

**BasiruddIn Ahmed Vs. Emperor**

**BasiruddIn Ahmed Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/876201](http://sooperkanoon.com/876201)

**Court :** Kolkata

**Decided On :** Jan-13-1909

**Reported in :** 4Ind.Cas.48

**Judge :** Holmwood and ;Ryves, JJ.

**Appellant :** BasiruddIn Ahmed

**Respondent :** Emperor

**Judgement :**

1. This is an appeal from a conviction under Section 408 of the Indian Penal Code and a sentence of two years' rigorous imprisonment passed by the Sessions Judge upon the unanimous finding of the jury that the accused Basiruddin Ahmed Sheik was guilty in regard to all the ten receipts upon which he had been charged. There appear to have been certain other charges amounting altogether to the sum of Rs. 46-11; but the learned Judge very properly only tried three of the charges and reserved the others. The amount, therefore, for which the accused was tried in this case was approximately Rs. 5-10. We can find no misdirection in the charge of the learned Judge to the jury.

2. It is urged before us that the use of the expression 'implied contract' is erroneous. Possibly, it is not a happy expression. But the expression which the Judge should have used would have been a far stronger one and would have gone far more against the accused person, for it appears to us that when a person

accepts a salary for the purpose of collecting money and accounting for the same and giving receipts to the payers, he accepts an 'express trust.' What the jury had to find was whether there was a breach of trust with respect to the sums and we are unable to find any misdirection as to that matter.

3. Another point as regards the charge is that the prosecution says that the accused deviated from the practice in several ways and that he actually realised sums of annas nine (9) in each case on behalf of the Committee and did not credit them and the circumstances were such that he had no intention of crediting them at a later date. We find that this is not the learned Judge's own statement to the jury. He says what the prosecution says and he leaves it to the jury to decide whether the circumstances were such that fraudulent intention was to be inferred. The jury evidently did infer fraudulent intention and we are unable to see on the evidence how they could possibly come to any other conclusion.

4. The only other point to be considered is the question of the sentence; and as in all these embezzlement cases the danger of reducing a sentence on a small item which has been tried first when there are other items to follow it, is that it would only result in further harassing the accused person in renewed trials, so it seems to us that the sentence of two years' rigorous imprisonment which has been awarded by the Sessions Judge in this case is sufficient punishment for all that the accused is shown to have done in each case now before us and we should be rather inclined to direct under Section 240 of the Criminal Procedure Code, that no further proceedings be taken than that the present sentence should be reduced and the case tried in driblets.

5. We, therefore, direct that this appeal be dismissed and the conviction and sentence be upheld with the proviso that no further proceedings be taken in the Criminal Court against this man as regards the sums said to have been embezzled in his office as mohurir to the Jamalpur Cattle Committee.

6. As the accused person is on bail, he must surrender to the District Magistrate and serve out the rest of his sentence.

