

Janeshwar Das Aggarwal

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 177-A and 177-B of 1975

(Syed M. Fazal Ali, Baharul Islam, A. Varadarajan JJ)

25.03.1981

### JUDGMENT

1. These appeals by special leave are directed against the judgment of the Allahabad High Court by which the conviction of the appellant under Section 409, Indian Penal Code on three counts has been affirmed.

2. The facts of the case have been detailed in the judgments of the trial Court and the High Court and it is not necessary to repeat the same.

3. According to the prosecution, the appellant who was an Overseer was put in charge of tube-wells and some open godowns which were attached to those tube-wells. These godowns contained cement, bricks and coal. Although the High Court has found that the articles in the godowns were entrusted to appellant, there is no evidence at all to show that any such entrustment was made. No document in the nature of a list or charge has been shown to show that physical charge of the articles after being regularly counted in the godowns was made over to the appellant. This fact has not been seriously disputed by Mr. Bhat, appearing for the State. In fact, the godowns were in the physical charge of Chowkidars and if there was any shortage, it was not the appellant but the Chowkidars who would be liable. Even assuming that some sort of entrustment was there, there is absolutely nothing in this case to show that the appellant had misappropriated the goods from the godowns which were found to be sort, particularly because the godowns being open the goods could have been pilfered by anyone else without the knowledge of the appellant. Before a conviction under Section 409, Indian Penal Code can be recorded, the prosecution must prove two essential facts : (1) the factum of entrustment, and (2) the factum of misappropriation of the entrusted articles. Even if it be assumed that entrustment was proved in this case, there is absolutely no evidence to show, either direct or circumstantial, that the appellant had misappropriated any of the articles in the godowns. As the godowns were open and accessible to all and sundry, the possibility of the goods having been pilfered or stolen away by others cannot be excluded. The High Court was, therefore, clearly wrong in holding that as the appellant has not given any explanation for the shortage, he must be presumed to have misappropriated the articles kept in the godowns. In the present state of evidence, no such legal inference could be drawn. Mr. Bhat also conceded that there is no legal evidence to show that there was any misappropriation by the appellant. Even the two Chowkidars who were in physical charge of the godowns and not been examined to prove who caused the shortage. In view of this unsatisfactory nature of the evidence, it is impossible for us to sustain the conviction of the appellant.

4. For these reasons therefore the appeals are allowed and the conviction of and the sentence passed upon the appellant are set aside and the appellant is acquitted of the charge framed against him. The

appellant who is on bail will now be discharged from the bail bond and need not surrender.

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