

Bhagwana Vs. Emperor

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Court : Allahabad

Decided On : Apr-03-1918

Reported in : AIR1918All130; 45Ind.Cas.513

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Bhagwana

Respondent : Emperor

Judgement :

1. The accused has been convicted under Section 457 of the Indian Penal Code read with Section 23 of the Criminal Tribes Act. The accused beyond all question belongs to a criminal tribe. He has been twice previously convicted of dacoity. From the evidence on the record there can be no doubt that the accused in the present case entered a dwelling-house and proceeded to steal clothes and utensils belonging to certain students. He removed some of the articles preparatory to taking them away, but before he actually got away the alarm was given and he was caught. The learned Sessions Judge was of opinion that under Section 23 of the Criminal Tribes Act he had no option except to sentence the accused to transportation for life. Mr. Sinha on behalf of the accused argues that on the facts proved the accused was not guilty of an offence punishable under Section 457. He contends that on the assumption that the accused is guilty at all, he is only guilty under Section 380. Section 380 is not one of the sections referred to in Section 23 of the schedule attached to the Criminal Tribes Act. Section 457

provides that whoever commits 'lurking house-trespass by night' or 'house-breaking by night,' has committed an offence under that section.

2. Lurking house-trespass is committed when a person enters premises of the nature described in Section 442 having taken precautions to conceal such house-trespass in the manner mentioned in Section 443. There does not appear to be any evidence that the accused in the present case took any such precautions. The evidence is that he was found by one of the students who was awakened by the noise in removing the articles. House-breaking is defined by Section 445. There does not appear to be any evidence that the accused effected his entrance into the house in any of the six ways mentioned in the section. On the other hand it is quite consistent with the evidence that he found the door open, walked into the house, went upstairs to where the students were sleeping, and commenced to steal. We think under these circumstances the accused could not be properly convicted under Section 457, and that his conviction ought to have been under Section 380 and therefore the Sessions Judge was not bound to sentence the accused to transportation for life.

3. The accused is evidently a dangerous man. We have already mentioned that he has been twice previously convicted for dacoity. We alter the conviction from a conviction under Section 457 read with Section 23 of the Criminal Tribes Act to conviction under Section 380 read with Section 75 and we reduce the sentence from a sentence of transportation for life to a sentence of ten years' rigorous imprisonment with effect from the date of his original conviction.