

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 448] Punishment for house-trespass.

Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT—

In order to sustain conviction under the section it has to be found that the intention of the accused to commit an offence or intimidate, insult or annoy the complainant. There must be an unlawful entry and there must be proof of one or the other of the intentions mentioned in section 441. In this case, the evidence produced clearly established the offence.⁶⁹⁰. The complainant was allotted a shop by the Rehabilitation Department because of his being a displaced person, but the accused persons did not allow him to enter the shop. Though the accused persons entered the shop lawfully they retained it unlawfully and dishonestly for more than 37 years. They were held to be guilty under this section read with section 34. The complainant died during the revision petition. The accused persons' conviction was maintained but they were released on probation and directed to restore the shop to the complainant's son.⁶⁹¹. Allegation was that accused went to house of victim in order to commit offence of rape. Though rape was not committed at house of victim but committed at house of accused but entry of accused into house of victim was with intent to commit offence of rape. Accused is liable to be convicted under [section 448 IPC, 1860](#).⁶⁹².

[s 448.1] Accused acquitted of main offence, trespass stands.—

Case of trespass and culpable homicide. Cause of death was not clearly established. There might have been some jostling but that did not lead to the death of the victim. The cardiac arrest cannot be attributed to this act of the accused. Though the accused was acquitted of the offence under section 304, he was found to be guilty of section 447.⁶⁹³.

⁶⁹⁰. *Vidyadharan v State of Kerala*, (2004) 1 SCC 215 [LNIND 2003 SC 985] : AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 KLT 105 [LNIND 2003 SC 985] : 2004 Cr LJ 605 : (2004) 2 MPLJ

691. *Kirpal Singh v Wazir Singh*, 2001 Cr LJ 1566 (Del); *NC Singhal (Dr.) v State*, 1998 Cr LJ 3568 (Del), the petitioner was carrying on medical practice in a licenced chamber of which the respondent always had actual physical possession. He alleged that the respondent demolished the chamber and committed theft of his books and equipment. The court found that there was written notice to the petitioner of demolition and also that the charge of theft was vague because no details of books and equipment alleged to be stolen were given. See also *Ram Chandra Singh v Nabrang Rai Burma*, 1998 Cr LJ 2156 (Ori); *Bimal Ram v State of Bihar*, 1997 Cr LJ 2846 (Pat), house trespass, the testimony of a witness could not be thrown overboard just only because he was a chance witness. Conviction. *Chintamani Sethi v Raghunath Mohanty*, 2003 Cr LJ 2866 (Ori), complaint against the *Sarpanch* was found to be motivated for other reasons, hence, dismissed. *Kishori Lal Agarwal v Ram Chandra Sindhi*, 2003 Cr. LJ 2299 (All), charge on tenant that he occupied an additional room in the house, he was given notice to vacate, the notice did not specify the date within which he should do so. An offence under the section, held, not made out.

692. *Krishna Bordoloi v State of Assam*, 2012 Cr LJ 4099 (Gau).

693. *Bappa Malik v The State of West Bengal*, 2016 Cr LJ 95 (Cal).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 449] House-trespass in order to commit offence punishable with death.

Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with ^{694.}[imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

COMMENT—

An act can be said to be committed "in order to the committing of an offence" even though the offence may not have been completed. The words "in order to" have been used to mean "with the purpose of". ^{695.}

[s 449.1] Sentence to run concurrently.—

Offence under sections 302, 392, 404 and 449 committed in a gruesome manner. Considering the macabre nature of the crime the Court ordered the sentence to run consecutively. ^{696.}

^{694.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

^{695.} *Matiullah*, [AIR 1965 SC 132](#) [[LNIND 1964 SC 56](#)] . See the decision of the Supreme Court in *Laxmi Raj Shetty v State of TN*, [AIR 1988 SC 1274](#) [[LNIND 1988 SC 260](#)] : (1988) 3 SCC 319 [[LNIND 1988 SC 260](#)] , where death sentence for bank robbery and murder was reduced to life imprisonment. *Bhaskar Chatteraj v State of WB*, [1991 Cr LJ 451](#) (SC) : [AIR 1991 SC 317](#) . One of the accused against whom there was no evidence, discharged. *Satrughana Lamar v State*, [1998 Cr LJ 1588](#) , the accused entered into a hut, killed a person there with an axe, seen coming out with axe, recovery of weapon at his instance, conviction under sections 304/349 held proper. *Muniappan v State of TN*, [1997 Cr LJ 2336](#) (Mad), charge of beating and murder not proved. All round failure of evidence.

^{696.} *K Ramajayam v The Inspector of Police*, [2016 Cr LJ 1542](#) (Mad) : [2016 \(2\) CTC 135](#) [[LNIND 2016 MAD 88](#)] .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 450] House-trespass in order to commit offence punishable with imprisonment for life.

Whoever commits house-trespass in order to the committing of any offence punishable with ⁶⁹⁷[imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

⁶⁹⁸.COMMENT—

Section 450 deals with house trespass in order to commit offence punishable with life imprisonment. In the case, where the offence punishable with life imprisonment has been ruled out, one would have to look into actual act of the accused person. The act of the appellant is that of assaulting the complainant with chopper. The injury caused by the appellant is a simple injury. In such case, it would not attract life imprisonment and hence, [section 450 of the IPC, 1860](#) would not be attracted. ⁶⁹⁹.

[s 450.1] Murder and house trespass.—

Where accused entered the house of deceased and killed him by giving sword blow, and his wife, who was the eye-witness to the incident lodged FIR within a period of three hours, it was held that accused was rightly convicted under [sections 450](#) and [302](#) of [IPC, 1860](#). ⁷⁰⁰.

[s 450.2] Rape and House trespass.—

Where the victim aged above 18 years alleged that while she was sleeping, accused entered her house and she woke-up when he was committing sexual intercourse with her, and it was proved that she did not bolted door of house from inside and when she woke-up she did not raise alarm for help, it was held that offences are not made out. ⁷⁰¹. Where it was proved that the accused entered the mentally challenged victim's house, threw her on the cot and after removing her underwear committed forcible sexual intercourse with her, conviction under [section 450](#) and [section 376 IPC, 1860](#) was upheld. ⁷⁰².

697. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

698. *Her Chand v State of Rajasthan*, [1997 Cr LJ 345](#) (Raj), entry into parental house to which the right of access was there. Hence, criminal trespass was not made out. *Surjit Singh v State of Punjab*, [\(2007\) 15 SCC 391](#) [[LNIND 2007 SC 724](#)] , 5 policemen were accused of entering into the house of a woman with the intention to rape her. Their attempt was foiled by her sons who cried for help. On the suggestion of one of them, the other killed the woman. They were not the persons before the court. These two were neither involved in killing nor there any evidence of common intention. Criminal trespass into the house was established against them. They were convicted for the same.

699. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, [2008 Cr LJ 4736](#) (Bom).

700. *Mohanlal v State of Rajasthan*, [2012 Cr LJ 769](#) (Raj); *Bablu Alias Mahendra v State of Madhya Pradesh*, [2009 Cr LJ 1856](#) (MP)-material witnesses are not examined and evidence of identification is doubtful. Accused is entitled to benefit of doubt.

701. *Prahalad Mohanlal Sahu v State of Chhattisgarh*, [2013 Cr LJ 1726](#) (SC); *Ramesh v State*, [2011 Cr LJ. 3816](#) (Mad); *Wilson David v State of Chhattisgarh*, [2009 Cr LJ 1402](#) (Chh).

702. *Jhaduram Sahu v State of Chhattisgarh*, [2013 Cr LJ 1722](#) (Chh); *Moti Lal v State of MP*, [2008 Cr LJ 3543](#) (SC); [2008 \(11\) SCC 20](#) [[LNIND 2008 SC 1427](#)] ; *Sadan v State of Madhya Pradesh*, [2011 Cr LJ 2488](#) (MP).

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Of Theft

Of Criminal Trespass

[s 451] House-trespass in order to commit offence punishable with imprisonment.

Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

COMMENT—

This section is similar to sections 449 and 450. It provides punishment for house-trespass committed with intent to commit an offence punishable with imprisonment. Where the accused was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife, it was held that the conviction was valid.⁷⁰³ The accused was held to be guilty of the offence under section 450 (lurking house-trespass where he entered the house at mid-night getting easy access because of acquaintance with the family and forcibly raped the victim girl finding her alone in her room. He was punished for rape and lurking house-trespass for committing an offence.⁷⁰⁴ Accused persons committed house trespass in order to commit an offence punishable with imprisonment. They went to the house of complainant with preparation by holding sticks in their hands for assaulting the complainant. Therefore, all the four accused are liable to be convicted under [section 451 of the IPC, 1860](#).⁷⁰⁵ Where evidence shows that accused after entering the house unlawfully remained there and had even intimidated and insulted and annoyed the victim when they were called upon to quit the house. Court held that conduct of the accused will clearly come within the latter part of [section 441 IPC, 1860](#) and the same will be punishable under [section 451 IPC, 1860](#).⁷⁰⁶ There is enough material to show that the appellant had committed house trespass, however, not with intention to commit offence punishable with life imprisonment, hence, in such case [section 451 IPC, 1860](#) would be attracted instead of section 450.⁷⁰⁷ The accused trespassed into the house of the victim girl who was nearly about ten years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. Order of acquittal is reversed by the Supreme Court.⁷⁰⁸

It was alleged that the accused trespassed into the house of the victim when she was all alone in order to commit rape. But there was no evidence of any preparation or attempt to rape. The conviction under section 452 was held to be not proper. Since the trespass was not for any pious purpose because an offence under section 354 (outraging modesty) was likely to be involved, conviction was recorded under section 451.⁷⁰⁹ In another case the Courts below observed that from the evidence of PWs 1

and 2 it is seen that theft had taken place in the room in which PW 2 was sleeping; the thief entered the house and committed theft of gold chain which PW 2 was wearing and, therefore, this act will be covered by [section 451 of the IPC, 1860](#), i.e., house-trespass in order to commit offence punishable with imprisonment. A1 and A3 have been acquitted because nothing links them to the offence. But, similar is the case with the appellant. The only evidence against him is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the offence.⁷¹⁰.

The accused was convicted for house trespass for committing unnatural offence. The accused was convicted by the trial court but acquitted by the High Court because of no corroboration of the testimony of the victim. The Supreme Court restored the conviction and observed that corroboration could not be required as a fossil formula, even if the story revealed by the victim appeals to the judicial mind as probable.⁷¹¹.

⁷⁰³. (1875) 8 MHC (Appex) vi.

⁷⁰⁴. *Pacigi Narasimha v State of AP*, [1996 Cr LJ 2997](#) (AP).

⁷⁰⁵. *State of Maharashtra v Tatyaba Bajirao Jadhav*, [2011 Cr LJ 2717](#) (Bom).

⁷⁰⁶. *Appukuttan v State*, [2010 Cr LJ. 3186](#) .

⁷⁰⁷. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, [2008 Cr LJ 4736](#) (Bom).

⁷⁰⁸. *State v Antony*, [\(2007\) 1 SCC 627](#) [[LNIND 2006 SC 940](#)] : AIR 2007 SC Supp 1828.

⁷⁰⁹. *Ram Pratap v State of Rajasthan*, [2002 Cr LJ 1450](#) (Raj). *Gulam v State of Madhya Pradesh*, [2011 Cr LJ 179](#)

⁷¹⁰. *Azeez v State*, [\(2013\) 2 SCC 184](#) [[LNIND 2013 SC 54](#)] ; *Alistait v State*, [\(2009\) 17 SCC 794](#) .

⁷¹¹. *State of Kerala v Kurissum Moottil Antony*, (2007) 1 scc 627.

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[s 452] House-trespass after preparation for hurt, assault or wrongful restraint.

Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

The Legislature has enacted this section to provide higher punishment where house-trespass is committed in order to cause hurt, or to assault, or to wrongfully restrain any person. For a conviction under this section, it is necessary to prove that the dominant intention of the accused was to cause hurt to or to assault or to wrongfully restrain any person.⁷¹² Preparation is the genesis of offence under [section 452 of IPC, 1860](#). In absence of it being proved that any device as a metal rod, crow bar or even a stick was used by the accused due to which it could be described as "preparation for commission of offence," it appears to be impossible to hold that there exists adequate material even to frame the charge for offence under [section 452 of IPC, 1860](#).⁷¹³ Criminal trespass is committed by the accused when they entered the house of an individual with a view to insult, intimidate or annoy such owner of the house/property. If the accused entered the house of an individual to insult, intimidate or annoy any person other than the owner of the property, it would not constitute criminal trespass. Once the conduct of the accused is not criminal trespass, it would not be house trespass and would not become punishable under [section 452 IPC, 1860](#).⁷¹⁴

⁷¹². *Pirmohammad*, [AIR 1960 MP 24 \[LNIND 1959 MP 33\]](#) . *Syam Lal v State of HP*, [2002 Cr LJ 3178](#) (HP), murder, rioting and house trespass, conviction. *Raghunandan Pd. v State of UP*, [1998 Cr LJ 1571](#) (All), probably accused persons were in possession and complainants fired at them causing gunshot injuries thus, the accused persons had the right of private defence of person and property and were given the benefit of doubt. See also *Jai Narain v State of Rajasthan*, [1998 Cr LJ 2199](#) (Raj); *Devkaran v State of Rajasthan*, [1998 Cr LJ 3883](#) (Raj). *Rala Singh v State*, [1997 Cr LJ 1313](#) (P&H), in a charge of trespass and kidnapping against the accused persons, the victim gave her age to be 20 years. She was examined but not subjected to ossification test.

School leaving certificate showed her age to be 18 but her parents were not examined for corroboration. Guilt not proved beyond reasonable doubt.

713. *Subhash Sahebrao Datkar v State of Maharashtra*, 2011 Cr LJ 736 (Bom); *Chandreee v State* 2011 (3) Crimes 215 (Raj)-although there is no evidence on record that the present accused Chandraee entered the house of the complainant with any preparation, therefore, the essential fact of preparation is missing in the evidence and in the absence of any preparation, the offence under section 452 IPC, 1860 cannot be said to be made out and thus, the offence of the accused petitioner comes within the purview of section 451 IPC, 1860.

714. *Koduri Venkata Rao v State of A P*, 2011 Cr LJ. 3512 (AP).