**Khirode Kumar Mookerjee Vs. Emperor**

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**Court** : Kolkata

**Decided On :** Aug-18-1924

**Reported in** : AIR1925Cal260,85Ind.Cas.372

**Appellant** : Khirode Kumar Mookerjee

**Respondent** : Emperor

**Judgement** :

**Mukerji, J.**

1. The appellant Khirode Kumar Mukerji was tried by the Additional Sessions Judge of Khulna with the aid of a jury on a charge under Section 408, I.P.C. The charge was to the effect that between Jaistha 1329 and Baisakh 1330 the accused committed criminal breach of trust in respect of a sum of Rs. 7,434. That figure was arrived at upon a calculation which is to be found set out in the learned Judge's charge to the jury. The total amount collected by the accused was said to be Rs. 16,29014-0 consisting of 16 sums of money. The amount of Government Revenue paid by the accused was Rs. 7,868-14-9. Rs. 889 9-0 was sent by the accused to the proprietors and the accused was entitled to Rs. 407 as the stipulated amount of pay for the year. Deducting the last three items from the amount of collections the balance left was Rs. 7,125-6-3. To this was added Rs. 311 being the cash in hand at the close of the previous year and this gave a total of Rs. 7,436-6-3. The jury returned a unanimous verdict of guilty but

recommended the lightest punishment consistent with justice as in their opinion the amount misappropriated by the accused was much less than the amount stated in the charge. As to the amount embezzled they were not unanimous and they said they were not able to ascertain it definitely, but the majority of them were of opinion that it might be a thousand rupees or so out of the amount mentioned in the charge. The learned Judge agreed in the verdict. He, however, was of opinion that the amount embezzled was not a thousand rupees or so but nearly rupees five thousand. He accepted the verdict and convicting the appellant under Section 408, I.P.C., sentenced him to undergo rigorous imprisonment for three years. Hence the appeal.

2. The question is whether upon such a verdict the conviction can stand.

3. On behalf of the Crown reliance is placed upon the provisions, of Section 222, Sub-section (2) of the Code of Criminal Procedure, as justifying a verdict of this nature. It is said that the law permits a charge being framed in respect of a general deficiency in accounts and even if the jury are unable to find what particular amount has been embezzled, if they are satisfied that there is a general deficiency, so long as the amount of the deficiency is a part of the amount stated in the charge, they may bring in a verdict of guilty and the Court is entitled to act upon the verdict. In support of this proposition reliance is placed on the case of R. v. Lambert (1847) 2 Cox. C.C. 309.

4. Now, the object of the amendment made by the introduction of Sub-section (2) to Section 222, Cr. P.C., was

Not to amend the Penal Code, but merely to get rid of a technical difficulty in framing a formal document, viz., the charge.

5. By this amendment the procedural law was altered to meet two difficulties. Under the law as it stood before, there was very great difficulty in convicting where there was a running account and where the prosecution were unable to put their hands on a specific item out of which the particular sum was embezzled or to which it was attributable. The other difficulty was what was experienced in the case of Queen-Empress v. Pursotam Doss Morarjee (1896) 24 Cal 193. In that

case there was a charge of embezzlement of Rs. 9,168-6-0 which might have been made up of many, hundred items. Under Section 234, Criminal Procedure Code it was not allowed to have more than three offences of the same kind, and so the charge could not legally stand. The law on these two points was altered and altered for the better. It was not intended either to throw the onus on the accused by bringing a charge against him of a deficiency in his accounts or to do away with the necessity of proving the elements of the offence as laid down in the Indian Penal Code.

6. As to the case of R. v. Lambert (1847) 2 Cox. C.C. 309, it is no doubt an authority for the proposition that an indictment for embezzlement might be supported by proof of a general deficiency of moneys that ought to be forthcoming, without showing any particular sum received and not accounted for. There is on this point under the English law a conflict of judicial opinion, which perhaps it is not possible to reconcile [see R. v. Grove (1837) 7 C.& P. 635, R. v. Moah (1856) 7 Cox. C.C. 60 and Reg. v. King (1871) 12 Cox. C.C. 73 for the one view, and R. v. Lloyd, Jones (1838) 8 C.& P. 288, B. v. Chapman (1843) 1 C.& K. 119 and Beg v. Wolstenholme (1869) 11 Cox. C.C. 313 for the other]. The words of the statutes under which the above mentioned cases were decided are widely different from those of the statutes with which we are concerned and they can have no application here. As Martin, B, observed in the case of Reg. v. Moah (1856) 7 Cox. C.C. 60:

If there have been decisions of the Courts upon the statutes, we are bound by those decisions, but I protest against the idea that a number of cases decided years before upon another statute can be any guide to us in interpreting the particular statute before us.

7. The offence of criminal breach of trust involves entrustment or dominion over property and dishonest misappropriation, conversion, use or disposal thereof. It is not possible to find these elements unless one can form a conception as to what that property is. There must therefore be a definite finding of a certain definite sum traced to the accused in order to form the basis of his conviction. The verdict of the jury read in the light of their explanation suggests that they found that the accused

had succeeded in accounting for the whole with the exception of about a thousand rupees. The verdict so returned by the jury was not a simple verdict of guilty or not guilty on the whole matter covered by the charge but a special or qualified verdict to ascertain the exact scope and import of which it was the duty of the learned Judge to ask the jury such questions as were necessary. He should have endeavoured to ascertain how they arrived at the amount of ' about a thousand rupees or so ' which in their opinion the accused was guilty of having embezzled. His omission to put questions to the jury in this respect has deprived him of the opportunity of finding out whether the said amount or any part of it was included within the figure which he himself arrived at so as to determine whether he really agreed with the verdict or not. The omission has also created a difficulty which stands in the way of our deciding whether the verdict was a proper one or not, for we do not know upon what materials the verdict is founded or what it really means. Under Section 303 (1), Criminal Procedure Code, the Judge is always entitled to ask the jury such questions as are necessary to ascertain what their verdict is; and in a case like this it was his duty to question them. In the view that I take of this matter I do not think it necessary to hear the appeal further. I would set aside the conviction and sentence passed upon the appellant and direct that he be discharged. It will be open to the prosecution, should they so desire, to proceed afresh against the appellant in respect of such gross sum or specific item or both as he may be charged with, in accordance with the provisions of the law.

8. The appellant will be discharged from his bail.

**Walmsley, J.**

9. I agree.