

CALCUTTA HIGH COURT

Bolai Chandra Khara

Vs

Bishnu Bejoy Srimani

(Lort-Williams ,J.)

02.02.1934

JUDGMENT

Lort-Williams ,J.

1. We are of opinion that the case has been dealt with by the learned Magistrate from an entirely erroneous point of view. The prosecution case was that out of a gross amount of Rs. 2,500 odd which the accused had collected as the Gomastha in the complainant's estate a sum of Rs. 1,900 odd only was credited by him to the sherista of the estate and the prosecution put forward three items, namely Rs. 75, Rs. 31-6-0 and Rs. 189-6 making up a total of Rs. 124-15-6 as the sum in respect of which criminal breach of trust had been committed by the accused. The learned Magistrate in two places in his judgment and also in the explanation which he has submitted in answer to this Rule has indicated vary definitely that he has dealt with the case on the footing that once the prosecution succeeded in proving that the accused had collected the said three items of money, it was for him to prove that he had paid those amounts into the complainant's sherista. At one place in his judgment he has said: The accused says he paid the amounts duly into the sherista but has not adduced any evi-dence to prove this payment.

2. Again at another place in his judgment he has said. "He (the accused) has failed to discharge the onus". In the explanation also the learned Magistrate has emphasized the fact that the accused had failed to prove the payments either by any eye-witness or by documentary evidence. It is settled law that the onus remains always on the prosecution to prove its case in its entirety and it does not change merely because the prosecution has succeeded in proving one part of its case. All the elements making up the offence have to be proved by the prosecution. In order to establish in the affirmative that the accused had committed criminal breach of trust in respect of these amounts, the prosecution had to give evidence as regards the actual procedure that used to be adopted by the accused for the purpose of paying in such realizations as be used to make and for that purpose if; was necessary for the prosecution to go into details to produce and prove not merely the pucca books of the estate which had been produced in this case and the four challans which had been proved for the purpose of showing that the sum of Rs. 1,900 odd was deposited by the accused, but the entire book of challans in order to prove that no other amounts were neither in fact paid nor could possibly have been paid by the accused (paid into the sherista). The case has not been tried from that point of view, and presumably for the reason that the learned Magistrate as also perhaps those who are in charge of the prosecution were of opinion that when

the accused set up a definite case of having made the payments it was for him to establish that case by oral or documentary evidence.

3. There is a further mistake which appears to have been made with reference to the evidence of the defence witness No. 3. In the explanation which the learned Magistrate has submitted as also in his judgment he has said that that witness admitted that the accused used to keep duplicate challans of amounts paid in the sherista and the learned Magistrate has also referred to the fact that none of such challans is forthcoming. Presumably, he thought that when such was the practice, non-production of the duplicate challans by the accused was a fact which would give rise to an inference adverse to the accused. On an examination of the record of the case, however it appears that D. W. 3 said that during the time he, that is to say the witness, was the khajanchi, he, that is to say the witness, used to keep with him one duplicate of the challan. On the materials such as they are before us it is not possible to say that a case of criminal breach of trust has been proved as against the accused. We accordingly make the Rule absolute, set aside the conviction of the accused under Section 408, I. P. C., and also the sentence passed on him. He will be acquitted and released from his bail.