

CALCUTTA HIGH COURT

Jugdown Sinha

Vs

Queen-Empress

(Beverley and Gordon ,JJ.)

04.12.1895

JUDGMENT

Beverley and Gordon, JJ.

1. The appellant has been convicted under Section 408 of the Indian Penal Code on the charge that being a servant, namely, a jemadar, of the Muktapore Indigo Factory, and- being in such capacity entrusted with dominion over certain plots of zerait land, he committed breach of trust in respect of those plots. It was objected at the trial, and the objection has been repeated here, that the offence so set forth really does not subsist, inasmuch as criminal breach of trust cannot be committed in respect of immoveable property. The Sessions Judge considered that this was a defect in form only, and he is inclined to read the charge in the sense that the accused dishonestly disposed of the plots of land in question in violation of a legal contract which he had made touching the discharge of his trust. The case for the prosecution is that it was the appellant's duty to see that certain plots of land were cultivated with indigo, and that he knowingly allowed them to be cultivated with other crops.

2. We are ourselves inclined to the opinion that the property referred to in Section 405 of the Indian Penal Code must, as in Section 403, be moveable property, and that, as it has been ruled in *Reg. v. Girdhar Dharamdas*¹ criminal breach of trust cannot be committed in respect of immoveable property. In this case the appellant was at most entrusted with the supervision or management of the factory lands, and the fact that he mismanaged the land does not in our opinion amount to a criminal offence under Section 408. Be that as it may, we think that upon the evidence the conviction cannot be sustained. Both the assessors found the appellant not guilty, and, as they have pointed out, the evidence in the case is extremely unsatisfactory. There are not only contradictions in the evidence, but-the witnesses are, upon their own showing, accomplices with the accused, and. their evidence is entirely uncorroborated. It appears, moreover, that the factory people had a grudge against the accused who appears to have left their service and entered the service of a neighboring factory. Under all these circumstances it would not be safe to

convict the accused.

3. We accordingly set aside the conviction and direct the discharge of the appellant.

Cases Referred.

¹6 Bom. H.C. Cr. 33