

Jagan Nath

Vs

State

Criminal Appeal No. 154 of 1971

(Y. V. Chandrachud, K. K. Mathew JJ)

21.10.1975

JUDGMENT

CHANDRACHUD, J. -

1. On May 5, 1962 the Chief Auditor, Co-operative Societies, Delhi wrote a letter to the Superintendent of Police, C. I. D. Delhi complaining that the appellant Jagan Nath, who was the President of the Bijwasan Khas Co-operative Thrift & Credit Society Ltd., and certain other office-bearers of the society had misappropriated the stock and cash belonging to the society. A. S. I. Hukam Chand investigated into the complaint and eventually a case was registered against the appellant and the others under Section 408 of the Penal Code.
2. The learned Additional Sessions Judge, Delhi held all the accused guilty under Section 120-B and under Sections 408 and 466 read with Section 120-B of the Penal Code. All the accused were sentenced by the learned Judge to an effective term of three years' rigorous imprisonment and fine. The order of conviction and sentence was confirmed in appeal by a learned Single Judge of the High Court of Delhi.
3. A petition for special leave was filed by the accused in this Court but it was dismissed on July 21, 1971 except in regard to the appellant who was granted special leave to appeal from the judgment of the High Court.
4. The High Court in the appeals before it had to consider the cases of six accused who were convicted by the trial Court and who by two separate appeals had appealed therefrom. Unfortunately, the High Court did not consider the cases of the accused separately, with the result that its judgment gives the impression that there was no evidence at all to connect the appellant with the misappropriation of the stock or the breach of trust in regard to the moneys belonging to the society of which he was the President. In its judgment, the only circumstance which the High Court has referred to in regard to the appellant is that the key of the store used to remain with the appellant during the night. This circumstance by itself is not sufficient to prove the charge against the appellant beyond a reasonable doubt.
5. Learned Counsel appearing on behalf of the State has however drawn our attention certain circumstances on which the learned Additional Sessions Judge had relied for convicting the appellant. Those circumstances are referred to by the learned Judge in paragraph 12, clauses (iii)(a), (iv) and (v) of his judgment. The High Court has not discussed any of the aforesaid circumstances which it was its plain duty to do as a court of appeal. We wanted to avoid a remand but the transcript record does not contain the necessary documents nor indeed all the oral evidence. It has therefore

become necessary to remit the case back to the High Court.

6. Accordingly we set aside the judgment of the High Court and send back the case to it for a fresh consideration of the oral and documentary evidence in the case in so far it concerns the appellant Jagan Nath. The order of conviction and sentence passed by the High Court against the other accused will, or course, stand as the petition for special leave filed by those accused was dismissed by this Court.

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