

APPELLATE CRIMINAL.

Before Mr. Justice Maung Ba.

KING-EMPEROR

v.

PO THIN GYI.*

1928

Dec. 3.

Alternative charges, how framed—S. 236 of Criminal Procedure Code (Act V of 1898) does not apply to distinct offences—S. 236 applicable when only law is doubtful—Alternative conviction on doubtful facts not permissible.

Alternative charges under two sections of the Penal Code cannot be combined together in one head of charge. If it is desirable to charge an accused person in the alternative, there must be framed two separate alternative charges. S. 236 of the Criminal Procedure Code applies only where there is a doubt as to the law applicable to a certain set of facts which have been proved. In such a case the accused may be convicted in the alternative, provided the Magistrate has come to a distinct finding of facts. If the facts are in doubt, alternative charges may be framed, but at the conclusion of the case, the Magistrate cannot compromise his doubts as to the true facts by convicting in the alternative.

MAUNG BA, J.—The accused in this case has been convicted, in the alternative, either of having committed the offence of theft of two cart wheels, under section 379 of the Indian Penal Code, or of having committed the offence of having taken a gratification of Rs. 5 for the restoration of the said cart wheels without taking any steps to cause the thief to be apprehended, under section 215 of the Indian Penal Code. The case has been very badly tried. Alternative charges under two sections cannot be combined together in one head of charge. If the Magistrate desires to charge the accused in the alternative he must frame two separate alternative charges. Moreover the facts stated in the charge do not comprise the essential ingredients of an offence under section 215. Furthermore the conviction in the alternative is bad. Section 236 of the Criminal Procedure Code does not

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apply where there is any doubt as to the facts, but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. While the facts are in doubt there is no objection to the Magistrate framing alternative charges, but at the conclusion of the case he is not entitled to compromise his doubts as to the true facts of the case by convicting in the alternative. He is bound to come to a distinct finding as to the facts, and then only if the law applicable to the facts which he considers to have been proved is doubtful, he may convict in the alternative. In the present case there was no doubt whatever as to the facts, or as to the law applicable thereto. There was no evidence whatever to connect the accused with the theft of the cart wheels, and the facts proved were that the accused obtained a gratification of Rs 5 to restore the stolen cart wheels, and then took no steps either to recover the wheels or to cause the apprehension of the thief. The offence committed by the accused was undoubtedly one under section 215. The alternative conviction is therefore set aside, and the accused is convicted of an offence under section 215 of the Indian Penal Code. In view of the previous convictions proved against the accused the sentence of 18 months' rigorous imprisonment was suitable and will stand.

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