

B. S. Narayanan

Vs

State of A. P.

Criminal Appeal No. 207 of 1978

(M. M. Dutt, G. L. Oza JJ)

23.01.1987

ORDER

1. This appeal by special leave has been filed by the appellant against his conviction under Section 204 read with Section 34 and Section 353 IPC. Initially at the trial there were seven accused persons out of them accused 2 to 4 were convicted for an offence under Section 204 IPC whereas this appellant and the rest were convicted for an offence under Section 204 read with Section 34 IPC. All the accused persons also were convicted under Section 353 IPC. After appeal and revision to the High Court all others have been acquitted and the only person who remained was the present appellant who was convicted under Section 204 read with Section 34 IPC and Section 353 IPC and was sentenced to underage imprisonment for one year and six months respectively for the two offences.

2. The only question before us which was raised is that the accused who were convicted for the substantive offence under Section 204 IPC having been acquitted the conviction of the appellant with the aid of Section 34 IPC could not be sustained. Even on facts as they emerged from evidence the only part in respect of an offence under Section 204 which was attributed to the appellant was that he was present on the scene of occurrence. Apart from it, admittedly accused 2 to 4 who were convicted for their acts constituting an offence under Section 204 have been acquitted as the learned courts came to the conclusion that it is doubtful as to whether they committed any act which constitute an offence under Section 204 IPC and therefore as they have been acquitted of the substantive offence it will not be possible for this Court to sustain the conviction of the appellant under Section 204 read with Section 34 IPC.

3. As regards his conviction under Section 353 IPC he was awarded a sentence of six months and the learned counsel informs that he may have remained in custody for about two months during this period. The incident is of 1975 and the appellant is a bus conductor who may lose his job as well. Looking at all the circumstances in our opinion it is a fit case for giving him the benefit of Probation of Offenders Act on his furnishing a bond of good behaviour for one year with one surety to the satisfaction of Judicial Magistrate First Class, Chennur. Consequently, the appeal is partly allowed, conviction of the appellant under Section 204/34 IPC is set aside, his conviction under Section 353 IPC is maintained but he is released on his furnishing a bond of good behaviour for one year with one surety to the satisfaction of the Judicial Magistrate First Class, Chennur under Probation of Offenders Act.

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