

In Re: Sellamani

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SooperKanoon Citation : sooperkanoon.com/778390

Court : Chennai

Decided On : Mar-15-1916

Reported in : 33Ind.Cas.629; (1917)32MLJ212

Appellant : In Re: Sellamani

Judgement :

1. The conviction is by a Jury and there is no misdirection.

2. As regards sentence we observe that the case appears to fall under Clause (a) and not under Clause (b) of Section 23(1) of the Criminal Tribes Act 1911. Accused's last conviction was in 1907 so that his present conviction is his first after the enactment of Act 3 of 1911 and the notification of his tribe as a Criminal Tribe. Section 23(1) is not altogether easy of interpretation; but we think that the phrase second conviction has reference to the words in) the sentence 'is hereafter convicted' and not to the earlier; words 'having been convicted' as the Sessions Judge has read them. The section will thus read, 'whoever, having been convicted, is hereafter convicted, shall on a second conviction be punished, with imprisonment for a term of not less than seven years'; and we must take the words 'second conviction' to signify a first conviction for a scheduled offence after the coming into force of the Act following upon either one or many convictions of scheduled offences prior to the act; and a third conviction of Clause (b); to signify a second conviction so following.

3. The construction put on the words by the Sessions Judge would entail a sentence of transportation for life on a member who had prior to the notification been twice convicted, for the first offence committed by him after the act. We cannot think that the legislature intended such a drastic provision. We notice a third alternative reading namely that on a second conviction means second after the notification but we think that this cannot be accepted. The legislature could not have intended to omit reference to the case of a first conviction after the notification. If it had wished that no special punishment should be attached to such a conviction it would have used some such words as shall on such conviction be punished with the punishment provided by the Penal Code but on the next conviction etc. It is also extremely improbable that the legislature would have intended to omit such fresh convictions from the mischief of the act.

4. On the view we have taken the Sessions Judge was not bound as regards sentence by the limitations imposed by Clause (b) and should have dealt with it under Clause (a) and on the merits of the case we think the ends of justice will be met by a sentence of ten years rigorous imprisonment to which the sentence is hereby commuted, the conviction being affirmed.