

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1200/2014

ANIL MARATHI

APPELLANT(S)

VERSUS

THE STATE OF CHHATTISGARH

RESPONDENT(S)

O R D E R

1. Heard the learned *Amicus Curiae* appearing for the appellant and the learned counsel appearing for the respondent/State.

2. The appellant was convicted for committing an offence of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short, the "IPC"). Apart from the appellant, there were other co-accused and, therefore, Section 302 read with Section 34 of the IPC was applied. The cases of the co-accused were not tried by the Sessions Court as they were juvenile at the relevant time.

3. According to the prosecution's case, the incident is of 2nd November, 2005. At about 6:00 p.m., the appellant/accused was riding a motorcycle. The deceased was admittedly drunk and was dashed by the motorcycle driven by the appellant. That led to an altercation. At that time, the appellant, who was 20 years old, called his friends (co-accused). The allegation is that during the course of altercation, the appellant and the co-accused hit the deceased with sticks, kicks and fists. The deceased succumbed to injuries five days after the incident.

4. Out of the eyewitnesses, PW-2, PW-3, PW-6 and PW-7 supported the prosecution. The Trial Court convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo life imprisonment. By the impugned judgment, the High Court has confirmed the same.

5. With the assistance of the learned *Amicus Curiae* appearing for the appellant and the learned counsel appearing for the respondent/State, we have perused the notes of evidence of all the material prosecution witnesses. Taking the prosecution's case as correct, we find that *Exception 4* to Section 300 of the IPC will apply to the present case.

6. As stated earlier, the appellant was only 20 years old. From the evidence, it appears that after the appellant gave a dash to the deceased when he was riding the motorcycle, an attempt was made by the deceased to apologise. While the appellant was plying the motorcycle, the deceased, who was admittedly drunk, came in the way. There was a flare-up and the appellant, who was only 20 years old, naturally called his friends, who were co-accused, and that is how the altercation started. As the witnesses have described, mainly the assault was by kicks and fists. Therefore, this is a case where there was absolutely no premeditation. The appellant and the co-accused engaged in a sudden fight with the deceased in the heat of passion created by the act of the deceased, who was drunk, coming in the way of the appellant while he was riding the

motorcycle. It cannot be said that the appellant has taken an undue advantage or has acted in a cruel or an unusual manner.

7. As *Exception 4* to Section 300 of the IPC will apply, the conviction of the appellant under Section 302 of the IPC will have to be brought down to the second part of Section 304 of the IPC.

8. Before the appellant was released on bail, he had undergone sentence for a period of about 08 years and 10 months. As narrated above, on the date of the incident which took place about 19 years back, the age of the appellant was only 20 years. Considering the age of the appellant at the time of the incident and the surrounding circumstances, in our view, sentence of 08 years and 10 months which the appellant has already undergone, will be an adequate sentence. To that extent, the Appeal will have to be partly allowed. While we do so, we make it clear that we have examined the role of the appellant only and nothing stated in this order shall be considered as an adjudication on the role played by the co-accused.

9. Accordingly, the impugned judgments and orders are modified. The conviction of the appellant for the offence punishable under Section 302 of the IPC is converted into the conviction for the offence punishable under the second part of Section 304 of the IPC. The appellant is let off on the sentence which he has already undergone. The Appeal is, accordingly, partly allowed.

10. The Appellant is on bail. Therefore, his bail bonds stands cancelled.

.....J.
(ABHAY S. OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;
NOVEMBER 13, 2024.**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCRIMINAL APPEAL NO.1200/2014

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APPELLANT(S)

VERSUS

THE STATE OF CHHATTISGARH

RESPONDENT(S)

(MR. JAYESH GAURAV, AS AMICUS CURIAE ON BEHALF OF SOLE APPELLANT)

Date : 13-11-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) Mr. Jayesh Gaurav, AOR (A.C.)

For Respondent(s) Mr. Prashant Singh, AOR
Mrs. Prerna Dhall, Adv.
Mr. Piyush Yadav, Adv.
Ms. Akanksha Singh, Adv.UPON hearing the counsel the Court made the following
O R D E RThe Appeal is partly allowed in terms of the signed order.
The operative portion of the order reads thus:

"9. Accordingly, the impugned judgments and orders are modified. The conviction of the appellant for the offence punishable under Section 302 of the IPC is converted into the conviction for the offence punishable under the second part of Section 304 of the IPC. The appellant is let off on the sentence which he has already undergone. The Appeal is, accordingly, partly allowed.

11. 10. The Appellant is on bail. Therefore, his bail bonds stands cancelled."

Pending application(s), if any, shall stand disposed of accordingly.

(ASHISH KONDLE)
COURT MASTER (SH)(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]