

Emperor Vs. Bechar Shiva

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Court : Mumbai

Decided On : Jan-06-1931

Reported in : (1931)33BOMLR338

Judge : John Beaumont, Kt., C.J. and ;Murphy, J.

Appeal No. : Criminal Appeal No. 513 of 1930

Appellant : Emperor

Respondent : Bechar Shiva

Judgement :

John Beaumont, C.J.

1. In this ease four accused were charged with committing an offence under Sections 457 and 380 of the Indian Penal Code. The accused Nos. 1, 3 and 4 were each sentenced to suffer two years' rigorous imprisonment, and accused No. 2, who was a member of a criminal tribe, was sentenced to five years' rigorous imprisonment by reason of the provisions of Section 23 of the Criminal Tribes Act, 1924. It appeared that accused No. 2 had a previous conviction against him under Section 392 of the Indian Penal Code passed in the year 1914, The learned Sessions Judge said that having regard to the length of time which had expired since the previous conviction he considered that he would be justified in passing a lesser sentence on accused No. 2 than the seven years provided for under Section 23(1)(a) of the Criminal Tribes Act. We sent for the record and

proceedings and directed notice to be issued to the Government Pleader because it seemed to us that there was something illogical in the learned Judge's judgment. Under Section 23 of the Criminal Tribes Act, in the absence of any special reasons to the contrary, which must be stated in the judgment of the Court, the sentence must be seven years. If the length of time which has elapsed since the last conviction can be relied on as constituting a special reason taking the case out of the section, then, as it seemed to us, the five years sentence on accused No. 2, as against the two years passed on the other accused, was too long a sentence.

2. In my view, the fact that an accused person has been for a long period without any conviction, and, therefore, so far as is known, living an upright life, is a special circumstance which can be taken into account as taking the case out of the provisions of Section 23. At first sight the proviso to that section which provides--

that not more than one of any such convictions which may have occurred before the first day of March, 1911, shall be taken into account for the purposes of this Sub-section

looks rather as though the length of period which has elapsed since the last conviction is not to be taken into account, the only relevant date being March 1, 1911. But, I think, the proviso does not have that effect. March 1, 1911, was the date on which the original Act came into force, and, I think, the proviso is only directed to ruling out of account more than one conviction before the Act came into force. I think that the proviso was not directed to the length of time which has elapsed since the previous conviction and was not intended to prevent that fact being considered a special reason. If that had been the intention of the proviso, it would probably have provided that convictions occurring more than a certain number of years ago were not to be taken into account instead of taking a fixed date which must recede further into the past as time goes on. This view seems to me to be in accordance with the view of Mr. Justice Shah in *Emperor v. Tuka Nana* 1920 23 BOM. L.R. 347. I think, therefore, that the learned Judge was justified in not passing a sentence of seven years. But, in my view, the sentence he did pass was rather too severe, and I think the sentence on accused No. 2 should be reduced to three years' rigorous imprisonment. In that way he gets one

year for being a member of the criminal tribe.

Murphy, J.

3. I agree that a long period of good behavior so far as this can be inferred from an absence of intermediate convictions, may be a special reason under Section 23 of the Criminal Tribes Act, and that in such cases the minimum sentence provided by the section need not be passed; and also with the order proposed to be made in this case.

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