

(1916) 01 AHC CK 0011
In the Allahabad High Court

Abdul Karim

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 28-01-1916

Acts Referred:

Penal Code, 1860 (IPC) — Section 378

Citation : AIR 1916 All 89 : 36 Ind. Cas. 148

Hon'ble Judges : Piggott, J

Bench : Single Bench

Judgement

Piggott, J.—Abdul Karim has been convicted by a Magistrate of stealing a box, admittedly his own property, under somewhat peculiar circumstances. The conviction was affirmed by the learned Sessions Judge of Azamgarh on appeal and Abdul Karim has brought the matter before this Court in revision. The essential facts of the case are simple enough. Abdul Karim, travelling by a train, arrived at the railway station of Muhammadabad on the Bengal and North-Western Railway, and as he was leaving the station premises became involved in a wrangle with the Station Master Muhammad Imam. There was a dispute with regard to certain persons who were leaving the station along with Abdul Karim, as to whether they had or had not travelled by the same train without taking any ticket. This dispute is not essential to the matter now in question, except as forming part of the general dispute between Abdul Karim and the Station Master. The other matter raised by the latter was as to the quantity of luggage with which Abdul Karim was endeavouring to leave the station. At the instance of the Station Master his luggage was collected and weighed, including a box brought from the railway van for which Abdul Karim held a railway receipt. The whole of this luggage was weighed together and it was found to be in excess of the quantity covered by the ticket (or tickets) in Abdul Karim's possession. The excess freight was demanded, and was paid. At the same time Abdul Karim satisfied, although it would appear under protest, the demand made on him by the Station Master for the fares of the persons alleged to have travelled with him without tickets. When all this, had been done, Abdul Karim began to remove his

luggage from the railway station and he did in fact remove the whole of it; but he took away with him the railway receipt for the box which had travelled in the van. According to the Station Master, and assuming that the evidence of that official, with regard to a matter of this sort, that is to say, with regard to an altercation in the course of which considerable heat was no doubt engendered, is to be implicitly relied upon, all that was said upon this particular point was that he asked Abdul Karim for the railway receipt and the latter replied that it was in the possession of one of his friends who was outside the station. He left the railway station to fetch the railway receipt from his friend, and he never returned. If the recital of the facts ended here, I do not think any Court would have seriously entertained the suggestion that Abdul Karim was guilty of the theft of his own box within the meaning of the definition in Section 378 of the Indian Penal Code. It seems, however, that a message was subsequently sent to Abdul Karim demanding the railway receipt, and he refused to surrender it. Thereafter two results followed, though I cannot say that the record shows with certainty what was their precise order. The Station Master accused Abdul Karim of having stolen the box, and Abdul Karim denied having ever received the box at all, thus by implication making the Railway Administration, and perhaps the Station Master personally, responsible for its loss. The case for the prosecution, therefore, is that Abdul Karim removed the box from the possession of the Station Master with dishonest intention, that is to say, with the intention of falsely denying that he had ever received it, and so causing wrongful loss to the Station Master, or the Railway Administration, and possibly wrongful gain to himself, in the shape of compensation for the alleged loss of the box. This is the evidence on which he has been convicted and the conviction has been, with some hesitation, affirmed by the learned Sessions Judge. I think the conviction is bad in law, and for two distinct reasons. I do not think it can rightly be held on the evidence that the box was removed from the Station Master's possession without the consent of that official. It seems obvious that, after Abdul Karim had satisfied the demands made upon him for excess luggage and excess fares, he was allowed to remove the whole of his luggage, which had been collected together for purposes of weigh-ment, from the station premises, with the implied consent of the Station Master. The evidence of that official, if accepted as it stands, might possibly be used to support a charge of cheating u/s 415 of the Indian Penal Code, but does not seem equally applicable to the charge on which Abdul Karim has been convicted.

2. Secondly, I do not think the prosecution evidence can reasonably be accepted as proving that the removal of the box was effected with dishonest intent. The learned Sessions Judge clearly felt doubtful on this point. He admits that another intent, consistent with the innocence of Abdul Karim, might reasonably be inferred from the whole of the evidence, but he feels bound to reject that possibility because Abdul Karim did not himself admit all the facts alleged against him and state that he acted with the intent suggested. This line of argument overlooks the fact that the burden lay on the prosecution to prove the charge,

and one ingredient in the charge was dishonest intent on the part of the accused person. The Sessions Judge had to be satisfied that dishonest intent on the part of Abdul Karim followed as a clear and necessary inference from the evidence before him. For these reasons, I set aside the conviction and the sentence in this case and acquit Abdul Karim of the offence charged. As he has already been released on bail his surety will be discharged.