

Present: Wood Renton A.C.J.

THE KING v. ABDUL RAHIM.

79—D. C. (Crim.) Colombo, 3,531.

*Punishment—Forging three separate documents in the course of a transaction—Same object—Separate sentences—Consecutive—Penal Code, s. 67—Criminal Procedure Code, s. 17.*

The accused, with the object of obtaining payment of a sum of money deposited by another in the Post Office Savings Bank, forged three distinct documents, viz., (1) an application for withdrawal; (2) a warrant of withdrawal; (3) a letter of consent to the withdrawal by the depositor; and was sentenced to three terms of imprisonment, which were to run consecutively.

*Held*, that the three separate sentences on the three separate charges were legal.

WOOD RENTON A.C.J.—The three forgeries were committed on separate occasions. The appellant stands charged with each separately, and the three taken together do not constitute in their combination a distinct and more serious offence.

THE facts appear from the judgment.

*H. A. Jayewardene* (with him *De Jong*), for the appellant.

*Garvin, Acting S.-G.*, for the Crown.

July 14, 1913. WOOD RENTON A.C.J.—

The accused-appellant has been convicted of forgery in the District Court of Colombo, and has been sentenced to periods of imprisonment amounting in all to four years. The evidence in support of the findings of the learned District Judge on the facts is overwhelming, and there is no doubt but that the conviction must be affirmed. Mr. H. A. Jayewardene has raised an interesting point in regard to the sentences. The object of the appellant was to obtain payment by the Post Office of a sum of Rs. 100 from the Savings Bank account of Don Hendrick Amerasinghe. For this purpose, with the assistance of a little boy Cornelis, who is Don Hendrick's son, he forged, as he was bound to do in order to carry out the fraud, three distinct documents: in the first place, an application for withdrawal; in the second place, a warrant of withdrawal; in the last place, a letter of consent to the withdrawal by the depositor. Those were three distinct forgeries, although they were obviously committed as part of a transaction which had one and the same object, namely, to secure possession of the sum of Rs. 100. The appellant was charged with each of the forgeries.

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The District Judge has sentenced him to two years' rigorous imprisonment in respect of the first, and a term of one year's rigorous imprisonment in respect of each of the second and third. The sentences are to run consecutively. So that, as I have already stated, if they are upheld, the appellant will have to undergo four years' rigorous imprisonment. Mr. H. A. Jayewardene's contention is that the imposition of consecutive sentences in a case of this kind is prohibited by section 67 of the Penal Code, as it has been interpreted in certain cases here, and as the corresponding provision in the Indian Penal Code has been interpreted in India. Section 17 of our Criminal Procedure Code provides that, where a person is convicted at one trial of any two or more distinct offences, the Court may sentence him to the several punishments prescribed for each, so long as the amount of these punishments does not exceed its jurisdiction, and then provides—I will quote only the material words—"that, if the case is tried by a District Court, the aggregate punishment shall not exceed twice the amount of punishment which that Court in the exercise of its ordinary jurisdiction is competent to inflict." If that section stood alone, it could scarcely be contended that there was anything wrong in the sentences passed by the learned District Judge in the present case. But we are here referred to section 67 of the Penal Code. That section enacts that 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 for more than one of such offences, unless it be so expressly provided. It has been held in the judicial construction of that section in Ceylon—see, for example, *Meedin v. Kirihatana*<sup>1</sup> that where an accused person is convicted both of house-breaking by night for the purpose of committing theft and of the actual commission of theft, only one sentence should be imposed, and, therefore, *a fortiori*, the imposition of consecutive sentences would be illegal. The same view of the law has been taken in India in the construction of the corresponding section of the Indian Code. See *Empress of India v. Ajudhia*<sup>2</sup> and, more recently, *Queen Empress v. Malu*.<sup>3</sup> There is, however, a decision by three Judges in Ceylon to the contrary effect (*King v. Arnolis Appu*<sup>4</sup>). It was there held by Sir Charles Layard C.J. and Mr. Justice Moncreiff and Sir John Middleton that theft and house-breaking with intent to commit theft are two distinct offences, and that two separate sentences in respect of them may be passed under section 17 of the Criminal Procedure Code. That decision is binding on me, and would dispose of the case if I had only a question of house-breaking with intent to commit theft and theft committed in the course of the house-breaking to deal with. If I may respectfully say so, I agree with the reasoning of the Supreme Court in the case of *The King v. Arnolis Appu*.<sup>4</sup> The question was put in a

<sup>1</sup> (1896) 2 N. L. R. 157.

<sup>2</sup> (1880) I. L. R. 2 All. 644.

<sup>3</sup> (1899) I. L. R. 23 Bom. 706.

<sup>4</sup> (1904) 2 Bal. 81.

nutshell by Sir John Bonser in the case of *Mendis v. Cornelis*,<sup>1</sup> when he said that a man may break into a house to commit theft, and may then repent and desist from carrying out his original design, while, on the other hand, a man may commit theft in a dwelling-house without breaking into it. That comment is in itself sufficient to show that house-breaking by night with intent to commit theft and the theft itself are two distinct offences, and may therefore be made the subject of distinct and consecutive sentences. But the present case is a much stronger one. For all the decisions, both Indian and local, to which I have referred, contemplate cases where the two offences not only are committed at the same time and form part of the same transaction, but constitute, when combined, an offence of a more serious character. The circumstances here are quite different. The three forgeries were committed on separate occasions. The appellant stands charged with each separately, and the three taken together do not constitute in their combination a distinct and more serious offence.

The appeal is dismissed.

*Appeal dismissed.*

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