APPELLATE CRIMINAL.

1929.

Dec. 17, 18, 20

Before Terrell, C. J. and Macpherson, J.

KING-EMPEROR

v.

FAZLUR RAHMAN.*

Penal Code, 1860 (Act XLV of 1860), sections 43, 44 and 385—"illegal", meaning of —legal practitioner—threat with intent to extort to put questions forbidden by law—whether offence committed—section 385.

Section 385, Penal Code, 1860 lays down :—

"Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The word "injury" is defined in section 44 which provides :

"The word 'injury' denotes any harm whatever illegally caused to any person in body, mind, reputation or property."

And the word 'illegal' is defined in section 43 as follows :

"The word 'illegal' is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action....."

Held, that the word "illegal" has been given by the section a very wide meaning and that it has the same meaning as "unlawful."

Where, therefore, *F*, a Mukhtar engaged in a crimina case on behalf of the accused in that case, threatened, with intent to extort, to put questions to *H* and the ladies of his household (who were prosecution witnesses in that case) which were entirely irrelevant to the matters at issue, which were scandalous and indecent and which were intended to insult and annoy,

*Government Appeal no. 6 of 1929, against a decision of J. G. Shearer, Esq., I.C.S., Sessions Judge of Patna, dated the 5th August, 1928, overruling a decision of Babu R. B. Saran, Magistrate, 1st class, of Patna, dated the 19th May, 1928.

1929.

KING-EMPEROR v. FAZLUR RAHMAN.

Held, that the Mukhtar clearly intended, in order to extort money, to do an act prohibited by law, and that, therefore, he had committed an offence punishable under section 385, Penal Code, 1860.

Appeal by the local Government.

The facts of the case material to this report are stated in the judgment of Terrell, C. J.

The Government Advocate and S. A. Sami, for the appellant.

The accused appeared in person.

COURTNEY TERRELL, C.J.—This is an appeal by the local Government under section 417 of the Code of Criminal Procedure from a decision of the Sessions Judge of Patna setting aside a conviction by a first class magistrate of one Fazlur Rahman under section 385 of the Indian Penal Code and sentencing him to rigorous imprisonment for three months and a fine of Rs. 500.

The facts are simple and are established by the evidence beyond all possibility of doubt.

On March 8th, 1928, Mr. *H*, who is a zamindar and a well-known Barrister in this province lodged a first information charging one of his servants *S* under section 379 of the Indian Penal Code with the theft of an article of jewellery and a key. On April 17th the trial was begun before the Deputy Magistrate. The respondent in this appeal, Fazlur Rahman, who is a mukhtar practising in the Court of the magistrate came into Court and stated that he had been instructed to appear on behalf of *S*. The magistrate asked *S* if he desired to be represented by the respondent and the reply was in the affirmative. At the moment Mr. *H*, the prosecutor, was in the witness-box and he was subsequently cross-examined by the respondent. The Court Inspector who was conducting the prosecution requested that two witnesses, that is to say,

Mrs. *H* and Madame *L*, a lady employed by Mrs. *H* as a governess for her child whom he intended to call, might be examined at Mr. *H's* house. The respondent objected saying that he did not wish to cross-examine the ladies at Mr. *H's* house because he feared that Mr. *H* would commit a breach of the peace. Mr. *H* protested against this suggestion which was both impudent and unfounded and thereupon the mukhtar said that he would put questions that would damage the high reputation of Mr. *H* in the province. He also said that he would put questions to the ladies that would damage Mr. *H's* reputation and it was for this reason that he feared that Mr. *H* might use violence towards him if the examination of the ladies were conducted at Mr. *H's* house. The magistrate, however, directed that the examination of the ladies would be taken up on the afternoon of the 23rd at Mr. *H's* house and that Mr. *H* would be further cross-examined at the same sitting. On the 21st, however, before this examination could take place the accused was brought into Court in order that the charge might be amended from one under section 379 of the Indian Penal Code to one under section 381 and the charge was in fact so amended and the case was postponed to the 28th for the cross-examination of the prosecution witnesses. On the same day the respondent on behalf of *S* filed a complaint against Mr. *H* under section 330 charging him with having beaten him (*S*) to extort from him a confession. The complaint does no more than set forth the allegation of such beating. It is important to observe that the mukhtar on the 17th, as he has admitted to us, had not received instructions directly from his client who had been in jail but from some relative or friend and the announcement by the respondent to the magistrate on the 17th that he would put questions to Mr. *H* and the ladies which would damage Mr. *H's* reputation cannot have been made upon any instructions from his client and it is significant in view of subsequent events.

1929.

KING-EMPEROR v. FAZLUR RAHMAN.

COURTNEY TERRELL, C. J.

Now on the 24th April the respondent went to the house of a witness Leakat Hussain. This gentleman is a zamindar and an old friend of Mr. *H*. The respondent asked Mr. Leakat Hussain to tell Mr. *H* to give to him (the respondent) Rs. 500 to withdraw the case of *S* and further that if he did not pay, he (the respondent) intended to insult him grievously (*bahut zalil karengi*). Mr. Leakat Hussain went to Mr. *H* the next day and conveyed this message to him and he promptly refused to pay a pice. Mr. Leakat Hussain met the respondent the same day in Court and the respondent asked him if he had taken the message to Mr. *H*. The witness told him that he had done so and that Mr. *H* said that he would not pay a single pice whereupon Fazlur Rahman repeated the threat that he would greatly insult him (*bahut zalil karengi*). A little later on in the month a gentleman named Muhammad Mujtaba who is a pleader at Muzaffarpur and has known the respondent since 1915 and whose father had known the father and uncle of the respondent met the respondent at the latter's house at Muradpur. The witness mentioned the case against *S* and the counter-case by this man against Mr. *H*. He enquired of the respondent how he had come to take part in it and wanted him to withdraw from the case whereupon the respondent told him that if he was at all anxious for the reputation of Mr. *H* he should ask him to pay some money when the case would be withdrawn. The witness, however, had no opportunity of meeting Mr. *H* until the 15th December and so the threat was never conveyed by this witness to Mr. *H*.

On the 27th April, that is to say, on the day before the resumption of the proceedings against *S*, a gentleman named Saiyid Shaukat Ali, who is an engineer and contractor and has been employed by Mr. *H* as a consulting engineer, met the respondent in the street at Muradpur. It was evening time and

the witness who was acquainted with the respondent got down from his phaeton and spoke to him. The respondent asked him whether he knew what was happening. The witness replied " I know what you are doing " by which I understand him to mean " I know what you are up to." Then the respondent said that he was defending a poor mehtar (*S*) and after that he said that if Mr. *H* had any consideration for his reputation and if Rs. 1,000 or Rs. 1,500 were paid the whole matter (*mamla*) would drop. Next morning the witness went to Mr. *H* and told him of his conversation with the respondent. Mr. *H* said that he was already informed. The witness met the respondent subsequently but there was no conversation of any sort.

There was thus thrice repeated to independent and irreproachable witnesses, all of them friends of Mr. *H*, a very definite threat that the respondent intended to conduct his defence of *S* and his case for the prosecution of Mr. *H* by *S* in such a way as greatly to insult Mr. *H* and to damage his reputation and his meaning is quite clear from his attitude when resisting the application of the Court Inspector for the examination of the ladies at Mr. *H's* house.

On the 28th April the cross-examination of Mr. *H* was resumed as it appears that the magistrate had acceded to the objection by the respondent to the examination of witnesses at Mr. *H's* house which was to have been held on the 23rd. The very first question put to Mr. *H* in the renewed cross-examination by the respondent involved a suggestion of the grossest character against Mr. *H* and against Mrs. *H* and it was promptly disallowed by the magistrate. Nevertheless the respondent continued to cross-examine Mr. *H* for two whole days. Why the magistrate did not exercise his discretion to stop this gross abuse is difficult to understand. It is much to be regretted, as I have often pointed out, that the

1929.

KING-EMPEROR v. FAZLUR RAHMAN.

COURTNEY TERRELL, C. J.

subordinate Courts do not properly control the proceedings before them. The conduct of the respondent in this cross-examination was outrageous. Before us the respondent has had the effrontery to attempt to justify questions of the kind that he asked as reasonable and proper in the circumstances.

On the 2nd May Madame *L* was examined in Court and *S* was convicted. It may be noted that the Sessions Judge subsequently acquitted *S* on appeal but still later the High Court set aside the acquittal and re-convicted the accused who was sent to jail.

The respondent has endeavoured, without the slightest success, to attack the credibility of the three witnesses who independently proved his attempt to obtain money from Mr. *H*. The learned Sessions Judge has, however, found that the threats were in fact made, and that they were made with the object of extorting money. He has, however, acquitted the accused of the offence charged against him holding that the facts established before him did not constitute an offence in law. The mistake made by the learned Judge, and it is a very clear and definite mistake, is due to the fact that he has not read with sufficient care the sections of the Indian Penal Code relevant to the case. Section 385 is as follows:—

"whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The word "injury" is defined by section 44 of the same Code and is as follows:—

"The word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property."

And the word "illegal is defined in section 43 as follows:—

"The word 'illegal' is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action....."

The learned Judge appears to have been under the impression that in order to constitute an offence under section 385 the threat must be of some conduct which might either constitute an offence in criminal law or which might be made the basis of a civil action for damages but he has failed to observe that this does not exhaust the definition of the word " illegal " contained in section 43 and has omitted to read the words therein " or which is prohibited by law." The word " illegal " has been given by the section a very wide meaning and it has the same meaning as " unlawful." Now as the learned Judge holds quite properly (and for this purpose I quote his words)

" He intended no doubt to convey to Mr. *H* that he would keep him as long as he could in the witness-box and would hector and badger and ask him as many insulting questions as he could until the Court stopped him "

and again

" There are indications that Fazlur Rahman meant Mr. *H* to understand that he would set up some false defence on *S's* behalf which would reflect on the private life of Mr. *H*. or some member of his family."

The learned Judge has apparently not reflected that such a course of conduct on behalf of an advocate is forbidden by law. A reference to the Evidence Act and to section 138 would have shewn him that the examination and cross-examination of a witness must relate to relevant facts only. Further, had he looked at sections 151 and 152 he would have seen that the Court may forbid any questions or inquiries which it regards as indecent or scandalous unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed, and furthermore, that the Court is bound to forbid any question which appears to it to be intended to insult or annoy or which though proper in itself appears to the Court needlessly offensive in form. The respondent very clearly threatened, in order to extort money, to do an act

1929.

KING-EMPEROR v. FAZLUR RAHMAN.

COURTNEY TERRELL, C. J.

prohibited by law. He threatened, and the meaning of his threats is beyond question, to put questions to Mr. *H* and the ladies of his household which were entirely irrelevant to the matters at issue, which were scandalous and indecent and which were intended to insult and annoy and such a threat with intent to extort is an offence under section 385.

In the hearing before us we gave to the respondent the widest latitude in conducting his argument having regard to the fact that he is an accused appearing in person. He repeated himself at inordinate length and we found it necessary to order him after he had addressed us for several hours to conclude his address. Using my best endeavours to discover what points he did or might have urged I have been able to find three only. The first was a contention that no appeal by the Government against an acquittal could be entertained by this Court unless the offence charged was a cognizable offence. This point is entirely concluded by the wording of section 417 of the Code of Criminal Procedure which places no such limit upon the Government right of appeal.

Next he endeavoured to attack the credibility of the witnesses who proved the threats uttered by him. This attempt completely failed and was entirely unjustified. Their evidence was very properly accepted by the two lower Courts.

Lastly he urged the legal point upon which the case was decided in his favour by the learned Sessions Judge and this point I have already dealt with.

I now come to the question of sentence. The offence of blackmail, as this is commonly called, is one of the most despicable offences known to the law and it is particularly dangerous in India. A mere threat to expose some alleged fact in the private family life of a witness, however unfounded that allegation may be, is sufficient to deter a witness from going into the witness-box or make him part with money, and the

prosecution of a person making such a treat requires the greatest moral courage on the part of the victim. The community has good cause to be grateful to the prosecutor in this case for having exposed and rendered powerless for the future a dangerous ruffian. The offence is the more grave in this particular case because it has been committed by a member of a hardworking and respectable profession in the course of professional activities. The profession itself needs to be protected from such activities. The sentence originally inflicted by the magistrate was thoroughly inadequate. We have carefully considered the advisability of inflicting the maximum sentence but in view of the fact that the respondent will never again be allowed to practise in the profession and in view of the fact that the eyes of the public have now been opened to the risks to which they are exposed by the existence of such a man, we are of opinion that the proper sentence should be one of rigorous imprisonment for twelve months and the fine inflicted by the magistrate of Rs. 500 will be re-imposed: in default, the respondent will be sentenced to rigorous imprisonment for a further three months.

MACPHERSON, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Kulwant Sahay and Wort, JJ.

DURGA DATT SHRI RAM FIRM

v.

SECRETARY OF STATE FOR INDIA.*

1930.

July 18.
Jan., 6, 7.

Railways Act, 1890 (*Act IX of* 1890)—"*wilful neglect*", *what constitutes—term, whether synonymous with*

*Appeal from Appellate Decree no. 865 of 1928, from a decision of Rai Bahadur Jyotirmay Chatterji, District Judge of Saran, dated the 24th of February, 1928, reversing a decision of Babu Kapildeva Sahay, Munsif of Chapra, dated the 13th of July, 1927.