

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 453] Punishment for lurking house-trespass or house-breaking.

Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

COMMENT—

This section provides penalty for the offences defined in sections 443 and 444.

In all "house-breaking" there must be "house-trespass", and in all "house-trespass" there must be "criminal trespass". Unless, therefore, the intent necessary to prove "criminal trespass" is present, the offence of house-breaking or house-trespass cannot be committed. Where accused simply unlatched the chain and entered house of complainant in the night and there was nothing to show that any device such as metal rod, crow bar or even a stick was used by accused. It was held that preparation for commission of offence not proved. It is also held that house trespass without preparation is covered under [section 453 IPC, 1860](#), not under [section 452 IPC, 1860](#).⁷¹⁵

⁷¹⁵. *Subhash Sahebrao Datkar v State of Maharashtra*, [2011 Cr LJ 736](#) (Bom).

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[s 454] Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

Whoever commits lurking house-trespass or house-breaking, 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 three 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 ten years.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 4.*

Section 454 of the Principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass or house-breaking in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

COMMENT—

This is an aggravated form of the offence described in the last section. The latter portion of this section is framed to include the cases of house-trespassers and house-breakers by night who have not only intended to commit, but have actually committed, theft.⁷¹⁶ Though the relationship between parties is of landlord and tenant and accused is tenant in complainant's premises, It cannot be said that origin of dispute being of civil nature. It is held that criminal proceedings are maintainable.⁷¹⁷

[s 454.1] Section 380 and section 454.—

In view of the conviction for [section 454 of the IPC, 1860](#), separate conviction for the offence under [section 380 of the IPC, 1860](#) is not needed as the offence under section 454 also includes section 380.⁷¹⁸

716. *Zor Singh*, (1887) 10 All 146 . See *Khuda Bakhsh*, (1886) PR No. 10 of 1886. Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).

717. *Balwant Singh Chuphal v State of Uttaranchal*, 2007 Cr LJ 1362 (Utt); *Kana Ram v State of Rajasthan*, 2002 Cr LJ 1867 (Raj)-possession of house/room in question remained with accused petitioner. Offence not made out.

718. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

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[s 455] Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

Whoever commits lurking house-trespass, or house-breaking, 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 ten years, and shall also be liable to fine.

COMMENT—

The relation between this section and section 435 is the same as that between sections 452 and 450. This section is similar to section 458. The only difference is that the trespass here is committed by day, whereas under section 458 it is committed during night.

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[s 456] Punishment for lurking house-trespass or house-breaking by night.

Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT—

Lurking house-trespass or house-breaking is ordinarily punishable under section 453; but when it is committed at night, this section is applicable. The intent necessary to prove 'criminal trespass' must be present and the Court must come to a definite inference as to the intention with which the entry was effected.⁷¹⁹ Where the accused persons, execution creditors, broke open the complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, it was held that as they were not guilty of the offence of criminal trespass the conviction must be quashed.⁷²⁰

⁷¹⁹. *Sankarsan*, 1957 Cr LJ 286 .

⁷²⁰. *Jotharam Davay*, (1878) 2 Mad 30.

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[s 457] Lurking house-trespass or house-breaking by night in order to commit off-ence punishable with imprisonment.

Whoever commits lurking house-trespass by night, or house-breaking by night, 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 five 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 fourteen years.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 5.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house-breaking by night in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

U.P.—*The following amendments were made by U.P Act No. 24 of 1995, Section 11.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house breaking by night in any building used as a place of worship in order to the committing of the offence of theft of any idol or icon from such building shall notwithstanding anything contained in sub-section (1) be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

COMMENT—

The offence under this section is an aggravated form of the offence described in the preceding section. When a person is charged under [section 457 IPC, 1860](#), on the allegation that he entered the dwelling house of another person with the intention of committing theft it will not be legal to convict him under section 456 on the ground that the entry was made with the intention of committing some other offence or with the intention of annoying or insulting the inmates.^{721.}

[s 457.1] For committing offence under the section.—

To constitute an offence under section 457, it is necessary to prove that house trespass or breaking at night was committed in order to commit any offence punishable under this section. The mere fact that house trespass was committed at night does not attract the offence of lurking house trespass within the meaning of this section.^{722.}

^{721.} *Sankarasan Boral v State*, [1957 Cr LJ 286](#) ; *Narayanan v State*, [AIR 1962 Ker.81](#) [LNIND 1961 KER 232] .

^{722.} *Kandarpa Thakuria v State of Assam*, [1992 Cr LJ 3084](#) (Gau). *State of Rajasthan v Vinod*, [2002 Cr LJ 1308](#) (Raj), the accused and his family were proved to be persons known to the complainant being neighbours. The entry into the house could not be proved to be with the intention of committing an offence punishable with imprisonment. The finding of acquittal was not interfered with. *Satyanarayanan v State of Rajasthan*, [2000 Cr LJ 2529](#) (Raj) accused entered house at night, beat up the girl and subjected her to rape, conviction under section 458 was altered to one under section 457 as the accused had not committed lurking house trespass. He had made preparation for assault. *Harjit Singh v State of Haryana*, [1999 Cr LJ 580](#) (SC) offence under sections 457, 392, 397, 307, 332, 34, made out. See also *R Trinath v State of Orissa*, [1998 Cr LJ 3458](#) (Ori). *Joseph v State of Kerala*, [1997 Cr LJ 4289](#) (Ker), case of theft not made out. *Raghabacharan Panda v V Dindayal Patra*, [2003 Cr LJ 1307](#) (Ori), allegation that the shop of the chemist broken open by the landlord and handed over to another person for another purpose, evidence was in favour of the accused land lord and his new tenant. Benefit of doubt. *Md. Siddique Hussain v State of Assam*, [2003 Cr LJ 1487](#) (Gau), it was difficult for the court to believe that any one should force his way to the house of another just only to committing a hurt. Benefit of doubt.

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[s 458] Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

Whoever commits lurking house-trespass by night, or house-breaking by night, 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 fourteen years, and shall also be liable to fine.

COMMENT—

This section is similar to sections 452 and 455. To prove the charge for the offence under [section 458, IPC, 1860](#), the prosecution must prove:—

- (i) that the accused committed lurking house-trespass by night, or house-breaking by night;
- (ii) that he did as above after having made preparation for causing hurt, or for assaulting, or for wrongfully restraining some person, or for putting some one in fear of hurt, assault or wrongful restraint.^{723.}

It only applies to the house-breaker who actually has himself made preparation for causing hurt to any person, etc., and not to his companions as well who themselves have not made such preparation.^{724.} There should also be some evidence of lurking house-trespass, as defined in [section 443, IPC, 1860](#).

[s 458.1] Section 458 is not a cognate offence of section 398.—

The accused was charged under [section 398 of IPC, 1860](#) and section 25(1)(A) and [section 27 of the Arms Act, 1959](#). Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges however, come to the conclusion that the accused committed an offence under [section 458 of IPC, 1860](#). The High Court held that [section 458 of Penal Code](#) in no way was a cognate offence of offence under [section 398, IPC, 1860](#). Hence, conviction for offence under [section 458 IPC, 1860](#) without framing charge is liable to be set aside.^{725.}

723. *Pania v State*, [2002 Cr LJ 3050](#) (Raj).
724. *Ghulam*, (1923) 4 Lah 399.
725. *Manik Miah v State of Tripura*, [2013 Cr LJ 1899](#) (Gau).

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[s 459] Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with ⁷²⁶[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The offence under this section is an aggravated form of the offence described in section 453.

This and the following section provide for a compound offence, the governing incident of which is that either a 'lurking house-trespass' or 'house-breaking' must have been completed in order to make a person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections.⁷²⁷

During the period house-breaking lasts, if the trespasser causes grievous hurt to any person or attempts to cause death or grievous hurt, the provisions of this section will be attracted. It cannot be accepted that it is only in the process of making an entry into a house if the trespasser causes grievous hurt, that this section will be attracted, for, the essential ingredient of lurking house-trespass or house-breaking is 'criminal trespass' and that offence continues so long as the trespasser remains on the property in possession of another.⁷²⁸

⁷²⁶. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

⁷²⁷. *Ismail Khan v State*, (1886) 8 All 649 ; *Hasmatullah Khan v State*, 2005 Cr LJ 2266 (Utt)-Charge U.S 459 convicted under section 457 since the injuries are simple in nature. *Gopal Singh v State of Rajasthan*, 2008 Cr LJ 3272 (Raj)-conviction and sentence of the accused under sections 458, 459, 395/397 and 396, IPC, 1860 are maintained.

⁷²⁸. *Bhanwarlal v Parbati*, 1968 Cr LJ 130 . See *contra Said Ahmed*, (1927) 49 All 864 . *Dharampal Singh v State of Rajasthan*, 1998 Cr LJ 3372 (Raj) murder in a chowk not owned and