

SUPREME COURT OF INDIA**Before: Justices B.V. Nagarathna & Augustine George Masih****Date of Decision: 9th February 2024**

SPECIAL LEAVE PETITION (CRL.) NO. 3685 OF 2017

MOTIRAM PANDURANG LATHAD ...APPELLANT**VERSUS****THE STATE OF MAHARASHTRA ...RESPONDENT****Legislation:**

Indian Penal Code (IPC) - Sections 302, 304 Part II

Subject: Consideration of conversion of the offence from Section 302 to Section 304 Part II of IPC in a case where the appellant was accused of murder following a fight, but where the incident was characterized by an absence of intention to kill.

Headnotes:

Conversion from Section 302 to Section 304 Part II IPC – Appellant's sentence modified – Special Leave Petition partly allowed – The Supreme Court, after examining the details of the case, finds merit in the argument that the appellant's action leading to the death of the deceased was without intent to kill. The Court alters the conviction from Section 302 (Murder) to Section 304 Part II (Culpable Homicide not amounting to Murder) of the IPC. Acknowledging the appellant's 14 years of imprisonment excluding remission, the Court orders his immediate release, as he has served more than the maximum punishment for the modified offence. The appeal is thus partially allowed. [Paras 2, 6-9]

Intention in Commission of Offense – Analysis – The Supreme Court notes the lack of intention on the part of the appellant to commit murder. The incident resulted from a fight where the deceased intervened, leading to his unintentional death. This observation forms the basis for converting the offence from Section 302 to Section 304 Part II IPC. [Paras 3, 6]

Period of Custody Considered – The Court takes into account the period already served by the appellant in custody (14 years excluding remission),

which surpasses the maximum sentence under Section 304 Part II IPC, leading to the decision for immediate release. [Para 8]

Decision – Immediate Release of Appellant – The Court directs the immediate release of the appellant from Amaravati Central Prison, contingent on his non-involvement in any other offence. [Para 9]

Referred Cases: None.

Representing Advocates:

For Petitioner(s): Mr. Rishi Malhotra, AOR

For Respondent(s): Ms. Yugandhara Pawar Jha, Adv., Mr. Siddharth Dharmadhikari, Adv., Mr. Aaditya Aniruddha Pande, AOR, Mr. Bharat Bagla, Adv., Mr. Sourav Singh, Adv., Mr. Aditya Krishna, Adv., Ms. Raavi Sharma, Adv.

ORDER

1. Leave granted.

2. By Order dated 21.04.2017, while issuing notice, this Court categorically stated that notice was being issued on the limited question whether the offence committed by the appellant herein could be treated to have been covered under Section 304 Part II of the Indian Penal Code (IPC) instead of Section 302 IPC.

3. Learned counsel for the appellant-accused submitted that there was no intention whatsoever on the part of the appellant to commit murder of the deceased; that there was a fight which ensued between the accused and the PW-3 and the deceased by chance intervened in the fight so as to make peace between them but the deceased was injured, no doubt, at the instance of the appellant/accused, who later scummed to his injuries.

4. He submitted that there was no intention whatsoever on the part of the appellant herein to cause any injury much less to kill the deceased and therefore, this Court had issued notice for conversion of the offence as well as the sentence and this is a fit case where the appellant ought to be released

having regard to the fact that he has already spent 21 years 09 months and 07 days in custody including the remission as per Imprisonment Certificate dated 04.01.2024.

5. Learned counsel for the respondent/State however, objected to any mercy being shown to the appellant herein and restricting the sentence to the period already undergone in terms of Section 304 Part I or part II. She submitted that the concurrent findings as well as the sentence of life imprisonment would not call for any interference in this appeal.

6. However, we find that having regard to the fact that the offence and the death of the deceased occurred on account of his chance intervention in the fight between the accused and PW-3. We do not think that there was any intention on the part of the accused to cause the offence as against the deceased.

7. Therefore, we find that the appellant must be given the benefit of conversion of the offence from 302 to 304 Part II, since he has already in custody for over 14 years excluding the period of remission and insofar as 304 Part II is concerned, the maximum punishment is only 10 years or with fine or with both. We thus find that this is a fit case where the appellant must be given the benefit of the said conversion of the offence. Hence, we convert the conviction from Section 302 to Section 304 Part II, IPC.

8. Since, he has already undergone 14 years without remission, he must also be given the benefit of immediate release.

9. In the circumstances, we allow the appeal in part and direct the appellant to be released from Amaravati Central Prison, if he is not required in any other offence.

10. The present Appeal is allowed in part in the aforesaid terms.

Appeal allowed.

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