

Bechar Shiva Vs. Emperor

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Court : Mumbai

Decided On : Jan-06-1931

Reported in : 131Ind.Cas.478

Judge : J.W.F. Beaumont, C.J. and ;Murphy, JJ.

Appellant : Bechar Shiva

Respondent : Emperor

Judgement :

Beaumont, C.J.

1. In this case four accused were charged with committing an offence under Sections 457 and 380, Indian Penal Code. Accused Nos. 1, 3 and 4 were each sentenced to suffer two years' rigorous imprisonment, and accused No. 2, who was member of a criminal tribe, was sentenced to five years' rigorous imprisonment, by reason of the provisions of Section 23, Criminal Tribes Act of 1924. It appeared that accused No. 2 had a previous conviction against him under Section 392, 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 con-viction he considered that he would be justi-fied in passing a lesser sentence on accused No. 2 than the seven years provided for under Section 23 (1) (a), 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, 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 for 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 1st 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 1st March, 1911. But, I think, the proviso does not have that effect. First March, 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 Shah, J., in *Emperor v. Tuka Nana* 60 Ind. Cas. 1005 : A.I.R. 1921 Bom. 68 : 22 Cr. 317 : 45 B. 1082 : 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 tribes.

3. Murphy, J.--I agree that a long period of good behaviour so far as this can be inferred from an absence of intermediate convictions, may be a special reason under Section 23, 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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