

Emperor Vs. Rajendra Roy

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Court : Kolkata

Decided On : Jan-09-1918

Reported in : 47Ind.Cas.64

Judge : Charles Chitty and ;Smither, JJ.

Appellant : Emperor

Respondent : Rajendra Roy

Judgement :

1. This case comes before us on a reference by the Additional Sessions Judge of Hooghly under Section 307, Criminal Procedure Code. On 23rd July 1917 the accused Rajendra Roy was committed for trial in the Court of Session on three charges of criminal misappropriation committed on different dates in the year 1915. In the Sessions Court on 1st October 1917, an additional charge was added of an offence under Section 210, Indian Penal Code, in respect of a sum which was connected with the first of the three charges of criminal misappropriation. At the trial the Jury disagreed, a majority of three being in favour of an acquittal. Disagreeing with that majority and thinking their verdict to be perverse, the Additional Sessions Judge has referred the matter to this Court. On reading the letter of reference it appears to us that there was in this case a misjoinder of charges. In that view, it is unnecessary to go into the merits of the case, as the only fair course will be to direct a retrial of the accused on charges properly framed and properly joined. The three charges of criminal misappropriation related to three

separate sums. The accused was the manager appointed by the District Judge of Hooghly of an idol, Brindaban Chandra Thakur, of Guptipara; and was as such manager entrusted with the funds belonging to the idol. It is of portions of these funds that the alleged misappropriations took place. The first item was one of Rs. 1,441-9-3 said to be costs of the High Court decree in Regular Appeal No. 290 of 1909, to which the idol was a party. The second item was of a sum of Rs. 135 said to have been improperly retained by the accused on the 23rd July 1915. The third was one of Rs. 5-12-3 also misappropriated by the accused as such manager between 14th December 1915 and 8th January 1916. These three charges could, no doubt, have been properly tried together in one trial. The added charge was that the accused, on or about 10th December 1914, fraudulently obtained an order from the District Judge of Hooghly for a sum of Rs. 1,841-9-3, which sum was not due to him or which was larger than was due to him from the estate of the idol. The date of this offence, it will be seen, was not within the year within which the three alleged offences of criminal misappropriation fell. We are of opinion that the accused could not legally be tried on this fourth charge along with the three charges of criminal misappropriation. It was not an act forming one transaction with them. It had some relation to one of the three charges of criminal misappropriation but not to the other two; and, in part, it referred to matters not included in any of those three charges, because it appears from the letter of reference that the accused was said to have committed criminal misappropriation of a further sum of Rs. 200 out of the Rs. 1,841-9-3. This being so, we think that the case must go back to the Court of Session for a retrial of the accused. We need not here specify exactly on what charges he should be tried. That will be for the prosecution to consider and the Court to decide. We need only say that they must be charges which can be properly dealt with in one trial. The accused will remain on the bail at present subsisting.