# T.B. Mukerji vs The State on 18 December, 1953

## Equivalent citations: 1954CRILJ1072, AIR 1954 ALLAHABAD 501

JUDGMENT

Desai, J.

1. The following question has been referred to us by our brother Chaturvedi for our opinion:

> Are the different clauses of Section 239, Cr. P. C. mutually exclusive or can recourse be had to two or more of them for the purposes of jointly trying more than one person?
>
> The question arose before our learned brother when he was hearing an appeal filed by Mukerji and Chotey Lal against their convictions under sections 120B, 420 and 477A, I. P. C.

2. The case against the appellants is as follows : Chotey Lal is a partner of a firm carrying on business in Hardoi. Mukerji is a railway employee in charge of a railway grain shop at Allahabad. There was a contract between the railway, and Chotey Lal for the supply of grains to the railway grain shop. According to the contract, the grains had to be booked at Hardoi for Allahabad by 25-1-1947. The firm, however, booked the grains-after 25-1-47. Under the contract it was liable to pay a penalty to the railway for the delay in booking them. Chotey Lal entered into a conspiracy with the other appellant to defraud the railway and in pursuance of the conspiracy the other appellant prepared a false document known as Section 10 on 1-3-47 stating that the grains had been booked on 25-1-47. He took delivery of the grains and no penalty was charged from the firm. Thus he and Chhotey Lal were guilty of a conspiracy, and in addition Mukerji was guilty of the offence of Section 477 and Chhotey Lal of abetting it, and Chhotelal was guilty of the offence of Section 420 (for obtaining payment for the grains without having to pay a penalty with the help of the false document Section 10 and Mukerji for its abetment.

The above was one transaction; there were two other and similar transactions of 22-4-47 and 24-5-47. The two appellants were prosecuted jointly for committing three offences of Section 120B, three offences of Section 477A, three offences of abetment of the offence of Section 477A, three offences of Section 420 and three offences of abetment of the offence of Section 420. They were tried before the Additional Sessions Judge who has convicted both under Sections 120B, Mukerji also under Section 477A and Section 420 read with Section 109 and Chhotey Lal also under Section 420 and Section 477A, read with Section 109, Penal Code.

In the appeal they contended before our brother Chaturvedi that their trial for three offences committed by each of them in each of three different transactions was illegal. It was contended on

their behalf that the various clauses of Section 239, Criminal P. C. are mutually exclusive and that two or more than two of them cannot be combined to validate a joint trial. 'On behalf of the State, it was contended that the various clauses of the section can be combined to justify a joint trial and that Sections 234 to 239 can also be combined to justify a joint trial'. Our learned brother being of the view that the question raised is of general importance and has not been authoritatively dealt- with by this Court has referred it to a Bench for its decision.

3. Before I deal With the question 'I must deprecate courts' taking unnecessary risk in holding joint trials in doubtful cases. I consider it nothing short of foolishness to hold a joint trial, unless its legality is beyond dispute, & take the risk of the trial being held to be invalid by higher court'. If the higher court does not order retrial, there may arise serious miscarriage of justice from the holding of the joint trial. If it orders retrial, though justice may be done ultimately, it would be done after a waste of public time and money and unnecessary expenditure and inconvenience to the parties. There can be no excuse for all this. "The law is that a joint trial may be held and not that it must be held. A court is never obliged to hold a Joint trial'. Even where it can hold it, it is open to it to hold separate trials for the various offences. A prudent Judge would, therefore, always hold separate trials whenever he has the slightest doubt about the validity of a joint trial.

Further, when a Judge passes one sentence for the various offences committed by an accused or passes separate sentences but makes them concurrent, the holding of a joint trial in a doubtful case is all the more indefensible. In the present case, the learned Sessions Judge has not passed separate sentences for the eighteen offences. When he passed one sentence for three offences committed by each of the appellants it was nothing but an act of imprudence to try him for all the three offences and incur the risk of the joint trial being held to be invalid. The Public Prosecutor also is charged under the duty of seeing that the joinder of charges or persons is legal and of advising the Judge not to hold a joint trial in a doubtful case.

4. The normal rule is that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately.

see Section 233 of the Code. There are exceptions to this normal rule and they are all specified in the section. They are "the cases mentioned in Sections 234, 235, 235 and 239". There are no other exceptions and any joinder of charges which is not covered by the above-mentioned sections is illegal. This is made clear in the illustration to the section which says that if A commits a theft in one transaction and causes hurt in another transaction, he "must be" separately charged and separately tried for the two offences. The exceptions are to be construed strictly. In - 'Shanker v. Emperor', 11 All L J 188 (A), Knox, J, observed:

> A court cannot and ought not to treat a case before it as in exception to the general and broad rule, unless it is satisfied that the charge should be brought within one of the four exceptions.

5. Joint trial is permitted under Sections 234 etc. on certain principles. These principles are obvious from "the provisions of the section themselves. A joint trial for which no principle can be found

would prima facie be invalid and would not be covered by any of the exceptions. On the other hand, the mere fact that a joinder of charges is based on one of the principles on which the exceptions are founded would not make it valid if it is not covered by the provisions of the exceptions. The court's duty is to enforce the law and not to enact it. One of the principles is that as 'joinder of charges in certain circumstances would save multiplicity of proceedings; but a court would not be justified, in order to prevent a multiplicity of proceedings, in joining two or more charges if the joinder is not covered by the language of any of the sections'. With great respect to the learned Judges deciding - 'Mangi v. The State' , I do not think that the mere fact that every one suffers and none gains by the interpretation sought to be put upon the section on behalf of the accused is a valid reason for rejecting the interpretation. If everyone suffers and no one gains by the interpretation which is in accordance with the canons of interpretation, the remedy must be left to the legislature. I think the correct view is that taken by Rajadhyaksha, J. in - 'D. K. Chandra v. The State'. .

6. What is meant by excepting the Sections 234 etc. from the normal rule is that a joint trial can be had in circumstances mentioned in Section 234 or Section 235 or Section 236 or Section 239. The word "and" is used because there are four exceptions and they are enumerated. It is certainly not the meaning that a joint trial is permitted only where the case is covered by provisions of all the four sections. The word "and" is not used in a cumulative sense; it is used in the sense of the word "or". It cannot be doubted that it can toe used in disjunctive Sense; see - 'L. H. Sugar Factory v. Moti' AIR 1841 All 243 (D). It can be interpreted in conjunctive sense and can also be interpreted in disjunctive sense, but in a given case it must be interpreted only in one sense and can never be interpreted in both senses on different occasions. Since the word in Section 233 cannot always be used in conjunctive sense, it follows that it must be used in disjunctive sense. It was remarked in the case of Mangi at pp. 230, 231 (B) that the use of the word "and" instead of "or" tends to support the view that a joint trial need not be justified by the pro-visions of only one of the excepted sections and can be justified by the provisions of all of them taken jointly.

I do not think that the use of the word "and'' lends any such support. Of course, so far as the mere figures "234" "235" are concerned, there is nothing to prevent their being taken into consideration jointly. But we are not concerned merely with the figures, "234", "235" etc.; we are really concerned with the provisions of these sections. Whether they can be combined together in a case depends upon their language. If there is anything in the language to prevent any two of them being applied to a case, both cannot be applied to it. The plain meaning of Section 233 is that each of the Sections 234, 235 etc., is an exception to the normal rule. Each exception is different from the other exceptions. A joint trial of two or more persons or for two or more distinct offences, is valid if it is permitted by provisions of any of the four sections; the whole of the joint trial must be permitted by anyone of them. Section 233 refers to the validity of the whole trial and not of parts of it. If a part of a joint trial is permitted by one section and another part by another, the whole joint trial cannot be said to be permitted by any one section. Every provision of law must be given effect to so far as it can be. It is not expressly laid down in any of the four sections that if a case is covered by it, the provisions of the other sections must not be applied to it.

If the provisions of two of the sections can apply to a case, both must be applied, the court cannot ignore the provisions of one section on the ground that those of the other have been applied. But the

provisions of each section must be applicable to the whole of the case; it is not open to a court to split up a case into two parts and apply the provisions of one section to one part and those of the other section to the other part. If the facts in a case attract the applicability of Sections 234 and 235(2), certainly both can be given effect to and there is no law to prohibit its being done.

7. A person, who is accused of more offences than one of the same kind committed within the space of twelve months, may be charged with and tried at one trial for any number of them not exceeding three; Section 234. This provision governs the case where there is only one accused see - 'Budhai Sheikh v. Tarap Sheikh', 33 Cal 292 (E); - 'Karam Singh v. Emperor', 12 Cri LJ 208 (Lah) (P); - 'Mahbub Ali v. Emperor', 12 Cri LJ 266 (Lah) (G); - 'Ram Prasad v. Emperor' AIR 1921; All 246 (2) (H) and - 'Ram Sahai v. Emperor' AIR 1921 All 408 (2) (I). In - 'Budhai Sheik's case (E)', the learned Judge observed on page 294:

> It appears to us, therefore, that the Legislature intended to and did by these sections differentiate between the cases of a single and several accused, and that it cannot be said that all the sections prior to Section 239 apply to both these cases though in terms they refer to one only, viz., that of a single accused. The existence of 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.
>
> In - 'Ram Prasad's case (H)', it was pointed out by a Bench of this Court that the Legislature Intended to, and did by these sections differentiate between the cases of a single and several accused and that the existence of Section 239 specifically dealing with the case of several accused constitutes such a repugnancy in the context as prevents us from reading "a person" in Section 234 as including several persons. The case of several persons being accused of more offences than one of the same kind committed within the space of twelve months is dealt with in Section 239 (c), if the word "person" in Section 234 included "persons" there would have been no necessity of the Clause (c) of Section 239. The word "jointly" in the Clause (c) is important. Unless the various persons committed the offences jointly, there would be no logic behind trying them jointly. If the word "person" in Section 234 included "persons" the requirement of jointness in committing the offences would be missing and A and B would be liable to be tried jointly under Sections 323 and 323(sic) I. P. C. even though they had not committed these offences jointly.
>
> Another fact to be noted is that Section 234 requires the sameness of offences and not of transactions. The offences of which a person is accused must be of the same kind; it is not enough if the transactions in which he committed various offences are same. This has been made clear in the case of - 'Budhai Sheik (E)'; - 'Sheo Saran Lal v. Emperor', 7 All LJ 225 (J) and - 'Chuhar Mal Nirmal Das v. Emperor' AIR 1938 Bind 164 (K), If a person commits several offences in one transaction and those very offences in another similar transaction, the case is not covered by Section 234, - 'Sheo Saran Lal v. Emperor (J)'.

8. If in one series of acts forming one transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for all of them. This is Section 235(1). This provision also deals with a case in which there is only one accused. A case in which there are two or more accused is expressly provided for in Section 239 (a) and (d). There would have been no necessity of these clauses if the word "person" in Section 235(1) included "persons". The Offences mentioned in Section 235(1) may be of the same nature or of different natures. If they are of the same nature, they can be tried together regardless of their number. The limit of three offences which governs the joinder of charges when the offences are committed in different transactions does not govern the joinder of charges when they are committed in one transaction. It was stated in the case of - 'Budhai Sheik (E)' that Section 234 does not control Section 235(1). Since Sections 234 and 235(1) deal with mutually exclusive circumstances, they cannot possibly be applied simultaneously to any case. If the offences in a given case were committed in one transaction, it must toe governed by Section 235(1); if they were committed in different transactions they can be tried jointly if it Is governed by Section 234. As we cannot have a case in which the offences are committed in one transaction and also in different transactions, we cannot apply the provisions of Sections 234 and 235(1) simultaneously. It was laid down in the cases of -'Sheo Saran Lal (J)' and - 'Janeshar Das v. Emperor' AIR 1929 All 202 (L) that these two provisions are mutually exclusive. That these provisions cannot be combined was laid down in - 'Raghavendra Rao v. Emperor', 12 Cri LJ 567 (M); - 'Raman Behari Das v. Emperor' AIR 1915 Cal 296 (N); - 'Shujauddin v. Emperor' AIR 1922 All 214 (1) (O); - 'Dubrt Misir v. Emperor' AIR 1931 Oudh 86 (P) and - 'D. K. Chandra v. The State (C)'.

9. In - 'Rex v. Daya Shanker' , the accused was charged under Section 477A for making false entries in six registers in different transactions or, in the alternative, under Section 408, I. P. C. It was held that the trial of the six charges under Section 477A was illegal. As it was a case of offences committed in more than one transaction, Section 235 did not apply to all. Section 239 also did not apply because it was a case of only one accused. The trial of six charges could be valid if at all only under Section 234. But not more than three offences could be tried together under that provision. Therefore, the trial for the six offences of Section 477A was illegal. The question of the joinder of the charge under Section 408 did not arise at all because regardless of the joinder of that charge the trial was illegal. But the learned Judges went into the question of the joinder and held that the charges could be joined together. That was clearly obiter.

The learned Judges applied the test whether the joinder would confuse the jury or the Judge or prejudice the accused in the joint trial for three offences under Section 477A. With great respect to them, I think that that is not the correct test. The law has specified the charges which can be joined together. Though the legislature seems to have selected the charges that can be joined together on considerations of convenience, avoidance of multiplicity of proceedings and expenditure, embarrassment etc., it has not laid down any law to the effect that any joinder of charges which would not cause greater confusion to the jury or the Judge or greater prejudice to the accused than the joinder that is permissible under Section 234 etc. is also permissible. In - 'Ram Kishoon Parshad v. Emperor' AIR 1934 Pat 232 (R), one charge under Section 408, I. P. C. consisting of three items was held to be jointly triable with Section 477A. Again, that decision was given by way of obiter because it was not required for the decision of the case before the Bench.

10. If the acts alleged constitute an offence falling within two or more separate definitions of any law, the person accused of them may be charged with and tried at one trial for each of them, this is Section 235(2). If several acts of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one or more of such acts; this is Section 235(3). In these provisions, the word "person" includes persons because there is nothing in the context to show that the word was used only in singular. If an act is punishable under two different sections and the accused can be tried jointly for both, it does not matter whether he is tried singly or Jointly with others. There are no similar provisions expressly applicable to a case in which there are two or more accused.

Surely the legislature did not intend that in a case in which there are two or more accused, they must be tried separately for the two or more offences constituted by the act done by them. These provisions simply lay down the rule as to how charges should be framed for an offence. This rule would be applicable whether there is one accused or there are two or more. These provisions thus stand on a different footing from those of Sections 234 and 235(1) which essentially deal with the joinder of distinct offences. Therefore, the question whether they can be applied to a case simultaneously with provisions of another section such as 234, or 235 (1) or 239 may not be answered in the same way as the question whether, the provisions of Sections 234, 235(1) and 239 can be simultaneously applied in one case. I think a mistake has been committed in some cases in thinking that either the provisions of Sections 234 to 239 can be simultaneously applied in one case or no two provisions contained in these sections can be applied simultaneously, the difference in the nature of the provisions contained in the various sections has not been taken into account.

A provision dealing with the question whether certain two offences can be tried together or not and another dealing with the question under what sections charges can be framed for an offence cannot be said to be mutually exclusive; both questions may arise in one case. Even when the court decides to try an accused jointly for two offences, it may have to decide how to frame charges in respect of those two offences. Thus, even after holding that a case is governed by Section 234 or Section 235(1), it may have to consider and give effect to the provisions of Section 235(2) or (3) when framing the charge. In other words, both these provisions can be applied together in one case. There is nothing in Section 235(2) and (3) to indicate that the validity of the joinder depends upon there being only one accused. They do not deal with the number of distinct offences which can be tried together; they ' deal only with the nature of charges which can be framed for one criminal act of offence. They can be availed of against several accused who are jointly tried in a case; what is permissible as against one can be permissible as against the others.

11. I respectfully differ from the wide proposition contained in the case of - 'Janesnar Das (L)' that the provisions of Sections 234, 235 & 236 are mutually exclusive. Those of Section 234 and of Section 235(1) are certainly mutually exclusive but not the others. In the case of - 'D. K. Chandra (C)', it was laid down that the provisions of Sections 234, 235 and 236 cannot be combined and supplemented so as to contravene the provisions of any of these. I do not think there arises any question of infringing provisions of any of the sections. All these sections are of a permissive nature;

they only permit certain joinders of charges. They do not contain any mandatory or prohibitory clause. Therefore there is nothing in them which can be infringed. If a joinder is not covered by the language of any section, it may be said that it is permitted by it but it cannot be said that it infringes its provisions.

As regards combining the provisions of Sections 234 , and 235(1), I agree with what was said in - 'D. K. Chandra's case (C)', but not as regards combining the other provision. It was recognised in that case at page 181 that Section 234 etc. can be made use of in co-operation but a condition was added that the co-operation must not lead to contravention of any of the sections. If a joinder of two charges is permitted under one provision but not under another, it cannot be said that it contravenes the other. It is impossible to say that every joinder must be permitted by all the provisions. What the law requires is that a joinder must be permitted by any of the sections; if it is, there is no longer any necessity of considering the other provisions. But a joinder of charges may be permitted by two provisions applied simultaneously, though a joinder, of distinct offences must be permitted by the provision of only one section.

12. In 'In re Bal Gangadhar Tilak', 33 Bom 221 (S), the accused printed two articles on two different dates. For each publication he was charged under Sections 124A and 153A. He was tried for the two offences of Section 124A and only one offence of Section 153A. The three offences were held to have been committed in one transaction and the joinder was justified under Section 235(1). But it was held that even if the two publications were not done in one transaction, the joinder was permitted by combination of the provisions of Sections 234 and 235 (2) or 236.

In - 'Emperor v. Tribhuwan Das', 33 Bom 77 (T), the trial of Tribhuwan Das for offences of Sections 124A and 153A committed through the publication of an article in a paper on one date and of the same offences through the publication of an article in, the same paper on another date was held to be valid under Section 234, I.P.C. It was held to be a trial for only two offences and not four, though he was charged with four offences.

The offences were held to be of the same nature, though they were punishable under different Sections 124A and 153A. Heaton, J. pointed out 'at page 86' that Section 234 does not say that a trial must be limited to three charges. It says it must be limited to three offences and the offences must be of the same kind. He read the word "section" in Section 234 as including "sections". The first offence was punishable under the same Sections 124A and 153A as was the second offence; so they were of the same nature. I respectfully agree with him.

13. It is stated in Section 236 that if it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any of such offences and any number of charges may be tried at one trial or he may be charged in the alternative with having committed some one of them. Section 237 provides that in such a case if the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under Section 236, he may be convicted of the offence which he is proved to have committed. These provisions, like the provisions of Section 235(2) and (3), deal essentially with the question how to frame a charge for an offence and not with the question how many offences can be

tried together.

It deals with the question which does not take into account the number of the accused. Its provisions apply whether there is only one accused in the case or there are several. If there are several accused, there is nothing to prevent its being applied against each one of them. Its applicability is not controlled by any other provision. Like Section 235(2) and (3), it lays down a rule regarding joinder of charges for one offence, and not joinder of offences. Its provisions contain nothing to indicate that they cannot be applied in a case governed by Section 234 or 235(1). Just as the provisions of Sections 235(2) or 235(3) and 234 or 235(1) can be simultaneously applied in a case, so also those of Sections 236 and 234 or 235(1). I should make it clear here that this simultaneous application does not at all militate against the rule that the whole of a joint trial must be permitted by one section or another. The reason is that framing two or more charges for an offence in accordance with the provisions of Section 235(2) or (3) or Section 236 is really not trying an accused jointly for two or more offences. The normal rule contained in Section 233 is in respect of distinct offences, whereas the charges that are permitted to be framed by these provision are not for distinct offences. It is the whole joinder of distinct offences (not the whole joinder of charges) that must be permitted by any one section.

14. Any number of alternative charges can be framed under Section 236. No limit is placed; there can be more than three alternative charges for an offence. Section 234 permit a joinder of not more than three offences. Neither is there any conflict between these two provisions nor is one eon-trolled by the other. A charge is not the same thing as an offence. Section 234 limits the number of offences, not of charges. Two charges can be framed though only one offence is committed; so an accused can be tried for six charges framed in respect of three offences, whenever he can be tried jointly for those offences (i.e. when they are of same nature committed within twelve months, or in one transaction). Though there are six charges, too will be convicted of three only, and he will be convicted on each of the three counts under the same section. He is tried for three offences only and not six. In - 'Keshav Lal v. Emperor' AIR ,1944 Bom 306 (U), it was said at page 311 that the provisions of the two sections can be combined in one case.

In - 'Shib Charan v. Emperor' AIR 1931 All 49 (V), King, J. observed at page 50:

> I cannot understand why Sections 235 and 236 should be regarded as mutually exclusive so that whenever a person is tried for two or more offences committed in the course of the same transaction, Section 236 must be deemed to have been expunged from the Code. It is a general rule of Interpretation that effect must be given to every part of a Statute and I see no reason in the present case why Section 235(1) should not be supplemented by Section 236.
>
> In that case Shib Charan, who was charged with the offences of Sections 363 and 379 committed in one transaction, was held to be rightly convicted under Section 411; the case was really governed by the provisions of Sections 235(1) and 236 with Section 237. The same view was taken by Niamatullah, J. in - 'Kashi Nath v. Emperor' AIR 1932 All 25 (W).

> Under the law it is not necessary to charge a person with alternative offences; Section 237 allows an accused to be convicted of an offence of which he could have been charged under Section 236 but was not. If without charging him in the alternative he can be convicted, it follows that he is not prejudiced by his being charged in the alternative. If he is charged in the alternative, that would be less prejudicial to him because then he would know what are the possible charges that he has to meet and of which he may be found guilty. The legislature could not have intended that framing charges in the alternative would cause an illegality, though framing only one of the alternative charges would not. In dealing with this question, one must also take into consideration the provisions of Section 403 of the Act and the effect of holding separate trials for the offences which can be joined in one trial under Section 235(2)(3) or Section 236. If it be said that these provisions cannot be given effect to along with other provisions such as those contained in Section 234 or 235(1) or 239 and if the accused are tried and acquitted of an offence, their trial for the other offences with Which they could have been charged under these provisions may become barred by Section 403.

15. It would also cause difficulties in the trial for perjury for making two contradictory statements. If the accused are tried separately for the two statements, the prosecution may fail to prove that either of them is false. The prosecution may succeed only if they are tried in the alternative for making one statement or the other falsely. I

16. 'In re Sriranga Chariar' AIR 1934 Mad 673 (X), the accused was acquitted of the offence of Section 380 and his trial for an altogether different offence of Section 467 was held to be not barred. He was alleged to have stolen a blank ticket and made some forgeries in it. The acts were done by him in one transaction and he could have been tried for both under Section 235(1). It was argued that he could have been charged in the first trial for the offence of Section 467 also and could have been convicted of it even if not charged and that he could not be tried again for that offence. The argument was repelled 011 the ground that Sections 235(1) and 236 are mutually exclusive and that if a case is governed by one of them it cannot be governed by the other.

The more correct reason would have been that the provisions of Section 235(1) are permissive and not mandatory and that a person can be tried separately for the distinct offences committed by him in one transaction. There really did not arise any question in that case whether the provisions of Sections 235(1) and 236 are mutually exclusive Or not. Section 236 did not apply to the facts of the case at all and the accused could not have been convicted under Section 467 in the first trial. So the second trial was not barred.

17. Section 239 lays down which persons may be charged and tried together. It is in seven clauses (a) to (g). Clause (a) is to the effect that persons accused of the same offence committed in the course of the same transaction can be tried together. It is to be noted here that the words used are "same offence", and not "same charge". So long as the offence is the same, it does not matter under what sections the accused are charged. Clause (b) is to the effect that persons accused of an offence and persons accused of its abetment or attempt to commit it can be tried together. Clause (c) is to the

effect that persons accused of more than one offence of the same kind within the meaning of Section 234 committed by them jointly within the period of twelve months can be tried together. This provision is analogous to that of Section 234; it was necessary to be made because Section 234 deals with only one accused.

Any number of offences can be tried together. Probably the legislature thought that rarely there would be a case in which several persons are accused of having jointly committed within the period of twelve months more than three offences of the same nature. Here also the word used is "offence" and not "charged". Clause (d) is to the effect that persons accused of different offences committed in the course of the same transaction can be tried together. This is analogous to S.' 235(1). Clause (e) deals with the joint trial of thieves and receivers of stolen property. Clause (f) deals with the joint trial of receivers of property stolen through one theft. And Clause (g) deals with counterfeiters of coins. Though the section has seven clauses, each clause is unconnected with, and independent of, the other clauses. The legislature could have as well enacted seven sections instead of seven clauses in one section.

What is laid down by Section 239 is that persons accused of the same offence committed in the course of the same transaction can be tried together, persons accused of an offence and those accused of its abetment or attempt to commit it can be tried together, persons accused of more than one offence of the same kind committed by them jointly within twelve months can be tried together, persons accused of different offences committed in the course of the same transaction can be tried together and so on. Thus each clause mentions which persons can be tried together. When the legislature has specified the various groups of persons who can be tried together it means that 110 other groups can be tried together. These groups are the only exceptions to the normal rule that every person should be tried separately.

Each group consists of persons who arc connected with one another in some way; it is because of the connection that they all are allowed to be tried together. In order that persons may be liable to be tried together, it is essential that they are connected with one another in one 01 the ways described in the clauses. No other connection would do certainly not an indirect connection or connection through a third person. If A and B are liable to be tried together, it is because of a direct connection between them, and not because they are connected with each other through C. If A can be tried jointly with B because of a certain connection and A can be tried with C because of another connection, it does not follow that A, B and C or B and C also can be tried together.

The connections described in the clauses are mutually exclusive; no two of them can exist simultaneously in any case. One cannot, therefore, have in any case persons connected with one another in two or more of the ways. In other words, per-sons included in two or more of the groups cannot all be tried together. There is absolutely nothing to connect one group with any other, the persons of one group cannot, therefore, be tried With those of any other.

I do not think anyone can seriously contend that A and B jointly committing a murder can be jointly tried with C and D jointly committing a theft in another transaction, or with C and E who abets C (and D) to commit theft, or with E and F, who receives the stolen property; or with F and G, who is

another receiver of the stolen property. A and B can be tried jointly; so also C and D, C and E, E and F or F and G; but there is no reason for permitting joint trial of persons included in two or more of these groups. The bare fact that a person is a member of two or more groups does not supply any connection between them; it is a mere accident in the case. So long as one cannot spin out a connection between two or more of the clauses from the language itself, the persons described in them cannot all be tried together.

Clauses (a), (b), (c) and (d) refer to offences in general and other clauses refer to particular offences only (such as theft, receiving stolen property, counterfeiting coins etc.); naturally Clause (a) or (b), (c) or (d) cannot be applied simultaneously with Clause (e) or (f) or (g). Clauses (a) and (d) deal with offences committed in one transaction only while Clause (c) deals with offences committed in different transactions; naturally no case can be governed by clauses (a) and (c) both of Clauses (d) and (c) both. The language of Section 239 leads to the same result.

The law says that persons accused of offences committed in the course of the same transaction can be tried together; it follows that only they can be tried together and no other persons can be tried along with them. If a rule lays down that certain combinations are allowed, it is inherent in the rule that combinations of combinations are not allowed unless there is a specific provision for the same. Had there been an eighth clause in Section 239 to the effect that persons mentioned in any two or more of the previous clauses can be tried together, then and then only would it be possible to try together persons described in any two or more of the clauses. But there is no such clause.

The question whether two or more of the clauses can be simultaneously applied to a case is similar to the question whether there can be simultaneous application in a case of the provisions of Sections 234, 235(1) or Sections 234 and 239 or of Sections 235(1) and 239. That is why I have discussed at length to what extent, if at all, the provisions of Sections 234, 235 and 236 can be simultaneously applied in a case. The provisions of Section 239, dealing with the question which persons can be tried together, are similar to those of Sections 234 and 235(1) and dissimilar to those of Sections 235(2) and (3) and 236. When the question arises what charges should be framed against the persons who are tried jointly in accordance with the provisions of Section 239, one must have regard to the provisions of Sections 235(2) and (3) and 23S; i.e., a case can be governed by the provisions of all these sections.

17a. The provisions of Sections 234 and 239 cannot be simultaneously applied; - 'Ram Prasad v. Emperor (H)'. The most important reason is that the two sections deal with mutually exclusive circumstances; one deals with a case where there is only one accused and the other deals with a case when there are two or more accused. Obviously a case cannot be governed by the provisions of both. In - 'Ram Prasad's case (H)', A, B, C and D jointly committed three offences of Section 396 in three transactions and their joint trial was held to be invalid. In the trial of A, B, C and D for one dacoity, which would have been valid under Section 239 (a), the charges of the other two offences of Section 396 could not be combined with the charge of the third offence against any of the men by applying Section 234.

In - 'Ah Kit v. Emperor' AIR 1925 Rang 198 (Y). the joint trial of A charged with offences of Sections 408, 408 and 408 committed in three transactions within one year and of B charged with abetment of the first two offences of Section 408 was held to be invalid. A and B could be tried Jointly for the offence of Section 408 and its abetment under Section 239 (b) but neither could A be tried in addition for the other two offences of Section 408 by applying the provisions of Section 234 nor could B be tried in addition for the other offence of abetment of Section 408 by applying the same provisions.

In the case of - 'AIR 1929 All 202 (L)', Dalai, J. observed on page 203:

> When more persons than one are tried jointly reference cannot be made to provisions of the Code previous to Section 239 indiscriminately, and on page 204 he observed:
>
> The provisions of Section 239 stand by themselves and the scope thereof cannot be extended by use of the provisions of sections not referred to in Section 239.
>
> I agree so far as Sections 234 and 235(1) are concerned, but not as regards 235(2) and (3) and 236. It was rightly pointed out in the case of - 'Ant. 1952 Bom 177 (C)' at p. 184 that:
>
> To construe these sections as supplementing each other would necessarily result in enlarging the scope of each exception. Each section is self-contained and the limits of each have been carefully laid down according to the circumstances contemplated in those sections.
>
> The provisions of Section 234 cannot be combined with those of Section 234 (sic 239?). If a person commits four offences of the same kind, he cannot be tried lor all of them even if they are committed within the space of twelve months.
>
> A joint trial for three of the offences would be valid under Section 234 but it cannot be contended that by again applying the provisions of this section, the trial of the fourth offence would be valid. In - 'Raghavendra Rao's case (M)', the trial of A for the offences of 8s. 403 and 426 for trees cut in eight different transactions was held to be invalid. In - 'Raman Lal v. Emperor' AIR 1927 All 223 (Z), Raman Lal's trial for more than three offences of Section 408 committed in several transactions spreading over a period of more than one year was held to be illegal.
>
> In the case of - 'Daya Shanker (Q)', it was held that a person cannot be tried for six offences of Section 477A committed in different transactions in a period of seventeen months. If the provisions of Section 234 could be applied twice in one case there would have been no use of the limit of one year. If the provisions of Section 234 could be combined with those of Section 235(1), there is no reason why they cannot be combined with those of Section 234 itself.

18. Just as the provisions of Section 234 cannot be combined with those of Section 239, so also those of Section 235(1) cannot be combined with them. Which persons can be tried for offences committed in one transaction is exhaustively laid down in Clauses (a) and (d) of Section 239; neither can other persons be tried along with them nor can charges for other offences be added against them.

19. In - 'Puttoo Lal v. Emperor' AIR 1924 All 816 (Z1), the trial of five men for the offences of Sections 147 and 325, I. P. C. committed in one transaction and of Sections 147, 323 and 342 committed in another transaction was held to be illegal. They could be tried for the two offences of Section 147 and 147 (if committed within 12 months), but the charge for the offence of Section 325 could not be added against them on the ground that since it was committed in the same transaction as the first offence of Section 147, they could be tried also for it under Section 235(1).

It was stated in - 'Karam Singh v. Emperor (F)' and - 'Gunno v. Emperor' AIR 1934 Oudh 325 (Z2) that Section 239(d) deals with a case in which the different offences are committed in one transaction only. Similarly Section 239 (a) also deals with a case when the same offence is committed by different persons in one transaction. Where A, B and C committed an offence in one transaction and A and B committed an offence of the same kind in another transaction, it was held that A, B and C could not be tried together for the offences committed in both the transactions; see - 'Ram Sahai v. Emperor (I)'.

There are numerous cases laying down that an accused cannot be tried in one trial for offences X and Y committed in one transaction; and for the same offences in another transaction for example see - 'Sheo Saran Lal v. Emperor (J)'; - 'Raman Eehari Das v. Emperor (N)'; - : Shulauddin v. Emperor (O)'; - 'Emperor v. Mata Prasad', 30 All 351 (Z3); - 'Dubri Misir v. Emperor (P)' and - 'Nagendra Nath v. Emperor' AIR 1932 Cal 486 (Z4). Similarly it was held in - 'Emperor v. Puttu Lal (Z1)' and - 'C, Tamiez Khan v. Rajjab Ali' AIR 1927 Cal 330 (25) that A and B could not be tried in one trial for offences X and Y committed by them jointly in one transaction and for the same offences committed by them jointly in another transaction.

In - 'Babu Lal v. Emperor' AIR 1938 PC 130 (26), the judicial Committee had to deal with a case in which A and B were charged with conspiracy and several thefts committed in pursuance of it in a period of thirteen months and B was charged in addition with several thefts committed by him in another place in a period of nine months. The Judicial Committee held the trial to be valid because all these thefts and the con-piracy were held to be one transaction. The whole trial was, therefore, governed by Section 239(d). The Judicial Committee refused to apply the limit of three offences contained in Section 234.

They observed on page 133 that Clause (d) does not import either expressly or by implication the limitation set out in Section 234...or the limit contained in Section 235(1).

In other words, a case governed by Section 239 was held to be not governed by Sections 234 and 235(1). It is noteworthy that the Judicial Committee referred to only Sections 234 and 235(1) and not to Sections 235(2) and (3) and 23S. If a case could be governed simultaneously by the provisions of Section 239-and those of Section 234 or 235(1), the Judicial Committee would not have made the

above observation. In the case of - 'Chuhar Mal (K)', the joint trial of A, B and C for various offences under the Excise and Opium Acts and of C also for abetment of those offences was held to be illegal.

With regard to the clauses of Section 239, Davies, J. C. observed on page 167:

> They are, we think mutually exclusive in the sense that they cannot be added one to another so as to bring some of the persons charged under one clause and some under another and so to put them upon their trial all together at one and the same time.... If more than one person are to be tried and charged together, their case must be brought within one of the clauses....
>
> The learned judicial Commissioner also observed that there is no reason to think that the word "offence" in Section 239 does not include a minor or alternative offence; he thought that the provisions of Section 239 (c) can be applied simultaneously with those of Section 235(2) or of Section 236 in a case. "Kashi Nath v. Emperor (W)' and - 'Ram Kishoon Prasad v. Emperor (R)' are the authorities for the proposition that the provisions of Sections 239 and 236 can be simultaneously applied in a case.

20. In - 'Niranjan v. Emperor' AIR 1934 All . 811 (27) and - 'Emperor v. Mathuri' AIR 1936 All 337 (Z8), it was held that the provisions of Section 239 (a) can De combined with those of Section 234 in, a case. In the case of - 'Niranjan (Z7)' A, B and C were tried for an offence of Section 411 committed Jointly and B in addition for two other offences of Section 411 of different stolen properties. A, B and C could be tried for the offence of Section 411, I. P. C. under Clause (a) and by applying the provisions of Section 234 the addition of the other two charges against B was held to be valid.

In - 'Mathuri's case (Z8)' which followed - 'Niranjan's case (Z7)' and dissented from - 'Ram Sahai's case (I)' and - 'Ram Prasad's case (H)'. A and B were tried for the offences of Sections 302 and 457 committed in one transaction, C for that of Section 460 committed in the same transaction and D and E for the offence of Section 411 for being in possession of the property stolen in that transaction. The trial was held illegal as not permitted by Clause (c). But by way of obiter it was remarked that if A and B could be tried for the offence of Section 457 jointly with D and E for that of Section 411, A and B could be also tried in the trial for the offence of Section 302. With respect to the learned Judges, I disagree.

In - 'Niranjan's case (Z7)', Bennet, J. remarked on page 812 that:

> There is nothing in the section specifically stating that as regards one or more of the persons accused, there should be no application to that person or persons of the previous sections, such as Section 234.
>
> That is true, but the absence of a specific bar in Section 239 is not the only criterion. Section 234 does not govern a case in which there are two or more accused. "Mathuri's case (Z8)' was decided by Harries and Kachpal Singh, JJ. The learned

Judges said on page 342 that:

If persons can properly be charged and tried together under Section 239, Cr. P. C., there is nothing to prevent other charges being added against one or more persons if the addition of such charges is permissible by the Code.

That also was by way of obiter. More charges can certainly be added against one or more of such persons, but only as permitted under Section 235(2) or (3) or Section 236. In - 'Michael John v. Emperor' AIR 1931 Pat 349 (Z9), M was tried under Section 408 for embezzlement committed in different transactions but within one year and under Section 477A for falsification of accounts, in those transactions and the trial was held to be legal. The court apparently applied the provisions of Sections 234 and 235(1). This in my view could not be done.

In the case of - 'Ram Kishcon Prasad (B)', the learned Judges followed the case of - 'Michael John (Z9)' and stated on page 234 that:

There is no more reason for holding that Sections 234 and 235 are mutually exclusive than that one or other of these provisions and either Section 238 or Section 239 are mutually exclusive or that Sections 236 and 239 are so.

For the reasons already stated, I respectfully differ from the view that the provisions of Sections 234 and 235(1) stand on the same footing as those of Sections 235(2) and (3) and 233.

21. It is laid down at the end of Section 239 that "the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges.

Section 239 is included in chapter 19 which is divided under two heads, (1) of "Form of charges" containing Sections 221 to 232 and (2) of "Joinder of charges" containing Sections 233 to 240. It was stated by Dalai, J. C. in - 'Bishaiubhar Nath Tandon v. Emperor' AIR. 1926 Oudh 161 (Z10) that the words "former part" mean the part headed by "Form of charges". In - 'Babu Lal Chowkhani's case (Z6)', the Judicial Committee at page 133 interpreted the words to mean "in regard to the form and joinder of charges". Therefore, the words are not restricted to the part headed by "Form of charges" as stated by Dalai, j.

All the provisions of the chapter upto Section 238 are covered by the words. The provisions of Sections 234 to 236 are made applicable to a case governed by Section 239 but only "so far as may be". If the provisions of Sections 234 and 235(1) cannot be applied for the reasons stated earlier,' there is nothing in this provision of Section 239 to make them applicable, On the other hand, it makes the provisions of Sections 235(2) and (3) and 236 applicable because they can be applied.

22. Great chaos and abnormality would result if it were held that the provisions of Sections 234, 235(1) and of the various clauses of Section 239 can be applied simultaneously in a case. I take by

way of an illustration a case in which A and B commit a. theft on 1-1-53, A commits another theft on 1-6-53 and a third theft on 1-11-53, D joins with him in the commission of the second theft, E abets D in the commission of that theft and causes a simple hurt to P who interferes with his abetment, E causes a simple hurt to G in an altogether different transaction within a year, H and J separately receive properties stolen during the third theft knowing them to be stolen property and J has in his possession on the same date property stolen by K. By applying the provisions of various sections and clauses, A, B, C, D, E, F, G, H, J and K can all be tried together for all the offences mentioned above.

I do not know if anything can be more absurd than this. Such a joint trial may not take place in practice, but the question is not whether it would take place in practice but what the legislature permits. Certainly the rule is not "the more the merrier". Nor is that the greater the multifariousness of charges and persons the more is the trial legal. Take another instance. Suppose A and B in one transaction commit an offence of Section 323, A and C in another transaction commit an offence of Section 323 and C and D commit in a third transaction an offence of Section 323. If Sections 234 and 235(1) can be combined, A, B, C and D can be tried together for the three offences, But can A be tried for the two offences of B. 323 jointly with. D only or can B be tried jointly with only D? Obviously they cannot because there is no provision under which they can be.

If they cannot, it would be absurd to hold that their joint trial will become legal if in the former case B and C are tried with them and in the second case A and C are tried with them. There is no law which makes it obligatory to join two charges in a trial. All the provisions pertaining to joinder of charges are permissive. There may arise an illegality if there is a joinder of charges or persons but under the law there cannot possibly arise any illegality on account of omission to include a charge or a person in a trial. If the result of an interpretation of the provisions of Sections 234 etc. is that the addition of a person in the trial would convert an illegal trial into a legal trial, it would go against the law that separate trials cannot possibly be illegal.

It would be converting a permissive provision into a mandatory one; in the above illustration the prosecution would be obliged to try A, B, C and D jointly in order to make the trial of two or more offences legal. There is no provision of law under which the addition of an accused in a trial would make an illegal trial of other accused a legal one. Therefore, in the above illustration, either the joint trial of A and D or that of B and D was not illegal or the joint trial of A, B, C and D would not be legal. There is no doubt about the illegality of the former; it follows that the latter is not legal. The law is that the prosecution cannot be worse off by omiting to prosecute any person; therefore we must not interpret Section 234 etc. in such a manner as would make a joint trial off some accused illegal on the ground that another person is not tried jointly with them.

23. Suppose A, B and C jointly commit one theft on 1-1-53, another theft on 1-6-53 and third theft on 2-1-54. They can be tried jointly for the first and the second thefts or for the second and the third thefts under Clause (c), but that clause would not permit their being tried jointly for all the three thefts. If A, B and C are tried jointly for the first two offences and if it were possible to apply the provisions of Section 234 or 235(1) to a part of the joinder of charges, one can try A, B and C for the third theft also.

One can argue that the third theft was within twelve months of the second theft and that consequently they could be tried for the second and the third thefts jointly. If it were thus possible to try A, B and C for all the three thefts, it would have been quite useless for the Legislature to prescribe the limit of twelve months in Section 234 and in Clause (c). One could get round the limit by applying the provisions of various sections and clauses to different parts of a joint trial. This illustration would make it clear that each provision permitting a joinder of offences must be considered as excluding the operation of every other provision permitting joinder of other offences.

24. It may be interesting to note that it is not even pleaded in some cases that a joint trial is permitted by the combined operation of two or more provisions permitting joinder of offences. I have come across several cases in which the joint trial has been held to be invalid and no attempt had been made on behalf of the State to justify it in this manner. For example see - 'Kararn Singh v. Emperor (P)'; 'Mahbub Ali v. Emperor (G)'; 'Emperor v. Mata Prasad (Z3)'; 'Michael John v. Emperor (Z9)';'Nagendra Nath v. Emperor (Z4)'; 'Krishna Ji v. Emperor' AIR 1932 Bom 277 ,(Z11) and - 'Ram Sahai v. Emperor (I)'.

25. In - 'Akhil Bandhu v. Emperor; AIR 1938 Cal 258 (Z12), joint trial for various offences of conspiracy and principal offences was held to be valid because all the offences were deemed to be parts of one transaction.

26. The question should, therefore, be answered accordingly.

Asthana, J.

27. The question which has been referred to us for decision is whether the different clauses of Section 239, Cr. P. C. are supplementary to each other or they are mutually exclusive.

28. It was contended on behalf of the State that not only the different clauses of Section 239 of Cr. P. C. but also Sections 234 to 233, which are exceptions to the general rule embodied in Section 233, Cr. P. C. that there shall be a separate charge for every distinct offence and every such charge shall be tried separately, are supplementary to each other and are not mutually exclusive.

On behalf of the accused it was argued that the exceptions provided in Sections 234 to 236 and the different clauses of Section 239, Cr .P. C. were not supplementary to each other but were mutually exclusive and, in order to decide whether the different offences against the same person or different persons could be tried together one had to see whether the case fell within any of the Sections 234 to 236 or any of the clauses of Section 239, Cr. P. C. and not whether all these sections and the different clauses of Section 239 taken together could enable the court to try the different persons of the different offences or a single person of the different offences together in one trial.

29. In order to decide this question it is necessary to reproduce Sections 234 to 236 and the different clauses of Section 239, Cr. P. C, which are exceptions to the general rule embodied in Section 233, Cr. P. C. Section 234 (1) when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, 'whether in

respect of the same person or not,' he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or any special or local law:

> Provided that, for the purpose of this section, an offence punishable under Section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under Section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local haw, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.
>
> S. 235 (1) If, in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.
>
> (2) If the acts alleged constitute an offence felling within two or more separate definitions of any law in force for the time being by which offences are denned or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences, (3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.
>
> (4) Nothing contained in this section shall affect the Indian Penal Code, Section 71.

S. 238. 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; or he may be charged in the alternative with having committed some one of the said offences.

S. 239. The following persons may be charged and tried together, namely:

> (a) persons accused of the same offence committed in the course of the same transaction;
>
> (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
>
> (c) 'persons accused of more than one offence of the same kind within the meaning of Section 234 committed by them jointly within the period of twelve months';

(d) persons accused of different offences committed in the course of the same transaction;

(e) 'persons accused of an offence which includes theft, extortion, or criminal misappropriation and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence';

(f) 'persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the' possession of which has been transferred by one offence; and

(g) 'persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence';

30. It will appear from a perusal of the above sections that Sections 234 and 235 are applicable only in those eases where the different offences have been committed by one and the same person and not by different persons. The section which is applicable to those cases where different offences have been committed by more than one person is Section 239, Cr. P. C. Section 234 is applicable where more than one offence of the same kind are committed by a single person within the space of twelve months, and provides that he can be tried for not more than three of such offences.

Section 235 provides that if more offences than one are committed by the same person in the same transaction he can be charged with all of them at one trial. If the two sections, i.e., Sections 234 and 235 are considered to be supplementary to each other and not mutually exclusive the result will be that more than three offences committed within a period of twelve months in three separate transactions can be combined against the same person at one trial. This will be inconsistent with the provisions of Sections 234 & 235 taken individually.

To take a concrete case, A commits criminal breach of trust on 15-1-1950 and in order to conceal that offence he falsifies the accounts on the same day in the course of the same transaction. He thereby committed two distinct offences in the same transaction one under Section 406 and the other under Section 477A. He committed similar offences on two other occasions, i.e., on 15th April and 1-11-1950. According to Section 234, Cr. P. C. he could be tried at one trial of only three offences either under Section 406, I. P. C. or under Section 477A, I. P. C. According to Section 235, I, P. C. he could be tried together of the two offences under Sections 406 and 477A which were committed in the same transaction on any of these three dates.

If, however, the two sections are combined together, the result will be that he can be tried of three offences under Section 406 and three offences under Section 477A I. P. C. at one and the same trial which will be contrary to the provisions of Sections 234 and 235, Cr. P. C. considered individually.

In my opinion the legislature could not have intended this effect as it would lead to a lot of confusion and complications and the accused will be very much prejudiced if the different offences committed by him at different times and in the course of the same transaction were combined together.

31. The question has been the subject of decisions in the different High Courts & I will now proceed to consider the various authorities which have been cited at the Bar on this point. I shall first consider the cases of this Court. The earliest case is - '7 All LJ 225 (J)'. m this case the accused was charged and tried at one and the same trial for three offences under Section 408, I. P. C. and three offences of forgery under Section 467, I. P. C, and was convicted and sentenced in respect of all the six offences.

It was held by Tudball, J. that the trial of a person in respect of six offences at one and the same trial although they might have been committed within the space of twelve months contravened the rule laid down in Section 233 even when read with Section 234, Cr. P. C. and as Clause (1) of Section 235 and Section 234 must be mutually exclusive, to hold that Section 234 covered all the offences committed in the course of similar and separate transactions when the number of offences committed was more than three would be straining the language of the section beyond all bounds. He, therefore, set aside the conviction and sentence and directed a retrial of the accused in accordance with law.

32. The next case is - '11 All LJ 188 (A)'. In this case six persons were committed for trial of the offences under Sections 302 and 323, 1. P. C. It was held by Knox and Rafiq, JJ. that the trial of all these persons for the different offences which were not committed in the course of the same transaction was illegal.

In the course of their judgment their Lordships observed:

> The rule embodied in Section 233, Cr. P. C. is made subject to four exceptions. But a court cannot and ought not to treat a case before it as an exception to the general and broad rule, unless it is satisfied that in the case before it the charge should be brought within one of the four exceptions and it would be safer if the Magistrate or the sessions Judge showed in the charge sheet or in his judgment that he had reasons for bringing the case before him under one of those separate sections. The exception mentioned in Section 236 has obviously no application in the present case.
>
> The case before the judge was a case in which more persons than one were accused of the same offences, and Section 239 would apply. But Section 239 has this limitation attached to it that the provisions contained in the former part of Chapter 19 apply to all charges falling under Section 239. Thus, Section 239 is in turn governed by Sections 234 and 235, Criminal P. C. Section 234 has no application to the present case. It refers to offences of the same kind, and offences of the same kind are defined in Clause (2) of Section 234.

Later on they observed that Section 235, Clause (2) and (3) had no application to the case. With due deference to their Lordships, I am afraid I am unable to agree with the view that Section 239 is governed by Sections 234 and 235, Cr. P. C. The words and the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges at the end of Section 239, Cr. P. C., in my opinion, do not refer to Sections 234 to 238, Cr. P. C., but only to Sections 221 to 232 which fall under the heading . "Form of Charges". The next heading "Joinder of Charges" begins from Section 233. If Sections 234 and 235 govern Section 239 and are supplementary to each other there does not appear any satisfactory reason why the exceptions mentioned in Sections 234 and 235 should have been reproduced in Section 239.

Section 239 (a) refers to the trial of different persons accused of the same offence committed in the course of the same transaction. Section 239 (c) refers to the trial of persons accused of more than one offence of the same kind within the meaning of Section 234 committed by them jointly within the period of twelve months. No doubt there is no restriction in this clause of three offences as is mentioned in Section 234, Cr. P. C. Section 235 (d) relates to the trial of different persons accused of different offences committed in the course of the same transaction. It appears from a perusal of Section 239 and its different clauses that this section is complete and independent and is not to be supplemented by the provisions of Sections 234 and 235 because if it were so there was no necessity for the reproduction of the provisions of those sections in this section.

33. The next case is 'AIR 1922 All 214 (1) (O)'. It is a decision of a single Judge of this Court. It was held by Gokul Prasad, J. that it was not legal to try an accused person at the same trial of three charges under Section 408 and one under Section 477A, I. P. C. It appears from a perusal of the judgment that his Lordship was first inclined to the view that a joint trial was possible having regard to the provision of Section 234 read with the provision of Section 235. But on a consideration of the case '7 All LJ 225 (J)', which was followed by him, he came to the conclusion that a joint trial was not possible.

He seems to have agreed with the view of Tudball, J. in the above case that the provisions of Sections 234 and 235 were not supplementary to each other taut were mutually exclusive, and before the different offences could be tried together the case should fall under one of the several exceptions taken individually and not cumulatively.

34. The next case is - Faujdar Mahto v. Emperor' AIR 1926 All 261 (Z13). It is also a decision of a single Judge and was decided in 1925. In this case two girls were kidnapped by the accused on different dates and were passed off as Chhattri girls to one BR, who wanted a wife for himself & a wife for his brother, and who paid money to the accused for them.

It was held by Mukerji, J. that although Section 234 of the Criminal P. C. would allow the trial of two cases of kidnapping together and similarly Section 235 would allow the trial of the offence of kidnapping with respect to one girl and cheating with respect to the same girl together, yet the

operation of the sections could not be combined and it was impossible to combine all the four charges, two of kidnapping and two of cheating in one trial. The cases 'AIR 1922 All 214 (1) (O)' and '7 All LJ 225 (J)', were referred and seem to have been followed.

The following passage from the judgment may be quoted:

> The question now is whether Sections 234 and 235 allow a combination of charges so that there may be one joint trial in respect of one kidnapping and - cheating as a part of the same transaction with another and independent offence of kidnapping together with cheating with respect to the girl kidnapped, as a part of the same transaction. Even if there were no authority for the proposition, I would have no hesitation in coming to the conclusion that the operations of the two Sections 234 and 235 cannot be combined. The reasons are obvious. If this were permitted the whole object of the rule laid down in Section 233 would have been frustrated.
>
> The main principle is that there should be a separate trial for every distinct offence. Two exceptions are allowed (so far as the facts of this case are concerned) viz., those enacted in Sections 234 and 235. The present case in its entirety does not come under Section 234, nor does it come in its entirety within Section 235. If we permit a joint trial in respect of two sets of separate and independent transactions in which different offences have been committed, we would create such an amount of confusion as would in most cases end in a distraction of the minds of the judges and jury and the accused persons themselves.

35. The next case is of - 'AIR 1929 All 202 (L)'. It was also a decision of a single judge. It was held by Dalai, J. that the provisions of Sections 234, 235 and 236 were mutually exclusive and the provisions of Section 239 stood by themselves and the scope thereof could not be extended by the use of the provisions of sections not referred to in Section 239. In this case two accused, namely, Janeshar Das and Khushi Ram were charged with three offences and each offence was framed in the alternative either of criminal breach of trust or abetment thereof. They both were tried together atone trial of all these offences. The question arose whether their joint trial was legal. As already stated above, it was held to be illegal. In the course of the judgment his Lordship referred to - 'AIR 1921 All 246 (2) (H)', decided by Kanhaiya Lal and Wallach, JJ.

The observations of their Lordships have been reproduced in this case and they may be quoted with advantage:

> The four accused could also have been tried jointly in one trial for any one of the three dacoities in which they are alleged to have taken part, taut all could not be tried together at one trial for the three dacoities, as these offences were not committed in the same transaction. 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 against single and several accused. But the sections under 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 several 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.

At page 204 Dalai, J. made the following observation:

The learned Judge refused to extend the exception mentioned in Section 234 by adding to it the exception mentioned in Section 235 (1). So far as this Court is concerned the opinion has been that the provisions of Sections 234, 235 and 236 are mutually exclusive. There is all the more reason, therefore, to hold that the provisions of Section 239 stand by themselves and the scope thereof cannot be extended by the use of the provisions of sections not referred to in Section 239.

36. The next case is - 'AIR 1932 All 25 (W)'. It was held by Niamatullah, J. in this case that if both the sections viz., Sections 235 and 236 are in terms applicable to a case, and if their application, does not lead to any anomalous result, they can be so applied. It was, further, held that where several charges have been rightly joined against the same accused under Section 235 there can be no objection to one of such charges being in the alternative as provided by Section 236 nor can there be any objection to another accused being joined under Section 239 as regards one of those charges.

In my opinion the proper section which is applicable to this case, where more than one accused were on trial is Section 239 and not Section 235 which refers to the case of a single accused only. According to Clause (d) of Section 239 persons accused of different offences committed in the course of the same transaction could be tried together. There is no limit to the number of offences of which they could be tried. If several offences were committed in the course of the same transaction, the accused could be charged of all those offences at one trial or he could be charged of some of them in the alternative. In view of this fact it could not be said there was any illegality in the trial. I am, however, unable to agree with the view that both Sections 235 and 239 can be applied together.

37. The next case is - 'AIR 1934 All 811 (Z7)'. In this case three persons were charged under Section 411 with receiving stolen property and one of them was in addition charged under Section 411, I. P. C. With receiving other stolen properties within twelve months and the three accused were tried together. It was held by Bennet, J. that there was nothing in Section 239, Cr. P. C. specifically stating that as regards one or more of the persons accused there can be no application to that person or persons of the provisions of sections such as Section 234 Cr. P. C, and if these two sections were

combined together there was no illegality in the trial. I am afraid I am unable to agree with this view. If the persons mentioned in the different clauses of Section 239 can be jointly tried with the person or persons in respect of the offences committed by them either within a period of twelve months or in the course of the same transaction then it will be difficult to find a case where different offences committed by the same person or different persons cannot be tried together.

Section 234 restricts the number of offences which can be tried together to three whereas Section 239 (c) does not put any such restriction. Section 234 refers to the offences of the same kind whereas Section 235 refers to offences of different kinds committed in the course of the same transaction. If Sections 234 and 235 are combined it may mean that an accused person may be tried at one trial of more than three offences which may not be of the same kind and which all may not have been committed in the course of the same transaction. Combination of these two sections may lead to an inconsistency of the provisions of either of them. Again, if the different clauses of Section 239 are considered supplementary to each other and the persons falling under the different categories according to the different clauses can be tried together at one trial it will lead to an impossible position, lot of confusion & great prejudice to the accused because they will find it very difficult to meet the several & different charges lumped together.

A and B committed three dacoities within a period of twelve months. During the commission of one of these dacoities they also committed a murder. C and D are accused of offences under Sections 411 and 414, I. P. C. in respect of stolen property the possession of which has been transferred by another offence. They have nothing to do with the three dacoities. If Clauses (c), (d) and (f) are considered supplementary and not mutually exclusive then A, B, C and D are all to be tried together at one trial of the three dacoities and the murder and under Sections 411 and 414, I. P. C. which, in my opinion, could never be the intention of the legislature,

38. The next case is . In this case the accused Daya Shanker Jaitly was employed as a cashier in the office of the Garrison Engineer at Kanpur. He was charged under Section 477A, I. P. C. for falsification of accounts during the period from 11-5-1945 to 10-12-1946. In the alternative he was charged under Section 408, I P. C. for criminal breach of trust in respect of a sum of Rs. 45,002/10/- during the period from 20-11-1945 to 8-11-1946. The question which arose for consideration was whether he could be tried jointly of these charges.

The question whether Sections 234, 235, 236 and 239 were mutually exclusive or supplementary to each other has been discussed at page 174 in the following words:

> The general rule mentioned in Section 233 is subject to the exceptions mentioned in Sections 234, 235, 236, & 239. It is a general rule of construction that the provision of an Act of the legislature must be read as full and in the absence of anything showing a contrary intention, every part of it must be read as supplementary to and completing the other part. There is nothing in Section 233 to indicate that Sections 234,235, 236 and 239 cannot be read together. An examination of the provisions of these sections leads to the conclusion that the legislature intended that they should be read as supplementary to each other.

> In this case there were three charges for criminal misappropriation in respect of the three items; besides these three charges there were three other charges for falsification of accounts arising out of the same three transactions in respect of which the criminal misappropriation had been committed. It was held by their Lordships that in view of the provisions of Sections 235 and 238 read together these charges which arose out of three transactions could be tried together.

39. The next case is , It was decided in 1952 by a division Bench of this Court. It was held by Dayal and Agarwala JJ. that the true effect of Section 234 was not to create a prohibition that more than three offences could not be tried together.

But its true effect was to provide for an instance in which more than one offence, but not exceeding three committed in different transactions, could be tried together, that Sections 234, 235, 236 and 239 were exceptions to the general prohibition contained in Section 233 and that the true construction to be placed upon the four preceding sections was that they laid down the circumstance in which joinder of trials could take place and when there were more than one exceptions to the prohibition all of them have to be read together because they carved out an area which was not covered by the prohibition, that so long as a particular joint trial was permitted by one section or the other taken either singly or jointly it could not be said to be contrary to the intention of the legislature though on the face of it, it may appear to go beyond one of the provisions of the enactment.

40. In - '33 Bom 221 (S)', it was held by Scott, C. J. and Batchelor J, that Sections 234, 235, 236 and 239, Cr. P. C. mentioned as exceptions to Section 233, were not mutually exclusive and if it had been intended that Section 235 (2) or Section 236 could not be made use of in co-operation with Section 234 this intention could have easily been expressed. In this case the accused was charged in respect of two articles published on 12-5-1908 and 9-6-1908 in the newspaper "Kesari". It was alleged that the accused had committed offences punishable under Sections 124A and 153A, I. P. C. in respect of each of the two articles.

There can be no doubt that Section 234 or 235, considered individually, did not apply to the case nor the accused had been charged of both the offences, (124A and 153A, I. P. C.) committed on two different occasions in one trial It was only when Sections 234, 235 and 236 were supplementary to each other and could be read together in order to decide what offences and persons can be tried together that they could be tried together of these offences.

41. In - 'AIR 1938 Bind 164 (K)', it was held by Davis and Havelivala, JJ. that the different clauses of Section 239, Cr. P. C. were mutually exclusive in the sense that they could not be added one to another so as to bring some of the persons charged under one section and some of another and so to put them upon their trial together at one and the same time. But they were not mutually exclusive in the sense that persons accused of an offence and accused of abetment or of attempt could only be tried at one trial because the case comes under Clause (b). But if more than one person were to be tried and charged together their case must be brought within one of the clauses of Section 239 before they could be tried together.

In this case Ghuhar Mal was charged jointly with others with the abetment of offences under Section 43(1) (a) and (1)(i), Atakari Act and Section 9 (a) and (d). Opium Act. It was held that as the different offences of which the accused was charged did not fall within any of the clauses of Section 239 he could not be tried together of all these charges. There could be no doubt that if the different clauses of Section 239 and Sections 234 and 235 were considered supplementary to each other and not independent and mutually exclusive the accused can be tried of all these offences at one and the same trial.

42. The last case on the point is . It is a Full Bench decision. In this case the accused was charged under Section 409, I. P. C. for criminal breach of trust committed in respect of a sum of Rs. 2,500/- on 12-4-1949 and in the alternative was charged under Section 420, I. P, C. for having cheated in respect of that sum on the same day. He was also charged under Section 409, I. P. C. with intended criminal breach of trust in respect of a sum of Rs. 900/- on 20-4-1949 and in the alternative with having cheated in respect of the same sum on the same day.

The question that arose for consideration was whether these four charges could be tried together at one trial. It was held by the Pull Bench that the joinder of the four charges did not fall within any of the three exceptions laid down in Section 233 and therefore was contrary to law. In order to decide whether the accused person could be tried of different offences committed by him at one trial the court has to consider whether his case fell within any of the exceptions contained in Section 234, 235 or 236.

It was observed by Rajadhyaksha, J. that to construe Sections 234, 235, 236 and 239 as supplementing each other would necessarily result in enlarging the scope of each exception, that each section was self-contained and the limits of each had been carefully laid down according to the circumstances contemplated in these sections, and to combine these sections must necessarily involve the widening of the scope of each and would result in the destruction of the essential elements of these sections.

43. I have already pointed out above that if the different clauses of Section 239 are considered supplementary to each other and not mutually exclusive and independent and if the different accused charged with different offences or some offences committed at different times or in separate transactions were tried together at one trial it would result in lot of confusion and would be prejudicial to the accused in properly defending themselves. The different clauses of B. 239 mention the categories of persons who can be tried together at one trial.

It could never be the intention of the legislature that the different categories of persons mentioned in the different clauses could all be tried together for the different offences committed by ail of them either jointly or severally. If the different clauses of Section 239 are considered supplementary to each other and not independent and exclusive of each other, then persons falling in Clause (e) could be tried with persons falling in Clauses (f) and (g). In other words persons accused of theft, extortion or criminal misappropriation, receiving or retaining stolen property or assisting in the disposal or concealment of the same, or attempting and abetting the commission of any of these offences can be tried with persons accused of offences relating to counterfeit coin. I agree with the views expressed

by the Pull Bench of the Bombay High Court and by the Sind Court.

44. My answer to the question is that the different clauses of Section 239, Cr. P. C. are mutually exclusive and not supplementary to each other and in order to decide the question whether different persons accused of different offences the court has to look to these clauses and if their case fell within any of these clauses considered individually then they would come under the exceptions and could be tried together. If they do not fall within any of the exceptions mentioned in the different clauses of Section 239 then they cannot be tried together.

JUDGMENT OF THE COURT;

43. Our answer to the question is that the different clauses of Section 239 are mutually exclusive i.e., it is not possible to combine the provisions of two or more clauses in any one case or to justify a trial of several persons partly by applying the provisions of one clause and partly by applying the provisions of another clause or other clauses. A trial of several persons is valid only if the joinder of all the persons is permitted : by any one of the clauses.