On the way it came on to rain and they took shelter in some Beldars' quarters till after mid-night, when they resumed their journey. About a mile beyond Chak Aruri they came upon the six accused, of whom Amir was sitting under a *Tali* tree and the other five were sitting near a bush on the side of the road. The six men got up, and Sultan and Fateh Khan attacked Ghulam Muhammad, who was a few paces ahead of his companions, striking him with axes. Muhammad Ali and Wazira left the road and fled northwards. They were pursued for some distance by some of the men, but escaped and made their way back to Chak No. 23, Muhammad Ali arriving after sunrise and Wazira sometime after Muhammad Ali. The body of the deceased is said to have been found at about 8 A. M. a little way from the road by one Mehrdad, who informed Tasadduk Hussain *Sarbarah Zaildar* of Chak Aruri. The latter went to the spot and sent information to the Thana. At about 10 A.M. a relation of the deceased came and identified the body, and later on Muhammad Ali and after him Wazira, arrived and told Tasadduk Hussain what had occurred. It is unnecessary to discuss Chawi's evidence further, but we may point out that when during the cross-examination of Chawi Counsel for the defence wished the learned Sessions Judge to refer to the statement made by the witness to the Police, the Judge was wrong in not doing so at the time and in refusing to give the copy which was asked for without having referred to the statement. The proviso to section 162 (1) of the Criminal Procedure Code makes it obligatory on the Court to refer to the statement made to the Police by the witness who is being examined, when requested to do so by the accused, and it is only after such statement has been referred to, that the Court may exercise its discretion in the matter of giving a copy to the accused. It is while the evidence of a witness is in progress, that a copy of his statement to the Police is likely to be of use to the accused in indicating points on which the witness should be questioned, and the whole object of the proviso to section 162 (1) would be defeated, if the Court were at liberty to postpone referring to the statement made by the witness before the Police till after the witness's evidence had been concluded.

After a careful consideration of the case we are of opinion that the evidence against the appellants is entirely unreliable. There is a strong probability that Muhammad Ali and Wazira were not with the deceased at the time of the murder, and that it was not till the next day that they went to the spot after news had reached their village that a man had been found murdered near the road leading to Sargodha. The evidence of Khanun and Rahman has been shown to be unworthy of belief, and Chawi's statement as to the correspondence of the tracks is also shown by the evidence of Tasadduk Husain to be of no value. We accordingly accept the appeal, set aside the convictions and sentences, and acquit the three appellants.

Appeal accepted.

A.I.R. 1921 Lahore 94.

ABDUL QADIR, J.

Muhammad—Accused-Appellant

v.

Emperor—Respondent.

Criminal Appeal No.637 of 1921, decided on 13th November, 1921, from the order of the Addl. S. J., Montgomery, dated 30th June, 1921.

Penal Code, S. 460—"At the time of committing of house breaking by night" means in the course of actual trespass.

The expression "at the time of the committing of house-breaking by night" must be 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. 2 P.R. (Cr.) 1883, Foll. [P. 95, C. 2.]

A party of four people were running away being discovered while breaking into a house by night. The accused was caught while so running and some one of his party inflicted injury on the person arresting the accused, causing his death.

Held, that the accused cannot be convicted under S. 460. [P. 95, C. 2.]

Muhammad Iqbal—for Appellant.

Judgment:—One Muhammad was committed to the Sessions on a charge under section 302, Indian Penal Code, and there was a charge in the alternative under section 460, Indian Penal Code. The Sessions Judge has acquitted him of the graver charge, in agreement with the opinion expressed by the assessors, but has convicted him of an offence under

section 460, Indian Penal Code, and sentenced him to rigorous imprisonment for seven years, including three months' solitary confinement. Against this conviction and sentence he has preferred an appeal through Dr. Muhammad Iqbal, who argues that section 460, Indian Penal Code, is not applicable and that the sentence awarded may be reduced if the conviction is altered to one under any other section. The facts of the case are fully stated in the judgment of the learned Sessions Judge and may be only briefly summarised here.

On the night of the 16th April, 1921, there was a burglary in the village Khajjian where four thieves broke into the house of Phallu by effecting a breach in the wall of his house. He was awakened by a noise and saw three men standing outside the breach and a fourth man just coming out of the hole. The three men ran away when they saw him, but he secured the man whom he had noticed coming out of the breach in the wall. The other three returned to rescue the captured man and succeeded in rescuing him by beating Phallu with sticks. All the four burglars were running away when certain neighbours of Phallu arrived, including Hassu, deceased. Hassu is said to have caught hold of the same man who had been rescued from Phallu, but he received certain injuries of which he died on the spot. The story of the prosecution was that the captured man, who is the present appellant, had an iron implement of house-breaking, called *sandhewa* in his hand when he was caught and he thrust it with both his hands into the ribs of Hassu and thereby caused his death. It was on the basis of this story that Muhammad was charged with the offence of murder. The medical evidence in the case, however, showed that this story was not true. The three injuries caused to the deceased were all contused injuries resulting from blows by a blunt weapon like a *dang* or a *lathi* and the iron implement which had a pointed sharp edge was not found to have been thrust in the manner described by the eye-witnesses. The Court accepted the theory that Hassu must have been beaten by the companions of Muhammad, who could not probably rescue him as a number of villagers arrived. It has not been held that any of the injuries to the deceased was caused by Muhammad and he was therefore acquitted of the charge under section 302, Indian Penal Code.

In convicting him under section 460, Indian Penal Code, the Court observed that—

> "As death was caused in the commission of the house-breaking the accused as one of the gang of thieves is guilty under section 460, Indian Penal Code."

Dr. Muhammad Iqbal's contention is that the offence of house-breaking by night had been completed when Hassu arrived on the scene. The thieves were admittedly running away when Hassu tried to catch one of them and any injury that was caused to him by any companion of Muhammad could not be said to be caused at the time of committing the house-breaking or the house-trespass in question. I think this contention must prevail. It was held by Plowden, J., in a ruling published as *Jaffir* v. *Empress* (1) in a similar case that—

> "Section 460, Indian Penal Code, was not applicable as the expression in that section "at the time of the committing of house-breaking by night" must be 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."

This authority appears to be on all fours with the present case and I hold that the conviction under section 460, Indian Penal Code, is not correct and cannot be maintained.

There remains the question as to what other offence has been committed by the appellant. [His Lordship then proceeded to examine the evidence to find of what other offence the appellant could be convicted and continued.] I think an offence under section 457, Indian Penal Code, is clearly made out against the appellant. The presence of the *sandhewa* on the spot and the breach in the wall leave no doubt as to the intention with which the house-breaking was committed and I think the intention of theft can be very safely presumed. The Court below did not record a finding on that point because it held the offence to be one under section 460, Indian Penal Code. I hold that the appellant is guilty of an offence under section 457, Indian Penal Code, and though he was not charged with that offence, I do not think he can be prejudiced by his conviction being altered

(1) (1882) 2 P.R. 1882 Cr.

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to one under section 457, Indian Penal Code. As it has been held that he was not directly responsibile for the death of Hassu and as constructive responsibility is ruled out by the exclusion of section 460, Indian Penal Code, a reduction of the sentence awarded against him seems to be called for and his sentence is hereby reduced to one of four years' rigorous imprisonment for an offence under section 457, Indian Penal Code. To this extent his appeal is accepted.

Appeal accepted in part.

A.I.R. 1921 Lahore 96 (1).

LE-ROSSIGNOL, J.

Mangal Singh—Plaintiff-Appellant

v.

Atra—Defendant-Respondent.

Second Appeal No. 1396 of 1919, decided on 11th January, 1921, from the decree of the Senior Sub-J., Ferozepore, dated 11th June, 1919.

Registration Act, S. 17 (1) (d)—Lease providing monthly rent—Rent allowed to be paid after consolidation—Lease is still monthly.

A lease of a hut or house for Re. 0-8-0 per mensem with a provision for ejectment if the rent be not paid, and that though the rent is payable monthly, it shall be actually paid at *Nimani* each year; and the first payment of Rs. 6 was to be made some 5 or 6 months after the comencement of the lease, is a lease on monthly terms and does not require registration. [P. 96, Cs. 1 and 2.]

Kanwar Narain—for Appellant.

Sundar Das—for Respondent.

Le-Rossignol, J.:—This was a suit for recovery of rent and possession of the house from the tenant. The Court below has dismissed the suit on the ground that the entry in the plaintiff's *bahi* is a lease from year to year, that it should have been registered and not being registered is inadmissible and also excludes oral evidence.

It may exclude oral evidence of the contract but it does not exclude evidence of plaintiff's title.

However, in my opinion the document which may be treated as a very crude lease did not need registration.

It is a lease of the hut or house for Re. 0-8-0 per mensem with a provision for ejectment if the rent be not paid. There is also a provision that though the rent is payable monthly, it shall be actually paid at *Nimani* each year; the first payment of Rs. 6 was to be made some 5 or 6 months after the commencement of the lease.

I do not think that this stipulation converts the monthly terms into annual terms. The lease was monthly at 8 annas per mensem but Rs. 6 had to be paid each *Nimani*. There was nothing in the lease to prevent plaintiff from ejecting the defendant at the end of any month for which the rent had not been already paid nor from giving him notice of the termination of the lease.

For these reasons I accept the appeal, set aside the Lower Appellate Court's decree and remand for a decision on the merits. Costs to follow final event. Stamp to be refunded.

Appeal accepted. Case remanded.

A.I.R. 1921 Lahore 96 (2).

MARTINEAU, J.

Abdulla—Accused-Petitioner

v.

Emperor—Respondent.

Criminal Revision No. 574 of 1921, decided on 27th June, 1921, from the order of the S.J., Delhi, dated 14th March, 1921.

(a) *Criminal P. C., S. 106—Breach of peace must be an ingredient of the offence itself.*

The words "offence involving a breach of the peace" mean an offence in which a breach of the peace is an ingredient and not merely an offence provoking or likely to lead to breach of the peace. 30 Cal. 366, Rel. on. [P. 97, C. 1.]

(b) *Criminal P. C., S. 106—Conviction under S. 143 or S. 297, I.P.C.—No order under S. 106 can be passed.*

An order cannot be passed under S. 106, Criminal Pro. Code, on a conviction for an offence under S. 143 or S. 297, Penal Code, as that offence does not necessarily involve the use of force. 35 Cal. 315 and 26 Mad. 469, Foll. [P. 97, C. 1.]

Feroz-ud-Din Ahmad—for Petitioner.

Noad—for Respondent.

Martineau, J.:—The facts of the case are briefly as follows. *Khan Bahadur Maulvi* Abdul Ahad died at Delhi on the 2nd December, 1920. Next day his body was taken out for burial in the Mehndi burial ground. Just outside the Turkman Gate, a halt was made for prayers. A hostile crowd then collected, intimidated the burial party, abused them, and threatened them with violence unless the body was taken to the *Jama Masjid* for a

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