
(2002) 07 BOM CK 0029

Bombay High Court

Case No: Criminal Appeal No. 264 of 1997

Walji alias Walya Dashrath Johny

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: July 26, 2002

Acts Referred:

- Arms Act, 1959 - Section 37
- Penal Code, 1860 (IPC) - Section 387

Citation: (2003) CriLJ 4284 : (2005) 1 RCR(Civil) 996

Hon'ble Judges: J.G. Chitre, J

Bench: Single Bench

Advocate: K.M. Sanghani, for the Appellant; Kejriwal, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

J.G. Chitre, J.

Though Shri Sanghani had last time submitted before this Court that as the papers have been returned to the relatives of the appellant, he was unable to argue. Today, he submitted that the papers have been collected by him from the department as asked by this Court and he is arguing for the appellant.

2. Shri Sanghani vehemently submitted that in the present case there is absolutely no evidence to prove the guilt of the appellant in respect of the offence punishable under Sections 367, 387, 452 of Indian Penal Code and Section 37 of Arms Act. He pointed out that the evidence of P.W. 1 complainant Rajendra is at variance from the evidence of his associates Sailani and therefore, by any stretch of imagination it cannot be said that P.W. 1 Rajendra was kidnapped by the appellant Walji alias Walya and his associate. At this juncture he made a reference to the evidence of A.P.I. Naik also. Mrs. Kejriwal A.P.P. appearing for the prosecution submitted vehemently that there is no material contradictions so as to make the evidence of

P.W. Rajendra and Sailani unbelievable. She submitted that trial Court has rightly accepted the evidence after scrutinising it.

3. The evidence is to be assessed as a whole and the impact created by the evidence has to be assessed and then it is to be judged whether the evidence is to be accepted for basing a conviction or is to be discarded. If with this approach the evidence of Prosecution Witness Rajendra and Sailani is examined, this Court has no alternative but to reject the submissions advanced by Shri Sanghani for the appellant. The evidence of Rajendra and Sailani corroborates each other. Rajendra has stated in his evidence that on 11-6-1993 appellant had threatened him by showing a knife and had asked him to give him Rs. 20,000/-. On 12-6-1993 at about 11 a.m. the appellant came with his associate to the shop of P.W. Rajendra when Sailani was present. He had taken both Rajendra and Sailani on the point of knife which he was holding and the knives which his associates were holding. Both of them were taken to Madani Estate and at Madani Estate under stair case, P.W. Rajendra was assaulted and thereafter, he was told to hand over Rs. 20,000/- to appellant. On this point the evidence of Sailani corroborates the evidence of Prosecution Witness Rajendra. Furthermore, it is to be noted that the appellant and his associate had taken Sailani to railway track and that has been stated on oath by Sailani and that has been corroborated by the evidence of Rajendra when he has stated that he had learnt about that from his staff members who were working at the shop. This evidence has been corroborated by the evidence of employees of Rajendra viz, Kailash and Satyaprakash. Kailash has been declared hostile by the prosecution as he did not narrate the exact story which he had narrated before the police. But even then his evidence which has not been destroyed by the cross-examination, corroborates the evidence of P.W. Rajendra and Sailani on material particulars. The said evidence has been corroborated well by the evidence of P.W. Satyaprakash. Both Kailash and Satyaprakash are not expected to tell the same story as Rajendra and Sailani had stated, because he was obviously not accompanying Rajendra and Sailani. Therefore, their evidence will have to be treated to be corroborative piece of evidence to the main core of evidence adduced by the prosecution through the mouth of P.W. Rajendra and Sailani. The total effect of the evidence of these four witnesses is that on 12-6-1993 at 11 a.m. the appellant with his associates had kidnapped P.W. Rajendra and Sailani and had demanded a sum of Rs. 20,000/- as ransom.

4. The evidence of A.P.I. Naik shows that he arranged the trap and asked P.W. Rajendra to keep the bundle of pieces of papers of the size of currency notes by standing at a bus stop No. 70 and after handing over the said bundle to give a signal to A.P.I. Naik and his staff. On this point the evidence of P.W. Rajendra and A.P.I. Naik is corroborating each other. Shri Sanghani submitted at this juncture that the said bundle had not been seized by the police and that destroys the prosecution case. This Court does not agree with the submission of Shri Sanghani, because that may be a lapse on the part of the Investigating Agency but that is not sufficient to

throw out the evidence of prosecution witnesses Rajendra and Sailani and A.P.I. Naik which stood the test of cross-examination.

5. Thus, the prosecution evidence adduced proves that Rajendra and Sailani was kidnapped by the appellant with his associates and the money was demanded from Rajendra which was handed over by Rajendra in the nature of paper pieces in the shape of currency notes which were accepted by the appellant. Non-payment of currency notes worth Rs. 20,000/- does not make prosecution case unbelievable, because what is to be seen is "act us facet non reum nisi sit mens rea." The intention to commit crime is important than the act. Here the amount was demanded, which was accepted. Therefore the offence of extortion has been proved in the terms as indicated by Section 387 of Indian Penal Code.

6. The appellant has committed the offence which has been spelled out by the provision of Section 367 of Indian Penal Code and Section 387 of Indian Penal Code. Therefore, the learned trial Judge was right in coming to the conclusion that the guilt of the appellant has been proved so far as these two counts are concerned.

7. After appreciating the core of the prosecution evidence this Court finds no difficulty in accepting the evidence in respect of the offence punishable u/s 452 of IPC. This Court concurs with the opinion and findings recorded by the trial Court holding the appellant guilty of the offence punishable u/s 452 of IPC.

8. The prosecution has produced the notification which was prohibiting the citizens to move with dangerous weapons like big knives in public places. The appellant was found to be carrying a Rampuri knife in the public place when he threatened P.W. Rajendra by making entry in his shop for the purpose of committing the offence and with preparation of committing the offence. Therefore, conviction of appellant in respect of Section 37 of Arms Act is also correct, proper and legal.

9. The learned trial Judge has appreciated the evidence on record properly, correctly and has recorded his findings which are consistent with the evidence on record. This Court does not find any error on the part of the trial Judge in appreciating the evidence and thereafter recording the finding of guilt against the appellant. Thus, this Court confirms the order of conviction passed by the trial Court against the appellant.

10. Shri Sanghani submitted that the sentence is too severe. Mrs. Kejriwal supported the sentence as proper and fit keeping in view the act committed by the appellant. The appellant has made entry in the shop of P.W. Rajendra on the point of knife for committing the offence and with preparation to commit the offence. He had committed criminal trespass being armed with deadly weapon. Not only that thereafter he kidnapped both Rajendra and Sailani and thereafter demanded ransom of Rupees 20,000/- and accepted also. These acts are prejudicial to the safety of the citizens and society at large and therefore the sentence inflicted on the appellant is correct, proper and appropriate keeping in view the act which has been

committed by him and which has been proved by legal evidence. Apart from that the appellant has undergone the sentence also. Thus, this Court dismisses the submission advanced by Shri Sanghani for the appellant.

11. Thus, the appeal stands dismissed. No interference in respect of the order regarding the disposal of the property.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristedar of this Court.