

Chapter XVII of the Code. An attempt to commit an offence is itself an offence within the definition of an offence as given in s. 40, and where no express provision is made in any other part of the Code for the punishment of such offence, it is punishable under s. 511. An attempt to commit house-breaking by night is punishable under s. 511 only. That section appears in Chapter XXIII of the Code. Although, therefore, the offence of house-breaking by night is punishable under s. 457, which appears in Chapter XVII, the offence of attempting to commit house-breaking by night is not punishable under that Chapter, but is punishable under Chapter XXIII only. As s. 75 does not apply to offences other than those punishable under Chapter XII or Chapter XVII, the learned Sessions Judge was wrong in applying it to the present case. I am fortified in this opinion by the rulings of this Court in *Empress of India v. Ram Dayal* (1), of the Bombay High Court in *Empress v. Nana Rahim* (2) and of the Calcutta High Court in *Queen-Empress v. Sricharan Bauri* (3).

The appellant, Ajudhia, has been properly convicted of an attempt at house-breaking by night with intent to commit theft. For this offence he was liable, under s. 511, to be sentenced to seven years' rigorous imprisonment, that being one-half of the largest term of imprisonment provided by the last portion of s. 457 for the offence of house-breaking by night with intent to commit theft. The sentence of five years' rigorous imprisonment passed on Ajudhia was therefore a legal sentence, and it was in my opinion a proper one. The appeal is dismissed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.

QUEEN-EMPRESS v. BHAROSA.

Act No. XLI of 1860 (Indian Penal Code) ss. 75, 511—Attempt to commit an offence after previous conviction—Sentence.

Section 75 of the Indian Penal Code does not apply to cases which are confined to s. 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of s. 75. *Queen-Empress v. Ajudhia* (1) approved.

(1) I. L. R., 3 All., 773. (2) I. L. R., 5 Bom., 140.
(3) I. L. R., 14 Calc., 357.

1895

QUEEN-
EMPRESS
v.
AJUDHIA.

1895

January 9.

1895

QUEEN-
EMPERESS
v.
BHAROSA.

The facts of this case sufficiently appear from the judgment of Edge C. J.

Neither the appellant nor the Crown was represented.

EDGE, C. J.—Bharosa Bhar has appealed against a conviction for an attempt to commit the offence punishable under s. 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 s. 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 inclosed 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 s. 457 of the Indian Penal Code. The Officiating Sessions Judge considered that he could not be convicted under that section and convicted him under s. 511 read with s. 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, s. 75 of the Indian Penal Code could not possibly apply. Section 75 does not apply to cases which are confined to s. 511 of the Indian Penal Code. The offences which come under s. 511 of the Indian Penal Code must be punished entirely irrespective of s. 75 of that Code. I have had the opportunity of reading the judgment of my brother Banerji in *Queen-Empress v. Ajudhia* (1) where he deals with the question of the applicability of s. 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 s. 379 is three years' rigorous imprisonment with

(1) *Supra* p. 120.

or without fine. When the offence committed is only an attempt to commit the offence of theft, s. 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 s. 75 of the Code applies; but, as s. 75 does not apply to offences under Chapter XXIII, in which s. 511 is, the sentence for the attempt to commit the offence cannot be enhanced by any application of s. 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 s. 451 of the Indian Penal Code. The accused admitted a previous conviction under s. 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 s. 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.—I concur.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.

ACHHAN KUAR AND ANOTHER (DEFENDANTS) v. THAKUR DAS AND OTHERS
(PLAINTIFFS)*

Hindu Law—Hindu widow—Power of widow of sonless Hindu to mortgage ancestral property—Pardah-nashin woman, conditions necessary to the execution of a valid deed by—Expectancy—Mortgage purporting to be of property in which one of the professed executants had an interest in expectancy only.

One Raja Khairati Lal died in 1866 possessed of considerable property both movable and immovable. He left surviving him a widow, Rani Hulas Kuar, who

First Appeal No. 22 of 1892, from a decree of Maulvi Jafar Husain, Additional Subordinate Judge of Bareilly, dated the 13th January 1892.

1895

QUEEN-
EMPRESS
v.
BHAROSA.

1895

January 11.