AIR 1959 P&H 448 : (1959) CriLJ 1106

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 176 of 1949

Bakhshish Singh Dhaliwal		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Jan. 15, 1959

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 239, 537

Citation: AIR 1959 P&H 448 : (1959) CriLJ 1106

Hon'ble Judges: G.D. Khosla, Acting C.J.

Bench: Single Bench

Advocate: J.G. Sethi and R.L. Kohli, for the Appellant; C.K. Daphtary, Solicitor General and K.S. Chawla, Asst. A.G., for the Respondent

Final Decision: Allowed

Judgement

G.D. Khosla, Ag. C.J.
I have before me the following four appeals which have arisen out of cases heard and decided by the East Punjab Special Tribunal originally known as the Third Special Tribunal, Lahore:

1. Criminal Appeal No. 176 of 1949 arising out of cases Nos. 31 and 32 of 1945. In each of these two cases the appellant, Bakhshish Singh Dhaliwal, was tried along with Nasse who is no longer before me because he has absconded and is believed to have gone away to Pakistan. Nasse was charged with the abetment of two distinct offences committed on two separate occasions, while the appellant was charged with the substantive offence or cheating u/s 420, Indian Penal Code. He was sentenced to rigorous imprisonment for a period of three and a half years and a fine of Rs. 25,000/- in each of these cases. The appellant was also awarded a compulsory fine of Rs. 20,000/- in case No. 31 and Rs. 21,825/- in case No. 32. The sentences of imprisonment in the two cases were ordered to run concurrently.

2. Criminal Appeal No. 478 of 1949 arising out of cases Nos. 21, 22 and 23 of 1945. In these three cases the appellant was tried along with Henderson. The appellant was "charged with the substantive offence of cheating u/s 420, Indian. Penal Code, while Henderson was charged with its abetment in each case. Henderson is no longer before the Court, because his appeal was heard and dismissed some time ago. The appellant was sentenced in each of these cases to three and a half years" rigorous imprisonment and a fine of Rs. 60,000/-. He was also awarded a compulsory fine of Rs. 3,10,585/- in case No. 21, Rs. 72,900/-in case No. 22 and Rs. 39,750/- in case No. 23. The sentences of imprisonment were ordered to run concurrently in the three cases.

3. Criminal Appeal No. 41 of 1949 arising out of cases Nos. 33 and 34 pf 1945. In these cases the appellant was charged with the substantive of-fence of cheating u/s 420, Indian Penal Code while one Karam Singh, who was acquitted, was charged with the offence of abetment. In each case the appellant was convicted and awarded a sentence of three and a half years" rigorous imprisonment and a fine of Rs. 10,000/-. He was also ordered to pay a compulsory fine of Rs. 67,500/- in case No. 33 and Rs. 40,850/- in case No. 34. The sentences of Imprisonment in the two cases were ordered to run concurrently.

4. Criminal Appeal No. 479 of 1949 arising out of cases Nos. 24, 25 and 26 of 1945. In these cases the appellant was tried along with Henderson. He himself was charged with the commission of substantive offences of cheating u/s 420, Indian Penal Code, while Henderson was charged with the abetment of these offences. Both the appellant and Henderson were convicted, but the appeals filed by Henderson have since been disposed of and his case is no longer before me. The appellant was sentenced to three and a half years" rigorous imprisonment and a fine of Rs 20,000/- in each case. He was also ordered to pay a compulsory fine of Rs. 33,300/- in case No. 24, Rs. 44,800/- in case No. 25 and Rs. 24,700/- in case No. 26. In these cases, too, the sentences of imprisonment were ordered to run concurrently.

2. The appellant has, therefore, been awarded a total sentence of fourteen years" rigorous imprisonment in addition to the various fines detailed above. These cases arose out of allegedly false claims made by the appellant in respect of works which he said he had done in Burma under the orders of the Army in the spring of 1942 when the Japanese were advancing in Burma and the Indian Army was forced to make a retreat to India.

3. Before dealing with these appeals it is necessary to explain the apparently lamentable delay which has occurred before these matters could be brought to ripeness. The appeals were filed as long ago as 1949, but delays occurred because for some time the complete records and police diaries were not received from the Tribunal. The matter was then held in abeyance because some witnesses who were residents in Great Britain were examined on commission under the orders of this Court. Certain legal points were then argued before Falshaw J. and myself. Our decision on these law points was given on 25-9-1951.

The legal objections were repelled by us, butt the appellant''s prayer for the examination of certain witnesses in Burma and in the United Kingdom by means of commission was allowed. In pursuance of this order a number of witnesses were examined in England but the commission in Burma could not be executed, and the appellant was quite content to abandon this part of the prayer. In 1954 I heard these appeals out I was asked by the parties'' counsel to stay my hand because an important law point, which had been argued before me, was under the consideration of the Supreme Court.

The law point related to the misjoinder of charges and, according to parties'' counsel, went to the very root of the matter. Adjournments were then obtained from time to time and it was not till the end of 1958 that after some additional arguments had been addressed to me by parties counsel that matters became ripe for judgment. The question of misjoinder of charges was argued before me at considerable length both in 1954 and now, and a large number of rulings were cited. After considering the provisions of Section 239(b), Criminal Procedure Code, and the various rulings which have a bearing on the point at issue I am satisfied that these appeals must succeed. It is clear that there has been a misjoinder of charges and that on this ground the various trials which have given rise to these four appeals were vitiated.

4. The question of misjoinder of charges arises in all the four appeals. As stated above, Criminal Appeal No. 478 of 1949 arises out of a case in which Henderson and the appellant Dhaliwal were tried together. The appellant was charged with three distinct offences which are described in cases Nos. 21, 22 and 23, while Henderson was charged with the offence of abetment in each of these three cases. Similarly, appeal No. 479 of 1949 arises out of a case in which the appellant and Henderson were each charged with three separate offences, the appellant with the commission of the principal offence in cases Nos. 24, 25 and 26 and Henderson with the offence of abetting him in committing these three offences.

Therefore in each of these two appeals we are concerned with the trial of six distinct offences at the same time. Criminal Appeal No. 41 of 1949 arises out of a case in which the appellant and Karam Singh were tried together, the appellant on two charges of cheating and Karam Singh with the offence of abetment in respect of the same two offences. Criminal Appeal No. 176 of 1949 arises out of a case in which the appellant and Nasse were'' tried together, the appellant upon two charges of cheating and Nasse with the offence of abetting him in respect of the same sums of money.

5. The argument of the learned counsel for the appellant is that these four trials were bad owing to misjoinder of charges inasmuch as a principal offender and an abettor can be tried at one trial in respect of one offence only, and if the offender and abettor are charged in respect of more than one offence, then the trial is bad because of misjoinder of charges as the case does not fall u/s 239(b) of the Code of Criminal Procedure.

6. The matter of charges is dealt with in Sections 233 to 240 of the Code of Criminal Procedure. Section 233 provides that there shall be a separate trial for each separate charge against a person. The six sections which follow set out a number of exceptions to this general rule. But for these exceptions it would not be possible to try a person on more than one charge, nor could more than one person be tried for committing the same offence. Sections 234 to 238 envisage the trial of one person who is charged with more than one offence. Section 234, for in-stance, permits a person to be charged at one trial with three offences of the same kind committed within a period of twelve months.

Sub-section (2) defines what axe offences of the same kind, and the proviso to the section deals with the special case of Sections 379 and 380 of the Indian Penal Code. Section 235 provides that a person can be tried of any number of offences if they formed part of the same transaction. The section envisages one accused person and one transaction although the offences committed by him may be more than one. Section 236 deals with a case in which an act or series of acts done by an accused person may constitute one of several offences. Where it is doubtful which offence has been committed the accused may be charged with having committed all these offences or one of them in the alternative. Section 237 is a further amplification of the provisions of Section 236.

This provides that when an accused is charged with one offence, and it appears in evidence that he committed a different offence of the type falling u/s 236, then he may be convicted of the offence proved against him. Section 238 deals with a case in which an accused person is charged with a major offence but is found guilty only of a minor offence included within the major offence. In such a case the accused may be convicted of the minor offence. These five sections envisage the trial of only one person. Section 239 deals with the case of more than one accused person and gives seven instances in which a joint trial is permissible.

7. The point to note is that in Sections 233 to 238 the accused person is mentioned in the singular number. It may be contended that the singular includes the plural as in all statutes, but when we come to examine the wording of Section 239 it becomes clear that this is the only section which deals with the joint trial of more than one person and the preceding five sections are intended to cover the case of one accused person but more than one charge. If the singular were to include the plural in Sections 233 to 238 there would be no point in enacting Section 239, for Section 239(a) would be covered by the provisions of Section 233, Section 239(c) would he covered by Section 234 and Section 239 (d) by the provisions of Section 235.

It is significant that in each of the Clauses (a) to (g) of Section 239 the word used is ''persons'' accused, whereas in the previous six sections the word ''person'' is used in the singular number. ..It is contended that Clause (b) of Section 239 read with Section 234 makes legal the joint trial of an offender in respect of three offences of the same kind and a person charged with the abetment of the same three offences. The question, therefore, arises whether the exceptions to Section 233 are mutually exclusive or may be read

together. On behalf of the appellant it is contended that each exception has to be taken by itself and that if a case does not fall under any of the Sections 234 to 239 taken by itself, we cannot evolve a new exception to Section 233 by combining two or more of these exceptions.

8. The question of joinder of charges was considered by the Bombay High Court in In re Bal Gangadhar Tilak, ILR 33 Bom 221. In that case Bal Gangadhar Tilak was charged u/s 124A of the Indian Penal Code in respect of an article published in his newspaper dated 9-6-1908. He was also charged under Sections 124A and 153A of the Indian Penal Code in respect of another article published in the same paper on 12-5-1908. Objection was taken that the trial was bad owing to misjoinder of charges.

The Bombay High Court took the view that the trial was good and expressed the opinion that Section 234 of the Code of Criminal Procedure could be read together with Section 235 (2) or Section 236 and that the exceptions to Section 233 were not mutually exclusive. But the learned Judges observed that the trial was good, because the charges all fell within the scope of Section 235 (1), and that being so, it was scarcely necessary to hold whether the exceptions to Section 233 were or were not mutually exclusive.

9. This case was referred to in Keshavlal Tribhuvandas v. Emperor AIR 1944 Bom 306, but the decision of the 1944 case proceeded on entirely different premises. In that case two persons Keshavlal and Ishwarlal were tried jointly upon a number of charges. Both of them were charged u/s 6 of the Explosive Substances Act with the abetment of three offences punishable under Sections 3 and 4(a), and Keshavlal was in the alternative charged u/s 4(b) of the Act. The Bombay High Court held that the offences under Sections 3 4(a) and 4(b) were distinct offences and the joint trial of two persons for distinct offences of this kind was illegal. The allegation in that case was that Ishwarlal bad either himself or through other persons thrown bombs in fourteen different places on different days. The prosecution Selected three of these cases only, so that a joint trial u/s 234 (1) could be held. Lokur J. who wrote the judgment in the case observed ;

"But the selection was unfortunate, since in one case the bomb exploded and caused some damage, while in the other two cases there was no explosion. The first was punishable u/s 3 and the other two u/s 4(a), Explosive Substances Act, 1908. * * * * Hence these three offences, one punishable u/s 3 and the other two u/s 4(a) of the Act, cannot be said to be of the same kind and, therefore, they could not he tried at one trial u/s 234 (1) of the Code."

In view of this finding it was scarcely necessary to examine whether the exceptions set out in Sections 234 to 2-39 are or are not mutually exclusive and the decision did not rest on the principle laid down in Bal Gangadhar Tilak"s case, ILR 33 Bom 221.

10. Both these cases were considered by a Full Bench of the Bombay High Court in D.K. Chandra Vs. The State, and not approved of. In this case a person was charged in the

alternative under Sections 409 and 420. Indian Penal Code, in respect of two distinct items. The first item of Rs. 2,500/- was alleged to have been misappropriated by him on 12-4-1949 and the second item of Rs. 900/-on 20-4-1949. The question was whether a joint trial was possible by reading together Sections 234 and 236 in conjunction.

Under Section 234 he could have been tried jointly for the two offences u/s 409 in respect of the two items or of the two offences u/s 420 in respect of the same two items. u/s 236 he could have been tried in the alternative u/s 409 or Section 420 in respect of any one of these items, but if Sections 234 and 236 could be applied in conjunction, then a joint trial in respect of the two items upon alternative charges under Sections 409 and 420, Indian Penal Code, would have been legal. The Bombay High Court held that the exceptions could not be read together. Chagla, C. J., while dealing with this matter observed :

"It is not very helpful to consider whether the exceptions contained in Sections 234, 235 and 236 are mutually exclusive. It would be better to lay down that if the prosecution wishes to justify a trial in which charges are joined, it is for the prosecution strictly to establish that the joinder is permissible under either Section 234, 235 or 236. It is a well-known canon of construction that exceptions must be strictly construed, and unless the prosecution satisfies the Court that the exception has been strictly complied with, the joinder of charges in a trial must be held to be contrary to law.

It may be possible in a conceivable case for the prosecution to establish that a case falls under more than one exception. But if it falls under more than one exception it must so fall that it must not infringe the provisions of any of the three sections. It in not permissible for the prosecution to combine and supplement the three sections in such a manner as to contravene the provisions of any of these three sections."

11. The proposition has been stated in very clear and unequivocal terms by the learned Chief Justice and the Full Bench considered all the previous rulings dealing with the point including Bal Gangadhar Tilak"s case. ILR 33 Bom 221 and the case Emperor v. Tribhuvandas P. Mangrolevala ILR 10 Bom 801, upon which Tilak"s case ILR 33 Bom 221 was based. The Full Bench overruled ILR 10 Bom 801, and as far as the Bombay High Court is concerned the latest decision of the Full Bench is that the exceptions to Section 233 cannot be combined together in such a manner as to contravene the provisions of any of the three Sections 234, 235 or 236.

12. A reference may also be made to Emperor Vs. Manant K. Mehta, In this case a person was tried upon three charges of breach of trust and also upon three charges of falsification of accounts in respect of the same three items. It was held that the joint trial was not permissible either u/s 234 or u/s 235 of the Code of Criminal Procedure and that these two sections could not be read together to make the trial legal.

13. Puttoo Lal v. Emperor, AIR"1924 All 316, was a case in which six persons were tried at one trial for offences punishable under Sections 147 323 and 342 of the Indian Penal

Code, alleged to have been committed on the same day. Daniels, J., held that the trial was illegal because Sections 234 and 239 could not be combined.

14. Ram Prasad v. Emperor AIR 1921 All 249 (2), was a case in which four persons were charged with having committed three dacoities. The learned Judges took the view that the trial was had because Sections 234 and 239 of the Code of Criminal Procedure could not be read together. Wallach J. observed :

"Section 234 is one of a number of sections which are grouped together under the heading of "Joinder of charges". This may, and in fact does refer to charges both again st single and several accused. But the sections under the general heading relating to these respective cases are kept separate Section 233 lays down a general rule that for every distinct offence there is to be a separate charge and that every such charge is to be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239.

Sections 234 to 238 by their terms refer to the case of a single accused. Section 239 deals with the case where more persons than one are accused. The legislature intended to and did by these sections differentiate between the cases of a single and saveral accused. It cannot be said that all the sections prior to Section 239 apply to both these cases, although in terms they refer to one only, viz., that of a single accused. The existence of a section (239) specifically dealing with the case of several accused, and the arrangement of the sections to which we have referred, constitutes such a repugnancy in the context as prevents us from reading "a person" in Section 234 as including several persons.* * *We are of opinion that when the Criminal Procedure Code lays down as a general principle that each person should be tried separately and there should be a separate charge except as is otherwise specially laid down, the exception to the general rule must be construed strictly in favour of the accused. No doubt, as provided for by the General Clauses Act, words in the singular shall include the plural and vice versa, but this is only where there is nothing repugnant in the subject or context."

15. Janeshar Das and Another Vs. Emperor is a decision by Dalai J. sitting singly. In this case two persons were tried jointly upon three separate charges of embezzlement and also on charges of abetment in the alternative in respect of the same three items. Dalai J. held that the trial was bad because Sections 234, 235, 23G and 239 were mutually exclusive. The learned Judge made a reference to the fact that Section 239 was entirely recast in 1923.

An earlier decision of the Allahabad High Court, Emperor v. Sheo Saran Lal. ILR 32 All 219, was relied upon. In that case a man was charged and tried at one and the same trial for three offences u/s 408 of the Indian Penal Code committed within a period of one year and three offences for forgery u/s 467, Indian Penal Code. Tudball J. while dealing with the question of the legality of the trial observed ;

"It has been argued, however, that Section 235, Clause (1), must be read with Section 234, and that the three offences mentioned in the latter section must be deemed to include all the offences committed in three similar transactions such as are contemplated by Section 235, Clause (1); in other words, if an accused person goes through three similar transactions within the period of twelve months committing in each transaction the same series of offences, he can be tried at one and the same trial on account of all offences committed in the course of the three transactions, even if they total more than three. I am of opinion that this would be too great an extension of the exception mentioned in Section 234."

In this case, too, therefore, the learned Judge took the view that the exceptions to Section 233 could not be read together and were mutually exclusive.

16. Carr J. in Ah Kit v. King Emperor. AIR 1925 Ran 198, dealt with the case of a person charged with three separate offences who was tried with another accused person charged with abetting two of the three offences. It was held that that trial was illegal. The judgment is a very brief one and Carr J. mentioned in passing that had the first accused been charged with the first two offences only and the second accused with the abetment of those two offences, the trial might have been legal.

The learned Judge, however, did not give any reasons and since the case before him was not the hypothetical case contemplated by him we need not attach a great deal of importance to this remark. It seems to me that the joint trial of a person charged with three offences and another person charged with abetting two of those offences is not more embarrassing or more complicated than if the second accused had been charged with abetting all the three offences. In the latter case the number, of charges which the accused person would have to meet would be six whereas in the actual case the number was only five, and if the trial of five charges is illegal, surely the joint trial of six charges cannot be good. So the joint trial of the appellant and Henderson in the two cases which have given rise to Criminal Appeals Nos. 478 and 479 of 1949 is completely covered by the dictum laid down in this case and the trial must be held to be bad.

17. G. H. Astell v. T. Eng Take AIR 1941 Ban 337, is scarcely a case in point although Mosley J. in this case did observe that the provisions of Section 239 (d) could not be combined with those of Section 234.

18. In Chuharmal Nirmaldas v. Emperor, AIR 1938 Sind 164, three persons were jointly charged with a number of offences under different sections of the Bombay Abkari Act and the Opium Act. One of them was also charged with abetment u/s 109, Indian Penal Code. It was held that the trial was bad because the Clauses of Section 239 of the Code of Criminal Procedure were mutually exclusive.

19. Reliance was placed on Rabindra Nath Mazumdar Vs. Patiya Urban Co-operative Bank, In this case a person was charged with three separate offences u/s 408, Indian

Penal Code, and he was tried with four other persons charged with abetting him. The trial was held legal not because Section 239 could be read conjointly with Section 234 but because the three items of abetment constituted only one offence by virtue of the provisions of Section 222 (2) of the Code, The argument urged before the learned Judges was- that there was no provision of the Code under which an abettor of the principal offence could be tried jointly with the principal accused in respect of three separate abetments. This argument was not repelled, but on the ground that the accused persons had been charged in respect of one offence only the trial was held good as it was covered by the provisions of Section 239.

20. The State Vs. Rasool and Others, was a case in which a number of persons were tried together. They were originally charged u/s 411, Indian Penal Code. When the case became ripe for decision, it was found that the charge against six of them should have been u/s 414, Indian Penal Code. The trial Judge held one of the accused persons guilty u/s 411, three of them u/s 414 and acquitted the remaining three. He purported to act under Sections 236 and 237, Criminal Procedure Code. The Sessions Judge on appeal acquitted three more persons. The State filed an appeal against the order of acquittal to the High Court and the High Court held that the provisions of Sections 236 and 237 did not apply. The learned Judges declined to convict Rasool on the ground that he could not be charged u/s 411, Indian Penal Code, and convicted u/s 414, Indian Penal Code.

21. Emperor Vs. Mathuri and Others, is scarcely a case on the point, because the observations of the learned Judges show that the offences with which the accused persons were charged were all part of one transaction. The learned Judges held that in that case the irregularity or illegality with regard to charge was curable by Section 537, Criminal Procedure Code. The learned Solicitor-General placed his reliance on a decision of the Orissa High Court in Gurucharan Samal v. The State, AIR 1953 Orissa 258. In this case one person was tried upon six charges.

There was a charge u/s 409, Indian Penal Code in which three items of money were concerned. There were three distinct charges under Sections 467 and 471, Indian Penal Code, for forging receipts and there were two charges u/s 477A, Indian Penal Code, relating to the falsification of accounts. The argument was raised that this trial was bad because of misjoinder of charges. The learned Judges took the view that the trial was good. The Judges; seemed to think that the charges were all part of the same transaction. The important point, however, in his case was that according to the Judges the whole bunch of Sections 234 to 239 could be considered together if the charges formed part of the same transactions. The following extract from the judgment in this case makes the ratio decidendi of the case clear :

"If, therefore, the charges prima facie deal with matters which form part of the same transaction the Court is entitled to put the accused on trial for all such offences alleged against him and unless it is established that the adoption of this course embarrasses him in his defence, or is outrageous to the principles of natural justice the trial should not be

held to be illegal. As to whether the accused has been prejudiced in a particular case will depend upon me facts stated in the charge. There is an enormous volume of such cases which have proceeded on this footing and different opinions have been expressed by Judges based on different facts and circumstances of different cases.

It appears to me, however, that in a case of misappropriation of a gross sum it is not unfair to give notice of the several other offences alleged to have been committed by the accused in relation to the main offence of misappropriation. On the other hand, the adoption of such a procedure is advantageous to the accused inasmuch as it affords him an opportunity to know that the prosecution is going to lead evidence of other acts in support of the offence of misappropriation. If the joinder of charges for the other offences were to be prohibited an objection may he raised to the admission of evidence relating to falsification and forgery, the result being that the charge of misappropriation cannot be proved at all.

The Code, therefore, gives the discretion to the prosecution to combine such charges as it will be noticed that the whole bunch of Sections 234 to 239 are permissive in language and the word ''may'' is used therein throughout. There is nothing in any of these provisions to indicate that one is controlled by the other so as to be exclusive of each other. In my judgment, therefore, the prosecution can take advantage of one or more of the sections and combine charges which are inter-related and which do not violate any of the express provisions of the Code. But whether in a particular case the trial is to be held illegal or not, will depend upon whether the accused has been prejudiced in his defence in meeting more than one charge at the trial."

22. Although the learned Judges in this case laid down the principle that the provisions of Sections 234 to 239 are not exclusive of each other and may be taken together, there are some distinguishing features between that case and the cases before me. In that case there was only one accused person. There was one charge u/s 409 against him and the other charges were part of the same transaction.

In fact, the Judges took the view that if he were not tried together upon these charges, evidence relating to the charge upon which he was being tried might have to be excluded, and it was, therefore, in the interest of justice and in the interest of the accused himself that a joint trial should be allowed; In the cases before me the offences of cheating were all distinct. They were not part of the same transaction and bore no relation to one another. Evidence relating to one had no bearing upon the other charge and it, therefore, could not be said that if one of the charges were excluded, evidence relating to the other charges would be shut out. The points of distinction, therefore, are :

(a) There was only one accused in the Orissa case;

(b) all the charges formed part of one transaction; and

(c) the charges were so intermingled that the exclusion of one charge might entail shutting out evidence relating to other charges.

23. I now come to consider an important Supreme Court decision in which the question of illegality of charges was considered. The case, however, did not relate to the trial of abettors along with the principal offenders. Willie (William) Slaney Vs. The State of Madhya Pradesh, arose out of the trial of two brothers on charges u/s 302 read with Section 34 of the Indian Penal Code.

One of the brothers was acquitted and the other who had been specifically charged with murder in prosecution of the common intention was convicted. Evidence was that this brother had struck the fatal blow. He had not been charged in the alternative u/s 302 simpliciter. The High Court upheld the conviction, and the question before the Supreme Court was whether the omission to frame an alternative charge u/s 302 was an illegality that vitiated the trial. It was held that the trial was not vitiated. Their Lordships of the Supreme Court took the view that there was a defect in the charge but this defect was a mere irregularity which did not affect the validity of the trial. Their Lordships observed :

"In our opinion, Sections 225, 226, 227, 228, 535 and 537 furnish the answer and they apply with equal force to every kind of departure from that part of Section 233 that requires a separate charge for each offence. Section 237 is only a corollary to Section 236 and is there to emphasise that even when a number of charges could be joined together in the cases set out in S, 236 and one Or more are not put in, even then, there can be convictions in respect of those offences despite the absence of a charge or charges.

But all these sections are governed by the overriding rule about prejudice mentioned in one form or another in Sections 225, 226, 227, 228, 535 and 537. We think it would be monstrous to hold that a conviction cannot be set aside even when gross prejudice is proved in cases covered by Section 237 just because it does not speak of prejudice. We can envisage cases where there would be grave prejudice under that section just as clearly as we can see cases where there would be none under the others."

Bose J., who delivered the judgment in the case, then went on to observe that the important thing was not the violation of the sections relating to the charge but the consequences of such a violation. If the violation had resulted in prejudice to the accused or injustice, then the provisions of Section 537 could not be held to cure the illegality. We, therefore, see that there is not a single case in which it has been held that the trial of a principal offender along with that of an abettor in relation to more than one offence is an illegality which is curable by the provisions of Section 537, Criminal Procedure Code. Section 239(b) does not permit the trial of a principal offender and a person accused of abetment unless the trial related to only one offence. The misjoinder of charges and persons in a case of this type is not a mere irregularity; it is an illegality which vitiates the very trial. It is obvious that in the present case prejudice must of necessity have been

caused. The evidence led by the prosecution was voluminous and complex. In two trials it related to three distinct offences.

In the other two trials it related to two distinct offences. The principal offender was in each instance tried with the abettor. To be called upon to meet a complicated charge, which is sought to be proved by a mass of documentary and oral evidence, is, by itself, not an easy matter, and when the charges are multiplied in defiance of the provisions of the Criminal Procedure Code, then it must be held that the misjoinder resulted in injustice and caused prejudice to the accused person. In everyone of the cases in which Section 239 (b) was considered it was held that the illegality was not durable by the provisions of Section 535, Criminal Procedure Code.

24. I would, therefore, hold that these trials were bad because of misjoinder of charges and persons. The fact that Henderson''s appeals were dismissed does not make any difference to the case of the appellant. These appeals must, therefore, be allowed and the appellant''s convictions set aside. I do not consider it proper to order a retrial because the appellant has already suffered a great deal by a lengthy trial which began many years ago. At one stage attempts were made by the Burma Government to compound these offences, but it seems that the Punjab Government was not prepared to accede to this suggestion. It would not, therefore be in the interest of justice to order a retrial which may take many more years to conclude. Moreover, many of the witnesses will not be available now. Some of them reside in Great Britain, others are no longer traceable and some may not even be alive now.

25. The result is that all the four appeals are allowed and the appellant, Bakhshish Singh Dhaliwal, is acquitted in all the cases. Criminal Revision Petitions Nos. 490, 491, 492 and 493 of 1954 filed by the State for enhancement of sentence are dismissed.