

## Empress of India Vs Ajudhia

**Court:** Allahabad High Court

**Date of Decision:** Jan. 19, 1880

**Citation:** (1880) ILR (All) 644

**Hon'ble Judges:** Straight, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Straight, J.

I must accept the findings of fact. The accused within a very short period of the theft was in possession of the stolen property,

and I cannot say the Magistrate was wrong or that the evidence was insufficient in point of law to justify him in convicting. A question has been

raised before me on the part of the applicant that his conviction on Sections 380 and 457 of the Penal Code for one and the same offence is illegal,

and that he has been improperly sentenced to two distinct and excessive sentences. Although I am not disposed to hold at the present moment that

this contention is sound to the full extent urged, yet I think that the spirit of the Criminal Procedure Code, Sections 314, 452, 454 and 455, taken

with Section 71 of the Penal Code, as well as convenience of practice, are best consulted by a different course being pursued to that adopted in

the present case. It is true that the facts disclosed are consistent both with a charge of "theft in a dwelling-house" u/s 380 and to one of "lurking

house-trespass and house-breaking by night with intent to commit theft" u/s 457, but the latter is the more serious and aggravated form of crime

involving all the elements of the former, and if the proof is sufficient to justify a conviction, it should in my judgment be passed and the punishment

inflicted for the graver offence of the two of which the accused is found to be guilty. It is a common practice in England in framing indictments to

vary the description of the crime in several counts, e.g., a man is charged with wounding with intent to murder, to do grievous bodily harm, to

commit a felony, or to resist or prevent his lawful apprehension and detainer, but the conviction would only be recorded on one of the counts and

of course upon that for the most serious offence proved, which would dispose of or include all those subordinate and negative the others superior

to it. Equally the sentence would only be passed upon the one count, that substantially representing and containing within its four corners the real

offence committed, as to the more or less aggravated character of which the amount of punishment would have to be calculated. Where in the

course of one and the same transaction an accused person appears to have perpetrated several acts, directed to one end and object, which

together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be

convenient to vary the form of charge and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet in the

interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. This I think should have

been done in the present case, and I accordingly direct that the following amendment be made in the record. The applicant, Ajudhia, is convicted

on s. 457 of the Penal Code of "house-breaking by night in order to commit theft," and is ordered to be rigorously imprisoned for the period of

three years from the 21st March 1879. For formal purposes I order that judgment of acquittal be entered upon the charge u/s 380 of the Indian

Penal Code.