

MEEDIN v. KIRIHATANA *et al.*

D. C. (Criminal), Kégalla, 869.

1896.

August 5
and 6.

Ceylon Penal Code, s. 67—Offence made up of parts, each being itself an offence—Conviction of accused of such offence.

A breaks into a dwelling-house at night and steals some property therefrom. His conviction both of house-breaking by night in order to the commission of an offence punishable with imprisonment and of theft from a building used as a human dwelling would be obnoxious to section 67* of the Ceylon Penal Code.

IN this case the accused, two in number, were charged (1) with house-breaking by night in order to the committing of an offence punishable with imprisonment—to wit, theft, an offence punishable under section 443 of the Ceylon Penal Code; and (2) with theft from a building used as a human dwelling, an offence punishable under section 369 of the Ceylon Penal Code. The evidence showed that in the night of the 18th April, 1896, the accused broke into the house of one Mohidin and stole therefrom certain crockery, a teapot, a knife, and a bag containing 2,000 arecanuts. The District Judge convicted the accused of both the offences with which they were charged, and sentenced each to undergo twelve months' rigorous imprisonment for each offence. The accused appealed.

De Saram, for accused, appellants.

Rámanáthan, Acting A.-G., for the Crown.

Cur. adv. vult.

6th August, 1896. LAWRIE, J.—

I affirm the conviction and sentence of the accused for house-breaking by night with intent to commit theft, an offence punishable under section 443.

I do not approve of the separate conviction for theft from a dwelling-house under section 369, and of the separate sentences for that offence.

The sentence seems to me to be contrary to the provisions of the 67th section of the Penal Code.

I follow the Indian authorities quoted by Starling in his commentary on the 458th section of the Indian Penal Code, and especially I follow the judgment of my brother Withers on this point in the case D. C., Kalutara, 650, 16th December, 1895.

I set aside the sentence under section 369. The sentence is therefore one year's rigorous imprisonment on each of the accused.

* Ceylon Penal Code, section 67. —Where anything which is an offence is made up of parts, any of which parts is itself an offence, the

offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.