

(1925) 06 AHC CK 0033

Allahabad High Court

Case No: None

Brij Behari Lal

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: June 9, 1925**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 75

Citation: AIR 1926 All 44**Hon'ble Judges:** Banerji, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Banerji, J.

Brij Behari Lal has been, convicted of an attempt to commit theft,, and has u/s 75 of the Indian Penal Code been sentenced to five years" rigorous imprisonment by the learned Sessions Judge of Aligarh. The main contention before me is that when an accused person is convicted of an attempt to commit an offence, he cannot be made liable to enhanced punishment u/s 75 of the Indian Penal Code. A reference to Section 75 clearly shows that only when an accused is convicted of an offence under Ch. XII or Ch. XVII of the Indian Penal Code, that he is liable under the circumstances set out in that section to enhanced punishment. Now as the accused has been convicted not under Ch. XVII but under Ch. XXIII, in which Section 511 is to be found, the accused cannot be punished for anything more than what the law provides for, namely, half of the maximum term provided by Section 379, and he is not liable to enhanced punishment u/s 75. I am therefore, of opinion that the sentence passed on the appellant is illegal. He has been rightly convicted for an attempt to commit theft, and the maximum punishment that I can give him under the section is 18 months" rigorous imprisonment. I therefore set aside the sentence of imprisonment passed by the learned Judge and I direct that the appellant Brij Behari Lal be sentenced to 18 months" rigorous imprisonment for an attempt to commit theft

(Sections 379/511 of the Indian Penal Code).