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EMPEROR
v.
BADRI
PRASAD.

BANERJI, J :—I am of opinion that the court below was wrong in not inflicting on the appellant a sentence of imprisonment. A sentence of imprisonment is an essential sentence under section 392 of the Indian Penal Code. To this sentence a fine may be added, and under section 4 of the *Whipping Act* a sentence of whipping may be imposed where, in the commission of a robbery, hurt is caused. Therefore, the sentence of fine only was an illegal sentence, and a sentence of imprisonment ought to have been imposed. The sentence of whipping was not an illegal sentence, but in the circumstances of the present case I think the sentence of whipping should not have been inflicted. That is a punishment which, in view of the provisions of the *Whipping Act*, as amended, should be inflicted in cases where there is a certain amount of aggravation in the commission of the original offence. In the present case, the offence was the first offence, so far as is known, committed by Badri Prasad. He is a young man and is a shop-keeper. The hurt caused was obviously slight. A sentence of twelve months' rigorous imprisonment would, in my opinion, be a sufficiently deterrent punishment, so far as he is concerned, in addition to the fine which the court below imposed on him. I, therefore, agree in the order proposed by the learned Chief Justice.

Sentence altered.

APPELLATE CRIMINAL.

Before Mr. Justice Gokul Prasad.

EMPEROR v. SHUJA-UD-DIN AHMAD.*

Criminal Procedure Code, sections 234 and 235—Joinder of charges—Act No. XLV of 1860 (Indian Penal Code), sections 408 and 477A—Illegality.

It is not legal to try an accused person at the same trial on three charges under section 408 and one under section 477A of the Indian Penal Code. *Emperor v. Sheo Saran Lal* (1) followed.

THIS was an appeal against convictions under sections 408 and 477A of the Indian Penal Code passed by the Sessions Judge of Benares. The principal ground of objection was that of

* Criminal Appeal No. 121 of 1922, from an order of A. G. P. Pullan, Sessions Judge of Benares, dated the 8th of February, 1922.

(1) (1910) I. L. R., 32 All., 219.

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misjoinder of charges. The facts material to this report appear from the judgment of the Court.

Munshi Kumuda Prasad, for the appellant.

The Government Pleader (Munshi Sanbar Saran), for the Crown.

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EMPEROR
v.
SHUJA-UD
DIN AHMAD.

GOKUL PRASAD, J.—In this case the appellant Shuja-ud-din has been convicted of the offence of criminal breach of trust by a public servant in respect of three items, and also of falsification of accounts in order to conceal the defalcations, under section 477 A of the Indian Penal Code. He appeals, and one of the grounds pressed before me by the learned vakil for the appellant is that there has been a misjoinder of charges which vitiates the trial. The charge on which the accused was committed to the Sessions Court was admittedly different. The learned Judge amended the charge before the trial, and the accused has been convicted and sentenced. It is urged before me that sections 234 and 235 of the Code of Criminal Procedure do not warrant such a joinder of charges, that is, three under section 408 and one under section 477A of the Indian Penal Code. I was at first inclined to the view that this could be done, having regard to the provisions of section 235 read with the provisions of section 234, but I find that in a similar case the contrary view was taken by TUDBALL, J. See *Emperor v. Sheo Saran Lal* (1). I agree with the view of the law taken therein. I, therefore, allow the appeal, set aside the convictions and sentences and order the retrial of the appellant on the charges preferred against him in accordance with the law. It will be open to the Sessions Judge to divide the charges into two or three trials as he thinks fit.

Appeal allowed and retrial ordered.

(1) (1910) I. L. R., 32 All., 219.