery, which is a special aggravated form of the former. As in the instant case, Nirmal Singh was not induced to pay the money on the day he was put on fear of instant death but a few days later, he cannot be said to have committed 'robbery' within the meaning of Section 390 IPC for one of the ingredients of this offence is that the offender 'induces the person so put in fear then and there (emphasis supplied) to deliver up the thing extorted'. Consequently the appellant's conviction under Section 392 IPC for committing robbery has got to be set aside.

10. For the foregoing discussion we uphold the conviction and sentence of the appellant under Sections 387 IPC and 3 of TADA but set aside his conviction and sentence under Section 392 IPC.

The appeal is thus disposed of.