

Present: Anwarul Haq, C. J. and Muhammad Afzal Zullah, J

NADIR SHAH-Appellant

Versus

THE STATE-Respondent

Criminal Appeals Nos. 17-P to 31-P of 1973, decided on 21st January 1980.

(On appeal from the judgments and orders of the Peshawar High Court, dated the 3rd April, 1973, in Criminal Appeals Nos. 128 to 141 and 143 of 1967).

(a) Criminal Procedure Code (V of 1898)-

-- Ss. 222, 227, 228, 233 & 234-Joinder of charges-Alteration of charges-Acquittal-Separate charge and separate trial although necessary for every distinct offence yet such general rule subject to certain exceptions-While three offences/items permissible under S. 234 to be combined, no such limitation with regard to offence of criminal breach of trust and several offences of criminal breach of trust, within a period of one year, permitted under S. 222 (2) to be combined into one charge--Such provision, however, enabling and not necessarily to be followed in all cases- Trial Court following provisions of S. 233 but not making use of -enabling provisions of Ss. 222 (2) & 234-Court being of view regarding combination of charges being helpful to accused in facilitating his defence, held, could alter charges and proceed accordingly before pronouncement of judgment but could not acquit accused on so-called defect. -[Joinder of charges].

Machia and 2.dthers v. The State P L D 1976 S C 695 and Shahadat Khan and another v. Home Secretary to the Government of West Pakistan and others P L D 1969 S C 158 ref.

(b) Criminal Procedure Code (V of 1898)-

-- Ss. 225 & 537-Errors or omissions in proceedings-Errors committed in stating either offence, or particulars required to be stated in charge, or omissions in such behalf-Not material unless accused in fact misled by such errors or omissions and failure of justice occasioned.

(c) Penal Code (XLV of 1860)-

-- S. 408-Criminal breach of trust-Benefit of doubt--Appellant depositing amounts allegedly misappropriated by him liable to be convicted for temporary misappropriation if he intended to do so to cause wrongful gain to one person or wrongful loss to another person--Trial Court not imputing such intention to appellant for reasons neither irrelevant nor illegal, acquittal recorded by trial Court, held, in circumstances, neither based on unjustifiable reasons nor resulting in miscarriage of justice-Orders of trial Court maintained in extension of benefit of doubt but as furnishing no defence to appellant for recovery of amounts involved if established in accordance with law and facts brought before forum concerned.[Benefit of doubt.

(d) Penal Code (XLV of 1860)-

-- S. 408-Criminal breach of trust-Amounts in question prima facie received by appellant and missing in accounts-Appellant unable to bring enough material on record to support his plea-Trial Court observing that after having offered some explanation appellant wanted to refer to and rely on certain documents not forthcoming on record and instead of adopting coercive measures for procuring required documents from concerned sources or permitting appellant to establish his plea through other reliable evidence acting on certain generalisations for coming to conclusion of no offence having been committed in respect of such amount-Prosecution case with regard to receipt of amount being not denied and trial Court having failed to examine whether accused's plea established or whether accused at least able to create a reasonable doubt, orders of acquittal, held, resulted in gross miscarriage of justice and High Court fully justified in upsetting acquittal in such category of cases.

Abdul Samad Khan, Advocate-on-Record for Appellant.

S. Safdar Hussain, Advocate-on-Record for the State.

Date of hearing: 15th December 1979.