

1926.

SURENDRA  
MOHAN  
SINHA  
v.  
HARI  
PRASAD  
SINHA.

they are clearly of opinion that it was the duty of the defendants in ordinary course to lodge the Order there will be no costs allowed on the petition.

Solicitors for appellants (petitioners): *Barrow, Rogers and Nevill.*

Solicitors for respondents: *Watkins and Hunter.*

## APPELLATE CRIMINAL.

*Before Ross and Kulwant Sahay, J.J.*

MAKHURU DUSADH

v.

KING-EMPEROR.\*

1926.

March, 8.

*Penal Code, 1860 (Act XLV of 1860), sections 380 and 457, separate sentences under, whether bad.*

An accused person convicted of house-breaking followed immediately by theft is liable to punishment under section 457, Penal Code, only.

*Queen v. Tonaokoch (1), Queen v. Sahrae (2), Jogeon Pullee v. Nobo Pullee (3), In the case of Mussahur Dusadh (4) and Queen v. Chytun Bowra (5), followed.*

The facts of the case material to this report are stated in the judgment of Ross, J.

*W. H. Akbari* (for the Assistant Government Advocate), for the Crown.

Ross, J.—The appellant broke into a house at night and stole a box and was caught in the act. He has been convicted under sections 457 and 380 of the Indian Penal Code and has been sentenced to consecutive term of three years' rigorous imprisonment under each of these sections. It has been repeatedly held that separate sentences cannot be passed under

\* Criminal Appeal no. 21 of 1926, from a decision of B. Harihar Charan, Assistant Sessions Judge of Purnea, dated the 23rd March 1925.

(1) (1865) 2 W. R. (Cr.) 63. (3) (1866) 6 W. R. (Cr.) 49.  
(2) (1867) 8 W. R. (Cr.) 31. (4) (1866) 6 W. R. (Cr.) 92.  
(5) (1866) 5 W. R. (Cr.) 49.

section 457 and section 380 of the Indian Penal Code : see *Queen v. Tonaokoch* (1), *Queen v. Sakrae* (2), *Jogeen v. Nobo* (3), *Mussahur Dusadh* (4) and *Queen v. Chytun Boura* (5), where their Lordships observed : " The point has been frequently ruled. A prisoner convicted of house-breaking followed immediately by theft would be punished under section 457 of the Indian Penal Code only."

1923.

MAKHRU  
DUSADH  
v.  
KING-  
EMPEROR.

Ross, J.

The result is that the sentence of three years' rigorous imprisonment passed under section 380 must be set aside. The sentence under section 457, Penal Code, will stand.

KULWANT SAHAY, J.—I agree.

## APPELLATE CIVIL.

*Before Ross and Kulwant Sahay, J.J.*

BENGAL AND NORTH-WESTERN RAILWAY  
COMPANY

v.

TUPAN DASS.\*

1926.

March, 10.

*Railways Act, 1890 (Act IX of 1890), section 75—contents of parcel, abstraction of—whether " deterioration " within the meaning of section 75—Railway Company, liability of.*

Under section 75 of the Railways Act, 1890, " when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds Rs. 100, the railway administration shall not be responsible for the.....deterioration of the parcel or package.....".

Plaintiff consigned a parcel for transmission on the defendant's railway. When it was opened it was found that

\* Appeal from Appellate Decree no. 1299 of 1922, from a decision of Jadunandan Prasad, Esq., District Judge of Purnea, dated the 17th of July, 1922, modifying a decision of Maulavi Saiyid Mohammad Zarif, Munsif of Katihar, dated the 9th of September, 1921.

(1) (1865) 2 W. R. (Cr.) 63. (3) (1866) 6 W. R. (Cr.) 49.

(2) (1867) 8 W. R. (Cr.) 31. (4) (1866) 6 W. R. (Cr.) 92.

(5) (1866) 5 W. R. (Cr.) 49.