

is the extent of punishment, which the particular Court before which the cases are tried is competent to inflict. The object of the section is to award a specific punishment; for each particular offence, of which an accused person may be proved guilty, when all the charges against him are tried together, so that in case some one or other of the charges break down on appeal, the amount of punishment to be remitted may be known.

Section 411, Code of Criminal Procedure, lays it down most clearly, that in all cases a sentence of one month's imprisonment passed by a Magistrate exercising full powers, is not appealable, and if it had been the intention of the legislature to circumscribe a Magistrate's powers in this respect, and by lumping together two sentences each within the limit, because they happened to be passed at the same time, to make up one whole sentence, which would be beyond the limit, and therefore appealable, it would, no doubt, have said so. The principle laid down by the Judge would be applicable to cases where an accused person has been punished separately for what are really parts of one and the same offence, and not to cases like the present, where the offences are essentially different, and were committed at different times and places.

We think, therefore, that the Magistrate was right, and that no appeal lay to the Judge. The accused should be re-committed to jail to undergo the remaining portion of his sentence.

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*Before Mr. Justice Lock and Mr. Justice Glover.*

THE QUEEN *v.* JOSEPH MERIAM.\*

*Attempt at Rape—Punishment—Commutation of Sentence—ss. 59, 376, and 511 of the Penal Code (Act XLV. of 1860).*

A. was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for 7 years, which he commuted, under section 59 of the Penal Code, to transportation for the same term. *Held* that, under section 376 and 511 of the Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than 5 years, and such sentence could not be commuted, under section 59, to transportation for a longer term.

J. MERIAM was convicted of an attempt to commit rape. The Judge sentenced him to 7 years' rigorous imprisonment, which

\* Committed by the Magistrate, and tried by the Sessions Judge of Shahabad, on a charge of attempt to commit rape.

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he commuted, under section 59 of the Penal Code, to 7 years' transportation. The prisoner appealed generally against the Judge's decision.

No one appeared for the prisoner.

The judgment of the Court was delivered by

GLOVER, J.—We see no reason to interfere with the finding of the Sessions Judge and Assessors in this case. The evidence clearly proves the prisoner's guilt, and his appeal must be rejected.

But the sentence appears to us illegal. Section 376 of the Penal Code makes the offence of rape punishable with transportation for life, or imprisonment of either description for 10 years, and fine. Attempt at rape (there being no express provision made by the Penal Code for its punishment) would be punishable under section 511, "with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one half of the longest term provided for that offence." Now, had the Sessions Judge sentenced the prisoner under section 511 to transportation, he could, by section 57 of the Code, in calculating the half of the punishment for the substantive offence of rape, have taken that punishment as a sentence of 20 years' transportation, and in that case his present sentence of 7 years would have been less than the half of the full punishment awardable, and would, in consequence, have been legal. But the Sessions Judge has sentenced the prisoner to rigorous imprisonment, commuted, under section 59, to 7 years' transportation, the commutation does not change the nature of the punishment, for there is no such substantive punishment in the Penal Code as transportation for any period short of life; rigorous imprisonment, although afterwards commuted to transportation, is still, in the terms of the Code, rigorous imprisonment; and if this be so, then by section 511, only one half of the maximum rigorous imprisonment awardable under section 376 could be inflicted. The maximum imprisonment for rape is 10 years; and, therefore, the sentence upon the prisoner in this case cannot exceed 5 years' rigorous imprisonment.