

**(1918) 12 CAL CK 0013****Calcutta High Court****Case No:** None

Ghasita	APPELLANT
Emperor	RESPONDENT
Vs	

**Date of Decision:** Dec. 4, 1918**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 379, 75

**Citation:** 51 Ind. Cas. 476**Hon'ble Judges:** Wilberforce, J; Martineau, J**Bench:** Division Bench**Judgement**

1. In this case the appellant, a previous convict, has been sentenced under Sections 457/75, Indian Penal Code, to transportation for life. As for his guilt there can be no question. He is a resident of a different village and was arrested close to the spot and has been able to give no explanation whatever of his presence. The evidence against him is entirely independent and trustworthy.

2. The Sessions Judge was, however, in error in holding the appellant guilty of an offence u/s 457 and applying Section 75 for purposes of an enhanced sentence. The appellant made his way into an open thorned enclosure in which goats and sheep were kept. The owner was disturbed before the appellant was able to carry out his object and the appellant fled. It is plain, therefore, that the appellant cannot be convicted of criminal trespass by night in a house or building and that the only offence of which he can be convicted is one of attempted theft under Sections 379/511, Indian Penal Code. It has frequently been pointed out by this Court e.g., Jhamman Lal v. King Emperor 14 P.R. 1906 Cr. 12 P.L.R. 1907 ; 15 P.W.R. 1907 Cr. ; L.J. 85 that Section 75 has no application to attempted offences and that under such circumstances enhanced sentences cannot be inflicted.

3. We, therefore, accept the appeal to the extent that we alter the conviction to one under Sections 379/511, Indian Penal Code, and award the maximum sentence of

eighteen months" rigorous imprisonment.