

1948

Present : Soertsz S.P.J. and Nagalingam J.

THE KING *v.* USMAN.

S. C. 223—D. C. Colombo (Criminal), 1,281.

Penal Code, ss. 443 and 490—Attempt to commit housebreaking—Accused caught trying to open a window—Sufficiency of evidence.

Where an accused was caught attempting to open a window of a house—

Held, that the evidence was insufficient to sustain a charge of attempt to commit housebreaking as it did not point clearly or necessarily to the conclusion that he was trying to enter the house.

¹ (1934) *A. I. R. Sind*, p. 185 at 187. ² *11 Bombay Law Reports 1153 at 1155.*

APPPEAL from a judgment of the District Judge of Colombo.

Accused appellant in person.

J. A. P. Cherubim, C.C., for the Attorney-General.

January 15, 1948. SOERTSZ S.P.J.—

The accused in this case was charged with attempting to commit housebreaking under section 443, read with section 490 of the Penal Code. The evidence upon which this charge is based is the evidence of the complainant, which we accept without any hesitation, that he found the accused attempting to open a part of a window which was secured by means of a piece of wire. The other part of that window had been securely fastened with a bolt. At the time the complainant found the accused so engaged the accused had not succeeded in opening the window at all. He was merely found in the act of trying to force open the window. He had not even succeeded in opening the window to the extent of being able to introduce his hand through the opening. In these circumstances the question arises whether the charge of attempt to commit housebreaking is sustainable. Crown Counsel says that a reasonable inference to be drawn from what the accused was found to be doing is the inference that he intended to enter the house. That is a reasonable inference, no doubt, but it is not the only reasonable inference that can be drawn in view of the fact that the complainant appears, as is quite easily understandable, to have acted rather precipitately in arresting the accused at that stage without waiting till the accused proceeded to an extent which would have made his action unequivocal. As matters stood at the stage at which the accused was taken into custody it cannot be said, in our opinion, that his action was unequivocal and that it pointed clearly and necessarily to the conclusion that he was trying to enter this house. As Crown Counsel himself submitted in the course of his argument, it may be that the accused wanted to open that part of the window in order to peep into the house, and in that case I do not think that a charge of attempt to commit housebreaking could be maintained. Perhaps the accused did this just to spy out the possibility of a successful entry into the house and it may be that when he discovered that there were people in the room he would have beaten a hasty retreat without entering the house at all. In these circumstances, again, it would be impossible to say that the accused was attempting to commit housebreaking.

In the circumstances I think this conviction must be set aside and the accused acquitted.

NAGALINGAM, J.—I agree.

Accused acquitted.