22nd of April, 1922, of 10 bighas, 3 katahs and 9 dhurs in tauzi no. 1368 is not to be disturbed. There will be no costs of the appeal.

CHATTERJI, J.: I agree.

Decree modified.

1929.

SINGHASAN MISSER v. JADUNANDAN MISSER.

REVISIONAL CRIMINAL.

Before Adami and Chatterji, JJ.

DAMODAR RAM MAHURI

v.

KING-EMPEROR.*

1929.

Jan., 22.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 236 and 239—Joinder of charges—accused charged under sections 380 *and* 414, *Penal Code*, 1860 (*Act XLV of 1860*)—*trial whether bad.*

A trial is not vitiated by reason of the fact that an accused person has been charged substantively under sections 380 and 414, Penal Code, 1860.

Emperor v. *Wassanji Dayal* (1), distinguished.

The facts of the case material to this report are stated in the judgment of Chatterji, J.

A. D. Patel and *G. P. Singh*, for the petitioners.

G. P. Cammiade, for Assistant Government Advocate, for the Crown.

CHATTERJI, J.: The petitioner Damodar Ram was charged along with another person Narain Ram under section 380 and section 414 of the Penal Code in

*Criminal Revision no. 818 of 1928, against an order of R. B. Beevor, Esq., I.C.S., Additional Sessions Judge of Patna, dated the 5th December, 1928, modifying the order of Babu M. K. Chatterji, Deputy Magistrate, 1st class, of Bihar Sharif, dated the 16th October, 1928.

(1) (1904) 6 Bom. L. R. 725.

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DAMODAR RAM MAHURI v. KING-EMPEROR.

respect of a theft committed in the house of Mito Kuer. Both the persons were acquitted of the charge under section 414 in the lower Court while the Additional Sessions Judge acquitted Narain Ram under section 380 but confirmed the conviction of the petitioner under that section.

CHATTERJI, J.

In this revision case it is urged on behalf of the applicant Damodar Ram that the trial is vitiated because he was charged both under section 380 and section 414, and reliance is placed on the ruling in *Emperor* v. *Wassanqi Dayal*(1). In my opinion the contention is not well founded. Section 236 lays down that

> "If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once."

It is urged by learned Counsel that the accused could have been charged in the alternative but when he is charged under both the sections substantively, the trial is bad. I am unable to accept this contention. *Illustration* (*a*) to section 236 will show that it is possible to charge an accused with one *and* another offence or with one *or* the other offence. The section contemplates the state of facts which constitute a single offence but where it is doubtful whether the act or acts involved amount to one of several cognate offences, and consequently there can be a charge in the way done in the present case. In the next place the amended section 239, clause (*f*), shows that persons accused of offences under sections 411 and 414 may be tried together. This shows that section 414 is an offence cognate with an offence under section 411. If persons accused of these two offences can be charged together, I fail to see why a particular accused cannot be charged under both these sections under circumstances which will call into aid section 236 of the Criminal Procedure Code. Reference to clause (*e*)

(1) (1904) 6 Bom. L. R. 725.

of section 239 will also make the position quite clear. It is undoubted that sections 380 and 411 are cognate offences. I am satisfied that the trial is not vitiated by the charges under sections 380 and 414 which are really in the nature of alternative charges. The ruling *Emperor* v. *Wassangi Dayal*(1) has no application because that was decided before the amendment of section 239, besides the facts there were not stated and no grounds were also given in the decision. If the ruling be taken as laying down a general proposition that a case under sections 380 and 414 cannot be tried together under any circumstances, I, with all respect to the learned Judges, beg to differ.

The next point urged is that the circumstances in which the conviction has been based in the present case do not warrant such a conviction. I am unable to agree to this contention as well. The learned Additional Sessions Judge has dealt with the matter clearly. The accused was a servant of the lady at whose house the theft was committed. He used to live in the house and was one of the persons who had an opportunity to know of the treasure and effect a removal of the same. In the next place some of the stolen articles were recovered from the shop of his brother and what is more some ornaments with his clothes were found in the house of his mistress. It is significant that he denied that the clothes belonged to him. It is also suggestive that he disappeared just after the theft was committed.

On a consideration of the entire circumstances, the conclusion is irresistible that the man was guilty. It is possible that there were other persons who were also guilty but that would not make him innocent. In the result the application is dismissed.

S. A. K.

ADAMI, J.: I agree.

Rule discharged.

(1) (1904) 6 Bom. L. R. 725.