

Before Mr. Justice Kemp and Mr. Justice Glover.

THE QUEEN *v.* NAGARDI PARAMANIK.*

S. 411 of Act. XXV. of 1861—*Appeal—Separate offences.*

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June

A. was convicted of offences, under ss. 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. *Held*, that, under s. 411 of Act XXV. of 1861, there was no appeal. The separate sentences could not be taken together, and combined into one sentence, so as to give a right of appeal.

On the 29th February, Nagardi Paramanik was convicted by the Magistrate of Rajshaye, under sections 143 and 447 of the Penal Code, and sentenced to one month's rigorous imprisonment; and to furnish bonds and find securities on release to keep the peace. On the same date, the Magistrate convicted Nagardi, under section 211, of having brought a false counter-charge against the prosecutor in the former case, and sentenced him to another month's rigorous imprisonment. One appeal was admitted by the Judge, from Nagardi Paramanik, against his conviction in both the above cases. The conviction under section 211 was upheld, while that under sections 143 and 447 was reversed. The Magistrate submitted that as the convictions were for perfectly separate offences, the sentences thereon were not capable of being taken together as forming one sentence for the purposes of appeal to the Judge (1). The Judge relying upon an alleged decision of the High Court of the N. W. Provinces (2) was of a different opinion.

Mr. R. T. Allan for the prisoner.

* Reference from the Magistrate of Rajshaye, through the Judge of that district, under section 404, Code of Criminal Procedure.

(1) S. 411 of Act XXV. of 1861.— of a Magistrate shall pass a sentence "In all cases in which a Court of of imprisonment not exceeding one Session or the Magistrate of a district month, or of a fine not exceeding fifty or other officer exercising the powers rupees, no appeal shall be allowed."

(2) No reference given.

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The judgment of the Court was delivered by GLOVER, J.—In this case one Nagardi Paramanik was charged with being a member of an unlawful assembly, and with criminal trespass, under sections 143 and 447 of the Penal Code, and whilst the case against him was pending, he brought a counter-charge of criminal trespass against his accuser.

Both cases were disposed of on the 29th of February 1868. The charges under sections 143 and 447 were held to be proved against Nagardi, whilst his counter-charge was dismissed as false, and he was further convicted of bringing a false complaint under section 211, Penal Code. Nagardi was sentenced in each case to one month's imprisonment, and the question is, whether these two sentences are to be taken as forming one and the same sentence, and as such appealable to the Sessions Judge.

The Magistrate at whose instance this case has been referred to us, under section 404, Code of Criminal Procedure, holds that as the two convictions were of entirely different offences committed on different dates and in different places, the punishments awarded necessarily form separate and distinct sentences, and, being each within the limit of one month, were not appealable.

The Sessions Judge, on the other hand, following a decision of the High Court of the N. W. Provinces, holds, that the two sentences form together one ground of appeal, and being beyond the limit, are appealable to his Court.

The Judge has not referred us to the decision on which he relies, nor have we been able to find it, but we do find one of this Court, dated the 6th August 1866, *The Queen v. Morby Sheikh* (1), in which the contrary principle is distinctly laid down.

In support of the Judge's ruling, it is contended, that the words of section 46 of the Code of Criminal Procedure suppose that any number of different penalties imposed for different offences tried at the same time, make up only one sentence, but there is nothing in the section to bear out such a construction; on the contrary, the Court convicting a prisoner of several offences is bound to sentence such prisoner to the *several* penalties prescribed by law, the one penalty commencing after the expiry of the other, and the only limit (under a certain proviso)

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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