SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Harjan Vs. Emperor

Harjan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/458926

Court : Allahabad

Decided On : Mar-22-1928

Reported in : AIR1928All551

Appellant : Harjan

Respondent : Emperor

Judgement :

Sulaiman, J.

1. The accused was charged with the offence under Section 457, I.P.C., read with Section 23, Criminal Tribes Act. There can be no doubt as to the facts. They are proved by the direct evidence of no less than four witnesses. The complainant, while sleeping inside his house at night heard a noise and woke up. He noticed a thief lifting paddy tied in a cloth on his head, which had been kept in the house. The complainant at once got up and captured the thief and shouted for help. On this, three of his neighbours came in and secured the thief. It was the accused himself who was recognized by the villagers. A report to the police was duly made and the accused with the bundle of paddy was handed over to the Sub-Inspector who immediately took him under arrest. All the four assessors who heard the evidence unanimously agreed that the case was fully proved. There can be no manner of doubt as to the propriety of the conviction.

2. The accused is admittedly a registered member of criminal tribe. In October 1925, the accused was first convicted under Section 457, I.P.C. and sentenced to fifteen stripes. In April 1926 he was again convicted under Section 456 read with Section 75, I.P.C., and sentenced to eighteen months' rigorous imprisonment. This time he is again found guilty of an offence under Section 457, I.P.C. There can be no doubt that Section 23, Criminal Tribes Act, is applicable.

3. The learned Sessions Judge, however, treats the present conviction not as a third conviction making the accused punishable with transportation for life but as a second conviction. His reason is as follows:

But as there was no second conviction under Section 23, Criminal Tribes Act, this should be considered for the purpose of Section 23 his second conviction.

4. In my opinion the learned Judge is in error. In the first place, Section 23 does not lay down any substantive offence and it is therefore inaccurate to speak of a conviction under that section. All that it provides is minimum sentences in certain contingencies unless there are special reasons to the contrary. In the second place this section does not require that the two previous convictions should have been convictions 'under Section 23. Criminal Tribes Act.' It only requires that the member of a criminal tribe should have been previously convicted of any of the offences in the Indian Penal Code specified in Schedule 1, of the Act and should be again convicted of the same or of any other such offence. In my judgment therefore the present conviction of the accused is a third conviction and not merely a second conviction even though the accused was not given an enhanced punishment under this section on the last occasion.

5. It now remains to consider whether there are any special reasons for not imposing the minimum punishment of transportation for life.

6. The first conviction was of an offence apparently not of a very serious nature and the accused was not sentenced to any term of imprisonment. On the second conviction he got rigorous imprisonment for 18 months though he might have got seven years. In the present case the subject-matter of the theft was only a bundle of paddy though the offence was serious inasmuch as there was an entry into the

house at night. The learned Sessions Judge has thought that a sentence of seven years' rigorous imprisonment would meet the ends of justice. In view of these circumstances I have come to the conclusion, with some reluctance that a notice for an enhancement of the sentence on the revisional side is not called for. I would therefore, content myself with dismissing the appeal summarily.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com