

rent payable in respect of the entire tenure, together with a note that the villages named were exempted from sale under the order of the Commissioner. The judgment-debtor, therefore, cannot reasonably complain of what has been done by the decree-holder. At any rate, as a new sale proclamation is to be issued, we direct that it be drawn up in strict conformity with section 5 of the Bengal Rent Recovery Act, 1865. The rent will not be apportioned; the rent payable annually in respect of the whole tenure will be stated, together with a note that certain specified villages were exempted from sale.

The result is that this appeal fails, and is dismissed with costs.

O. M.

*Appeal dismissed.*

1912  
 MADANMOHAN  
 NATH  
 SAHI DEO  
 v.  
 PRATAP  
 UDAI NATH  
 SAHI DEO.

## CRIMINAL REVISION.

*Before Cox and N. R. Chatterjee JJ.*

AZIZ SHEIKH

v.

EMPEROR.\*

1913  
 March 11.

*Appeal—Concurrent sentences of imprisonment not individually appealable—Aggregate of sentences—Right of appeal—Criminal Procedure Code (Act V of 1898), ss. 35 (3) and 413.*

An accused sentenced to concurrent terms of imprisonment, not one of which is individually appealable, has no right of appeal. Concurrent sentences cannot, for the purposes of appeal, be taken collectively.

*Suknandan Singh v. King-Emperor* (1) approved.

*Abdul Khalek v. King-Emperor* (2) not followed.

\* Criminal Revision, No. 11 of 1913, against the order passed by B. C. Mitter, Sessions Judge of Birbhum, dated Dec. 4, 1912.

(1) (1912) 17 C. L. J. 392.

(2) (1912) 17 C. W. N. 72.

1913

AZIZ SHEIKH  
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The mere admission of an appeal does not preclude the Court from subsequently determining the question whether or not an appeal lies in the case.

THE petitioners were placed on trial before the Sub-divisional Officer of Rampurhat, a Magistrate of the first class, on charges of rioting, hurt and house trespass. Four of them were convicted, on the 23rd September, 1912, under sections 147, 323 and 448 of the Penal Code, and one under sections 147, 323 and 448, but all were sentenced to one month's rigorous imprisonment under each section concurrently, and further bound down to keep the peace. They thereupon preferred an appeal to the Sessions Judge of Birbhum, who admitted the same, sent for the records and released them on bail. The appeal came on for hearing before the Additional Sessions Judge, and he, by his order dated the 11th November, 1912, held that no appeal lay, but left the final determination of the question to the Sessions Judge. The latter, considering the judgment of the Additional Sessions Judge to be final, refused to hear the appeal. The petitioners thereupon moved the High Court and obtained the present Rule.

*Babu Surendra Nath Ghosal*, for the petitioners. The accused were convicted under three sections, and sentenced under each to one month's rigorous imprisonment. The aggregate sentence is, therefore, one of three months. Refers to section 35 (3) of the Criminal Procedure Code and *Abdul Khalek v. King-Emperor* (1). At any rate the appeal was admitted by the Sessions Judge, and it was incumbent on the Additional Judge to hear it on the merits.

No one appeared to shew cause.

COXE AND N. R. CHATTERJEA JJ. In this case the petitioners were sentenced to rigorous imprisonment for one month under section 323 (or, in the case of Muhir Sheik, under section 323 read with section 114), to rigorous imprisonment for one month under section 448, and to rigorous imprisonment for one month under section 147. All these sentences were concurrent. They appealed, and the Sessions Judge passed the following order: "Admit. Send for the records. Issue notices. Bail allowed Rs. 100 each. Fix 5th October." Then, during the vacation, the Vacation Judge heard the appeal and expressed himself as follows: "It appears to me, therefore, that no appeal lies. As, however, the appeal was admitted by the Sessions Judge, I do not pass final orders. I do not know whether the appeal was admitted on a different view of the law, or by reason of the fact of the sentences being concurrent not being brought to the notice of the Judge. I, therefore, leave the case to be disposed of by him." On his return the Sessions Judge passed the following order: "The judgment of the Additional Sessions Judge, so far as I am concerned, must be taken as final, in spite of his saying that it is left to me."

1913

AZIZ SHEIKH  
".  
EMPEROR.

It is argued that as the appeal was once admitted, it could not subsequently be held that no appeal lay. We cannot accept this contention. Even if there were any provision in the Criminal Procedure Code for admitting appeals, the mere fact of admission would not preclude the Court from dealing subsequently with the question whether an appeal lay.

The only question that really arises for determination is whether an accused, who has been sentenced to concurrent terms of imprisonment, not one of which is individually appealable, has a right of appeal against them collectively. It was held in *Abdul*

1913  
 AZIZ SHEIKH  
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*Khalek v. King-Emperor* (1) that he has. We are unable to accept this view. The learned Judges observe that under the rulings of this Court concurrent sentences, for the purpose of appeal, must be taken in the aggregate. We cannot trace these rulings, and in our opinion the aggregate of three concurrent equal sentences is the same thing as each of the sentences. In other words, if a man is sentenced three times over to be imprisoned for the month of March, 1913, the aggregate of his sentences is one month. From sub-section (2) of the section it would seem that it is only in the case of consecutive sentences that the question of aggregate punishment can be said to arise. We are not, therefore, prepared to follow the decision in *Abdul Khalek v. King-Emperor* (1), but we do not think that the matter need be referred to a Full Bench, as one of the learned Judges who decided it seems to have changed his opinion: vide *Suknandan Singh v. King-Emperor* (2).

We think, therefore, that no appeal lay to the Sessions Judge, and the Rule accordingly fails and is discharged.

E. H. M.

*Rule discharged.*

(1) (1912) 17 C. W. N. 72.

(2) (1912) 17 C. L. J. 392.