

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

EMPEROR v. CHANDKHA SALABATKHA.*

1913.

March 28.

Indian Penal Code (Act XLV of 1860), sections 457, 511—House-breaking—Attempt—Burglars digging a hole in a wall but not boring it through owing to interruption by third persons.

The accused dug a hole in the wall of the complainant's dwelling house, during the night, with intent to complete that hole in order to make their entry into the house through it; and, having so entered, to commit a theft in the house. In fact, the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other, as the accused were interrupted before they could complete it. The accused were on these facts convicted by the trying Magistrate of the offence of attempting to commit house-breaking by night. On appeal, the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused's acts did not amount to an attempt to commit house-breaking, but only to a preparation. The Government of Bombay having appealed against the order of acquittal:—

Held, setting aside the order of acquittal, that the accused's acts did in law amount to an attempt, for the actual transaction, the distinct overt act, was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted.

APPEAL by the Government of Bombay from an order of acquittal passed by F. J. Varley, Sessions Judge of Khandesh.

The accused went to the house of the complainant one night, and began to dig a hole in the wall of his house. The hole was not carried through the whole thickness of the wall, because the accused were surprised and decamped. On these facts, they were convicted by the First Class Magistrate of Jalgaon of the offence of attempting to commit house-breaking by night (sections 457 and 511 of the Indian Penal Code).

On appeal the Sessions Judge reversed the conviction and acquitted the accused on the ground that what the

* Criminal Appeal No. 6 of 1913.

1913. accused did amount merely to preparation and fell short of an attempt to commit the offence.

EMPEROR
v.
CHANDKHA
SALABATKHA.

The Government of Bombay appealed against the order of acquittal.

G. S. Rao, Government Pleader, for the Crown.

D. W. Pilyaonkar for the accused.

BATCHELOR, J. :—This is an appeal by the Government of Bombay against the order made by the Sessions Judge of Khandesh reversing the conviction recorded against the two respondents under sections 457 and 511, Indian Penal Code. In other words, the respondents had been convicted of the offence of attempting to commit house-breaking by night, and their conviction of that offence was reversed by the Sessions Judge. It was so reversed by reason of the Sessions Judge's view upon a point of law, and for the purpose of expressing his view on that law the learned Judge quite rightly assumed the state of facts found proved by the Magistrate. The question is, whether upon that state of facts the Judge is right in thinking that these respondents could not be convicted of the offence of attempting to commit house-breaking. The state of facts assumed is that during the night these two respondents dug a hole in the wall of the complainant's dwelling house with intent to complete that hole in order to make their entry into the house through it, and, having so entered, to commit theft in the house. In fact, the hole was not completed as the respondents were interrupted before they could complete it. It was left, therefore, unfinished in the sense that it did not completely penetrate from one side of the wall to the other. In this state of facts the learned Judge below was of opinion that the respondents' acts did not amount to an attempt to commit house-breaking, but only to a preparation, and were therefore not punishable. I think that, on the facts as stated, there is really no room for doubt but

that the respondents' acts did in law amount to an attempt. In the leading case in England *Reg. v. Cheeseman*⁽¹⁾ Mr. Justice Blackburn, as he then was, in laying down the difference between a preparation antecedent to an offence and the actual attempt, said this:—If the actual transaction has commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime. Here the actual transaction, the distinct overt act, was begun and to a certain point carried through. It was only not carried through to completion by reason of the respondents' being interrupted by other people. It seems to me clear that if the facts as alleged are proved against these respondents, then they ought to be convicted of the attempt at house-breaking. Whether those facts are or are not proved is a matter which we do not now decide, seeing that the second respondent has not appeared before us; but with this expression of our view upon the point of law, we reverse the order of the Sessions Judge and remand the case to him in order that this charge under sections 457 and 511 may be dealt with in accordance with law.

Order reversed.

R. R.

(1) (1862) 9 Cox 100.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

EMPEROR *v.* FULCHAND BAPUJI SHAH.*

1913.

April 3.

Indian Press Act (X of 1910), section 3—Printing press—Order to make deposit—Failure to make deposit—Liability—Deposit to be made within reasonable time.

The Government of Bombay, on the 13th September 1912, issued to the applicant a notice calling upon him under section 3, sub-section 2, of the

* Criminal Application for Revision No. 57 of 1913.