

(1868) 06 CAL CK 0023
In the Calcutta High Court

The Queen

APPELLANT

Vs

Joseph Meriam

RESPONDENT

Date of Decision : 06-06-1868

Acts Referred:

Citation : (1868) 06 CAL CK 0023

Judgement

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 u/s 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 u/s 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, u/s 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 u/s 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.

1[Sec. 59:--In every case in which an offender, is punishable with imprisonment

for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.]

In what cases transportation may be awarded instead of imprisonment.

2[Sec. 511:--Whoever attempts to commit an offence punishable by this Code with" transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for, the punishment of such attempt, be punished for 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, or with such fine as is provided for the offence, or with both.

Illustrations-

(a) A. makes an attempt to steal some jewels 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.

(b) 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 his pocket, A. is guilty under this Section].