

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Cunningham.

QUEEN-EMPRESS *v.* SRICHARAN BAURI.*

1887
March 19.

Sentence—Penal Code, Act XLV of 1860, ss. 75, 179, 511—Attempt to commit an offence—Enhancement of sentence for previous conviction—Previous conviction.

A person who has been convicted of the offence of theft (an offence punishable under Chapter XVII of the Penal Code) does not, on being convicted of an *attempt* to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.

ONE Sricharan Bauri, who had on the 7th April, 1885, been convicted of an offence under s. 380 of the Penal Code, and sentenced to three months' imprisonment, was, on the 4th February, 1887, convicted of an attempt to commit theft under ss. 379 and 511 of the Penal Code.

The Deputy Magistrate, before whom the latter case was tried, in passing sentence on Sricharan, refused to take into consideration the former conviction, which had been duly proved against him, inasmuch as the offence for which he was last under trial was an *attempt* to commit an offence only, and as such did not fall within the meaning of s. 75 of the Penal Code.

The Sessions Judge referred the case to the High Court under s. 438 of the Criminal Procedure Code, with a view to the sentence being enhanced.

No one appeared for either side on the hearing of the reference.

The order of the Court (PETHERAM, O.J., and CUNNINGHAM, J.) was as follows:—

We must decline to interfere. The accused has been convicted of an attempt, and the conviction therefore does not fall strictly within the terms of s. 75 of the Indian Penal Code.

T. A. P.

* Criminal Reference No. 43 of 1887, made by Col. W. L. Samuels, Deputy Commissioner of Manbhoom, dated the 28th of February, 1887.