

(1889) 05 CAL CK 0013
In the Calcutta High Court

**In Re: Koilash Chandra Chakrabarty
 Koilash Chandra Chakrabarty**

Date of Decision : 20-05-1889

Acts Referred:

Penal Code, 1860 (IPC) — Section 441, 456

Citation : (1889) ILR (Cal) 658

Hon'ble Judges : Prinsep, J; Hill, J

Bench : Division Bench

Judgement

Prinsep and Hill, JJ.—In this case the petitioner, Koilash Chandra Chakrabarty, was convicted by the Deputy Magistrate of Netrokona of the offences of house-breaking by night and of voluntarily causing hurt under Sections 323 and 456 of the Penal Code, respectively, and sentenced to six months' rigorous imprisonment in respect of the first offence, and to a fine of Rs. 50 in respect of the second. He appealed to the Sessions Judge of Mymensingh, but his appeal was dismissed; and he now moves this Court to set aside the conviction and sentence u/s 456 of the Code on the ground that the prosecution failed to prove that he had entered the complainant's house with the intent to commit theft or any other offence.

2. In our opinion the conviction and sentence ought to be maintained. The facts are these: The complainant, who is apparently a person in comfortable circumstances, lives in a country village in a house which is divided into several distinct apartments. One of these he used himself with his wife and three young children to sleep in, and another was used for the same purpose by two widows, cousins of the complainant, the elder of whom was of advanced age and the younger, whose name is Bhaba Sundari, a woman of about 20 years of age. On the night of the 12th Aughran, when the events out of which this case has arisen took place, there was no other occupant of the complainant's house but the persons I have mentioned. On that night a considerable time before daybreak, the complainant was awakened by his elder cousin, who told him that there was a thief in the house who was shaking the padlock of a sindhuk in his room. He got up and went out at once and found the petitioner forcing his way out of the ladies' room by pushing aside the bera. He seized the petitioner and a struggle

ensued in the course of which the complainant was bitten by the petitioner, and the elder lady received a blow from him with a piece of bamboo which drew blood. The complainant, under these circumstances, charged the petitioner with having entered his house with intent to commit theft and with assault. The defence was an alibi, and the petitioner asserted that he had been falsely accused because he was supposed by the complainant to have interfered with the amours of the younger of the widows. The alibi has been disbelieved by both the Courts below, and there seems to be no ground for the aspersions cast on the character of Bhaba Sundari.

3. Neither of the Courts below has found in terms with what intent the petitioner entered the complainant's house. The Deputy Magistrate declined to believe that his object was theft, but thought that he might have been there for "something worse", by which, I presume, is meant the prosecution of an intrigue with the younger widow; but with reference to this aspect of the case the learned Judge, in disposing of the argument that the petitioner's act was not criminal as his entry was for the purpose of having connection with Bhaba Sundari, remarks: "There is no evidence that the woman invited him in, or consented to his intrusion, and when seized he was guilty of extreme violence," and we should do wrong, were we, in the existing state of the evidence in the case, to assume, as we were invited to do by the pleader who appeared before us on behalf of the petitioner, that the intrusion of the petitioner was less distasteful to Bhaba Sundari than to any other member of the complainant's household. The learned Judge refused to accept that view, and on that ground, as we understand his judgment, declined to disturb the conviction. What we have then to deal with is the case of a man, a stranger, who uninvited and without any right whatever to be there, effects entry in the middle of the night into the sleeping apartment of two women, members of a respectable household, and who, when the attempt is made to capture him, uses great violence in the effort to make good his escape. Under such circumstances we think a Court ought to presume that the entry was effected with an intent such as is provided for by Section 441 of the Penal Code. This is the view upon which the learned Judge has acted, and we therefore think that his decision ought to be upheld.