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AMIN.

lower court and in this Court up to date, will abide the result of the suit.

Appeal dismissed.

REVISIONAL CRIMINAL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Justice
Sir Pramada Charan Banerji*

EMPEROR v. BADRI PRASAD.*

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March, 24.

*Act No. XLV of 1860 (Indian Penal Code), sections 390 and 392—Robbery—
Sentence of fine only not legal—Principles guiding the infliction of a
sentence of whipping.*

For an offence under section 390 of the Indian Penal Code it is not permissible to award a sentence of fine only without imprisonment.

Remarks on the principles which should guide the infliction of a sentence of whipping.

THIS was an application in revision, admitted on the question of sentence only, from a conviction under section 330 of the Indian Penal Code. The facts of the case sufficiently appear from the judgment of the Chief Justice.

Mr. N. C. Vaish, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

MEARS, C. J.:— In this case one Badri Prasad was convicted by a Magistrate of the first class of Aligarh. The prosecution case against him was that he with two other companions, on the evening of the 21st of January, followed three servants who were going to the house of their master, Jarao Lal, and who had at the time with them some money and a considerable quantity of valuables, said to be worth about Rs. 700. When two of the servants had entered the shop of their master, Badri Prasad was proved to the satisfaction of the Magistrate to have struck the third and rearmost man, Jwala Prasad, with a stout *danda* on the head; and, in the confusion which resulted, either Badri Prasad or one of his associates got hold of the box containing the valuables and got away with it. The blow struck was not a severe one. After that Badri Prasad ran away. The man who had been struck was apparently able to follow him and

* Criminal Revision No. 80 of 1922, from an order of K. A. H. Sams, Sessions Judge of Aligarh, dated the 18th of February, 1922

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somebody or other caught Badri Prasad, he having slipped up. In these circumstances, the Magistrate inflicted a fine of Rs. 100, with an alternative period of imprisonment if that fine was not paid, and sentenced Badri Prasad also to thirty stripes. Badri Prasad preferred an application in revision to this Court, and it has been admitted upon the question of sentence only, and at the same time notice has been served on him to show cause why the sentence should not be enhanced or otherwise altered. This was a charge under section 390 and the penalty is prescribed under section 392. An examination of that section shows that a fine alone is not a permitted punishment for a robbery. Robbery, under these circumstances, may be punished by rigorous imprisonment and by a fine, and in certain cases by whipping in addition. But the Magistrate erred in law in sentencing the accused to a fine, and a fine unaccompanied by imprisonment. We have got the whole matter before us, and I personally wish to say and I wish it to be known, that, in my view, when a person inflicts pain upon another and when the offence is one which permits of the penalty of whipping, I think it a good thing to inflict that penalty. There are, of course, circumstances in which the actual hurt caused is very slight, and that is a circumstance to which attention has to be paid; and though I myself should certainly have reduced the number of stripes awarded to this young man in this case, I should not have eliminated the punishment of whipping altogether, but I see that there are other points of view in this case. The accused is a young man, a Brahmin, and the degree of injury which he inflicted on Jwala Prasad was extremely slight, perhaps, in a sense, negligible. Therefore I defer very gladly to what I have no doubt is, in this case, Mr. Justice BANERJI'S better judgment in the matter. I am quite in accord with him that there must be a substantial period of imprisonment and, therefore, we alter the nature of the punishment which Badri Prasad must undergo and we sentence him to twelve months' rigorous imprisonment, with effect from the date of his arrest. We maintain the sentence of fine, with the alternative period of imprisonment if that fine be not paid, and we wipe out that part of the sentence which orders him to receive a whipping.

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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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