

Queen-empress Vs. Bharosa

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1895)ILR17All123

Judge : John Gdge, Kt., C.J. and; Banerji, J.

Appellant : Queen-empress

Respondent : Bharosa

Judgement :

John Edge, Kt., C.J.

1. Bharosa Bhar has appealed against a conviction for an attempt to commit the offence punishable under Section 379 of the Indian Penal Code and the sentence of three years' rigorous imprisonment passed thereon. He has had notice to show cause why he should not be convicted of an offence under Section 451 of the Indian Penal Code and why his sentence should not accordingly be enhanced. The case against him is a very clear one. A prostitute, her brother and her servant were sleeping in the verandah of her house, which was made practically a part of her house by chiks or screens which cut it off from the outside. In this in closed verandah where the persons were sleeping there was a box containing six hundred rupees' worth of jewelry and articles of clothing. The prisoner was caught in the act of trying to remove the box. He was charged with the commission of the offence punishable under Section 457 of the Indian Peinal Code. The Officiating

Sessions Judge considered that he could not be convicted under that section and convicted him under Section 511 read with Section 379 of the Indian Penal Code. The Sessions Judge went at some length into the question of previous convictions charged against the prisoner. Taking the view which he did of the offence committed by the prisoner, Section 75 of the Indian Penal Code could not possibly apply. Section 75 does not apply to cases which are confined to Section 511 of the Indian Penal Code. The offences which come under Section 511 of the Indian Penal Code must be punished entirely irrespective of Section 75 of that Code. I have had the opportunity of reading the judgment of my brother Banerji in *Queen-Empress v. Ajudhia* supra, p. 120, where he deals with the question of the applicability of Section 75, and I may say that I entirely agree with the view of the law as in that judgment expressed. As it was, the sentence which was passed by the Sessions Judge was illegal. The utmost sentence of imprisonment that can be passed for the full offence under Section 379 is three years' rigorous imprisonment with or without fine. When the offence committed is only an attempt to commit the offence of theft, Section 511 applies, and the utmost sentence of -imprisonment which can be imposed for the offence is half of that which can be given for the full offence. The sentence of imprisonment which may be given for the full offence of theft can only exceed three years' rigorous imprisonment if the accused has been previously convicted of an offence to which Section 75 of the Code applies; but, as Section 75 does not apply to offences under Chapter XXIII, in which Section 511 is, the sentence for the attempt to commit the offence cannot be enhanced by any application of Section 75. In our opinion the accused certainly committed the offence of house-trespass with the intention of committing theft. We set aside the conviction and sentence passed upon the accused and convict him of the offence punishable under the last clause of Section 451 of the Indian Penal Code. The accused admitted a previous conviction under Section 380 of the Indian Penal Code, in respect of which he was sentenced to two years' rigorous imprisonment and 20 stripes. We sentence him under Section 451 of the Indian Penal Code to be rigorously imprisoned for five years. The period of imprisonment already undergone will form part of his sentence. We dismiss this appeal.

Banerji, J.

2. I concur.

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