

Emperor Vs. Chittira

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Court : Allahabad

Decided On : Jul-29-1932

Reported in : AIR1933All115

Appellant : Emperor

Respondent : Chittira

Judgement :

Pullan, J.

1. Chatra, who is a registered member of a criminal tribe, has been convicted of an offence under Section 454, I.P.C. read with Section 23, Criminal Tribes Act, and has been sentenced to transportation for life. The facts of the case are clearly proved. This Chatra entered a house through the roof in the daytime and stole a 'hansli' and some money. The owner of the house returned in time and he was arrested with the 'hansli' and the money in his possession. There is therefore no question as to his guilt.

2. The sentence of transportation has been inflicted because in the opinion of the learned Sessions Judge, there was no alternative sentence under Section 23, Criminal Tribes Act. Section 23, Criminal Tribes Act, lays down that a member of a criminal tribe who having been convicted of any of the offences under the Penal Code specified in Schedule 1, is convicted of the same, or of any other such offence, shall, on a second conviction, be sentenced to not less than seven years'

rigorous imprisonment and, on a third conviction, to transportation for life. Section 454, I.P.C. under which the appellant has been convicted, is not included in Schedule 1, Criminal Tribes Act. The! previous convictions of this person were one under Section 454 and two under Section 457. Section 457 is included in Schedule 1. Thus, had the present conviction been one under Section 457, the Judge would have been right in sentencing this man to transportation for life. But in our opinion, Section 23 refers only to convictions for offences specified in Schedule 1. It has no application to a conviction for an offence which is not contained in Schedule 1. The Judge says that this is 'an offence similar in nature to the one of which he has been convicted twice before.' But these are not the words of the section. The words are 'the same or any other such offence,' and 'any other such offence' means one of those offences mentioned in the schedule. Thus Section 23, Criminal Tribes Act, does not apply to this case, and the applicant can only be punished as an old offender, who has been twice convicted under Section 457, Penal Code, and once under Section 454, I.P.C. We accordingly alter the conviction to one under Section 454 read with Section 75, Penal Code, and reduce the sentence from transportation for life to seven years' rigorous imprisonment.

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