

possessed by the complainant party. The accused also had the right of way through it. He was not liable to be convicted under section 459 or 460.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 460] All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with ⁷²⁹[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

Before holding a person to be guilty of offence under [section 460, IPC, 1860](#), the prosecution must prove:—

(i) that the accused committed lurking house trespass by night; or house breaking by night;

(ii) that he caused, or attempted to cause, death or grievous hurt;

(iii) that he did above whilst engaged in committing lurking house trespass by night or house breaking by night. On the aforesaid analysis of section, it is clear that this section applies to those persons who have actually committed lurking house trespass at night and not to those who may have accompanied their associates but did not commit the offence. Indeed, it applies to actual doers, and not the others.⁷³⁰ This section deals with the constructive liability of persons jointly concerned in committing 'lurking house-trespass' or 'house-breaking by night' in the course of which death or grievous hurt to any one is caused. It is immaterial who causes death or grievous hurt. Every person jointly concerned in committing such house-trespass or house-breaking shall be punished in the manner provided in the section. A person who actually commits murder in the course of committing house-breaking will attract the penalty under section 302.⁷³¹ Every person who is jointly concerned in committing the offence of lurking house trespass by night or house breaking by night is to be punished with life imprisonment where death has been caused or with imprisonment which may extend to ten years where grievous hurt has been caused to any person. This joint liability is based upon the principle of constructive liability. Thus, the person who has actually committed the death or grievous hurt would be liable to be punished under the relevant provisions, i.e., section 302 or section 326, as the case may be, while committing the offence of lurking house trespass by night. It is possible that common intention or object be not the foundation of an offence under [section 460 IPC, 1860](#). Thus, to establish an offence under section 460, it may not be necessary for the prosecution to establish common intention or object. Suffice it will be to establish that they acted

jointly and committed the offences stated in [section 460 IPC, 1860](#). The principle of constructive liability is applicable in distinction to contributory liability. The Supreme Court in the case of *Abdul Aziz v State of Rajasthan*,⁷³² clearly stated that if a person committing housebreaking by night also actually commits murder, he must attract the penalty for the latter offence under section 302 and the Court found it almost impossible to hold that he can escape the punishment provided for murder merely because the murder was committed by him while he was committing the offence of housebreaking and that he can only be dealt with under section 460.⁷³³

The words "at the time of the committing of" are limited to the time during which the criminal trespass continues which forms an element in house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time.⁷³⁴ If the offender causes grievous hurt while running away, he will not be punishable under this section.⁷³⁵

[s 460.1] Section 449 and section 460.—

The element of house-trespass is common in both the sections and section 460 has large ambit. In section 449 actual commission of offence punishable with death is not required and if the house trespass is proved in order to commit such offence, the accused persons would be liable for punishment under section 449, whereas in section 460 if a person guilty of lurking house trespass or housebreaking in night voluntarily cause or attempt to cause death or grievous hurt to any person then every person jointly concerned in committing such lurking house trespass in night shall be liable for punishment.⁷³⁶

⁷²⁹. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

⁷³⁰. *Badri Prasad Prajapati v State of Madhya Pradesh*, [2005 Cr LJ 1856](#) (MP).

⁷³¹. *Sohan Singh v State*, [AIR 1964 Punj 156](#). Where in a case of house-breaking committed in well-lighted house, the victim identified the accused and the articles stolen from her house in two exercises of identification parades, conviction of the accused was sustained. *Kasu Bhai v State of HP*, [1992 Cr LJ 3251](#) (HP). *State of MP v Bhagwan Singh*, [2002 Cr LJ 3169](#) (MP), the accused assailants entered into a house during night time, assaulted a man and hanged him and also caused death of his daughter. The motive was to avenge the action against them to prevent them from opening drainage towards the disputed land. They were held guilty of lurking trespass and murder. *Abdul Aziz v State of Rajasthan*, [\(2007\) 10 SCC 283 \[LNIND 2007 SC 592\]](#), house-breaking by several persons, death caused by one of them, others also constructively liable, attracted section 302. It would require the accused to be charged with murder also. *Mati Ratre v State of Chhattisgarh*, [2013 Cr LJ 560](#) (Chh)-Conviction set aside since testimony of sole witness found to be not reliable

⁷³². *Abdul Aziz v State of Rajasthan*, [2007 \(10\) SCC 28](#).

⁷³³. *Haradhan Das v State of West Bengal*, [\(2013\) 2 SCC 197 \[LNIND 2012 SC 817\]](#); *Dukalu v State of Madhya Pradesh*, [2011 Cr LJ 1548](#) (Chh)- the appellants have been held responsible for causing death of the 2 deceased persons with the aid of [section 149, IPC, 1860](#). It is not a case

in which at the time of committing lurking house trespass by night any one of the appellant caused death of the deceased person and liability has to be fastened on the principle of section 460. In the facts and circumstances of the case, if all the appellants were held liable for punishment under section 302 with the aid of [section 149, IPC, 1860](#) on the principles of common object of the unlawful assembly, of which they were the members, it was not necessary to punish them separately under [section 460, IPC, 1860](#) and punishment of the appellants under [section 460, IPC, 1860](#), in the facts and circumstances of the case, also requires to be set aside.

734. *Muhammad*, (1921) 2 Lah 342. *State of Madhya Pradesh v Kalli*, [2012 Cr LJ 2399](#) (MP)- where death was caused while committing theft in the house of deceased, and looted property from house of deceased were recovered from possession of accused and identified by witnesses in test identification parade, conviction of accused is held proper.

735. *Ibid. Mohan Manjhi v State of Bihar*, [2000 Cr LJ 4482](#) (Pat), for an offence under sections 460 and 382, the accused was sentenced to undergo 3 years RI. The proceeding had lasted for 11 years. The accused had been in jail for 6 months. Considering their mental and financial strain, the court reduced their sentence to the period already undergone with a fine of Rs. 1000.

736. *Dukalu v State of Madhya Pradesh*, [2011 CR LJ 1548](#) (Chh).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 461] Dishonestly breaking open receptacle containing property.

Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This and the following section provide for the same offence. As soon as the receptacle is broken open or unfastened the offence is complete. Where an IT raid could not be completed on the same day and the raiding team put the seized jewellery in an *almirah* and after locking and sealing it, left it in the custody of the accused, the latter was held liable of this offence because he cut the *almirah* to take out some articles.^{737.}

^{737.} *State of Maharashtra v Narayan Champalal Bajaj*, 1990 Cr LJ 2635 : 1990 Tax LR 918 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 462] Punishment for same offence when committed by person entrusted with custody.

Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

An offence under [section 462 of IPC, 1860](#) is an aggravated form of the offence made punishable under [section 461 of IPC, 1860](#).^{738.}

^{738.} *Yamunabai w/o Trimbak Lolge v The State of Maharashtra*, [1994 \(2\) Bom CR 73](#) [LNIND [1993 AUG 18](#)].

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 463] Forgery.

¹. [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

COMMENTS.—

The definition of 'forgery' in [section 463, Indian Penal Code, 1860 \(IPC, 1860\)](#) is very wide. The basic elements of forgery are: (i) the making of a false document or part of it; and (ii) such making should be with such intention as is specified in the section, viz., (a) to cause damage or injury to (i) the public, or (ii) any person, or (b) to support any claim or title, or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract, or (e) to commit fraud or that fraud may be committed.² If a document, which is not genuine, is being used as such and a person is made to part with money on that basis then not only the offence of cheating as defined under [section 415 IPC](#) but also the offence of forgery as defined under [section 463 IPC](#) is attracted.³

¹. Subs. by The [Information Technology Act](#) (Act 21 of 2000), section 91 and First Sch for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

². *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : (1999) 2 SCC 617 .

³. *Nahul Kohli v State*, 2010 Cr LJ 4536 (Del).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 464] Making a false document.

⁴. [A person is said to make a false document or electronic record—

First.—Who dishonestly or fraudulently—

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or, transmits any electronic record or part of any electronic record;
- (c) affixes any ⁵[electronic signature] on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the ⁶[electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or ⁷[electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document an electronic record in any material part thereof, after it has been made, executed or affixed with ⁸[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his ⁹[electronic signature] or any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

ILLUSTRATIONS

- (a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.
- (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.
- (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any

sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

- (d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.
- (e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.
- (f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C". A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.
- (g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.
- (h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.
- (i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.
- (j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.
- (k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

ILLUSTRATIONS

- (a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

- (b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.
- (c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.
- (d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.
- (e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

¹⁰.**[Explanation 3.—For the purposes of this section, the expression "affixing ¹¹. [electronic signature]" shall have the meaning assigned to it in clause (d) of subsection (1) of [section 2 of the Information Technology Act, 2000](#)].**

ILLUSTRATION

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

COMMENTS.—

An analysis of [section 464 of IPC, 1860](#) shows that it divides false documents into three categories:

A. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

B. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.