

Illustrations: that
there is no jewel in



**ASSIGN
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Illustrations: A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section. A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in the pocket.

A is guilty under this section. A keeps poisoned halua in his house, wishing to kill B whom he invited to a party, and to whom he wishes to give it. Unknown to A, his only son takes the halua and dies. Discuss what offence A has committed.

[Ans. Attempt to murder B not made out as the act does not pass beyond stage of preparation. But A is guilty of criminal negligence under Section 304-A as regards son's death.] Scope of the section: (1) The section applies only to offences under the Indian Penal Code and not to offences under any other law. (2) The section does not apply to offences punishable with death only or fine only.

It applies to all offences punishable with imprisonment for life or imprisonment. All offences in the Code are punishable with imprisonment except (1) murder by life convict (Section 303) which is punishable with death only and offences under Sections 137; 141-156; 171 (G), (H) and (I), 26-A; 278; 283; 290 and 294-A (Second part) which are punishable with fine only. (3) The section does not apply to offences but to attempts to commit them. (4) It applies only to attempts for which there is no express provision

of punishment in the Code. The attempts for which there are express provisions of punishment in the Code are as follows.

This section does not apply to such attempts : Section 121, attempt to wage war against the King; Section 124, attempt wrongfully to restrain the President and other high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful power : Section 125, attempt to wage war against the Government of any Asiatic Power in alliance or at peace with the King; Section 130 attempt to rescue State prisoners or prisoners of war; Section 161, attempt by a public servant to obtain an illegal gratification; Section 162, attempt to obtain a gratification in order, by corrupt or illegal means, to influence a public servant; Section 163, attempt to obtain a gratification for exercising personal influence over a public servant- Section 196, corrupt attempt to use as true evidence known to be false; Sections 198 and 200, corrupt attempt to use as true a certificate or declaration known to be false in a material point; Section 213, attempt to obtain a gratification to screen an offender from punishment; Sections 239 and 240, attempt to induce a person to receive counterfeit coin; Section 241, attempt to induce a person to receive as genuine a counterfeit coin which when the offender took it he did not know it to be counterfeit; Sections 307 and 308, attempt to commit murder and culpable homicide; Section 309, attempt to commit suicide; Sections 385, 387 and 389, attempt to put a person in fear of injury or death or accusation in order to commit extortion; Section 391, conjoint attempt of five or more persons to commit robbery; Sections 393, 394 and 398, attempt to commit robbery; Section 460, attempt by one of many joint house-breakers by night to cause death or

grievous hurt. Principle: The Code of Livingstone was consulted in drafting the Indian Penal Code. The principle of the law as enunciated in the Code of Livingstone is as follows: An attempt is made punishable, because every ‘ attempt’, although it fails of success, must create alarm, which of itself is an injury and the moral guilt of the offender is the same as if he succeeded. Moral guilt must be united to injury in order to justify punishment; or the injury is not as great as if the act had been committed, only half the punishment is awarded”.

What constitutes an “ attempt” is a mixed question of law and fact, depending largely on the circumstances of the particular case. It is difficult to define attempt. According to Stephen (Digest of Criminal Law) “ The offence of attempting to commit a crime may be committed in cases which the offender voluntarily desists from the actual commission of the crime itself”. “ Any overt act immediately connected with the commission of an offence forming part of a series of acts which if not interrupted or frustrated would end in the commission of the actual offence, is, if done with a guilty intent an attempt to commit offence”. (Halsbury’s Laws of England, 3rd edn. 1955). Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some overt act or conduct which may be divided into three stages. The first stage exists, when the culprit first entertains the idea or intention to commit an offence.

In the second stage he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be ‘ criminal’ need not be the penultimate act towards the commission of the offence.

It is sufficient if such act or acts were deliberately done and manifest a clear intention to commit the offence, aimed being reasonably proximate to the commission of the offence. Essentials: (1) There must be an attempt to commit or an attempt to cause an offence to be committed. This section applies in other words to both the attempts to commit an offence and the attempt to abet its commission. (2) An act must be done towards the commission of the offence in such attempt. In the absence of such act, this section shall not apply. In such act lies the essence or the gist of the section.

Mere intention to commit an offence not followed by any act cannot be punished. To quote Lord Mansfield, ' so long as an act rests in bare intention, it is not punishable by our law; but immediately when an act is done, the law judges not only the act done but of the intent with which it is done; and if it is coupled with an unlawful and malicious intent, though the act itself would have otherwise been innocent the intent being criminal, the act becomes criminal and punishable. (3) The attempt must relate only to offence or offences of the kind mentioned in this section.