

Rajbir

Vs

State of Haryana

Criminal Appeal No. 449 of 1985.

(D. A. Desai, Ranganath Misra JJ)

01.05.1985

ORDER

1. Four persons were convicted under Section 304, Part II and Section 323, both read with Section 34 of the Indian Penal Code ('Code' for short), by the Sessions Judge, Bhiwani. They appealed to the High Court and the conviction of all except Surajbhan under Section 304, Part II was set aside but the conviction under Section 323 of the Code along with the sentence was maintained.
2. The separate application for special leave by Surajbhan was rejected by this Court. Similarly, the prayer for special leave so far as Ramchander and Jai Bhagwan are concerned, was also refused and notice was issued in respect of Rajbir's application confined to the question of extending the benefit of the Probation of Offenders Act to him.
3. Heard Mr. Malhotra for the accused Rajbir and Mr. Gujaral for the State of Haryana. Special leave is granted.
4. From the judgment of the High Court it appears that though the sentence imposed for the offence under Section 323 of the Code was six months, the appellant and the co-accused had already suffered over one year's imprisonment. Ordinarily, in a situation as here, there would be no need to interfere. Learned counsel for the appellant has, however, pressed the appeal as the appellant is in Government service and if the conviction and sentence are maintained, he would lose his service. Both the parties to the assault were close relations. There is no material on the record to indicate that the appellant had any previous conviction. In the absence of such evidence, we treat the appellant as a first offender. He is entitled to be admitted to the benefits of probation under Section 3 of the Probation of Offenders Act, 1985, taking into consideration the circumstances of the case, the nature of the offence and the character of the appellant. While maintaining his conviction we direct that he shall be released on probation of good conduct under Section 4 of the Act. The Chief Judicial Magistrate, Bhiwani, before whom the appellant is directed to appear within four weeks from today shall release him after due admonition. We do not consider it necessary to direct him to enter into a bond in the facts of the case.
5. We are of the view that in the peculiar facts of the case, the conviction should not affect his service.

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