



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

JAIL APPEAL No. – 589 of 2021

Jag Prasad Yadav @ Jaggu

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Petitioner(s) : Jail Appeal, Girish Kumar Dwivedi,
Shreesh Kumar Mishra Atal
Counsel for Respondent(s) : G.A.

Court No. -10

**Reserved on 18.03.2026
Delivered on 27.05.2026
AFR**

**HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.**

(Per : Rajnish Kumar, J.)

- (1) The instant jail appeal has been preferred by convict/appellant, **Jag Prasad Yadav alias Jaggu**, assailing the judgment and order dated 19.04.2019 passed by Special Judge (S.C./S.T. Act), Faizabad, in Sessions Trial No. 171 of 2015 (Computer Registration No. 792 of 2015); *State Versus Jag Prasad Yadav alias Jaggu*, emanating from Case Crime No. 102 of 2015, under Sections 302, 307, 323 of the Indian Penal Code, 1860 (here-in-after referred to as “*I.P.C.*”) and Section 3(ii)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (here-in-after referred to as “*SC/ST Act*”), Police Station Kumarganj, District Faizabad.

- (2) The case of the prosecution, in short, is that complainant, Ramlautan son of Suraju, resident of village Sakir Pithala, Police Station Kumarganj, district Faizabad, had submitted a written complaint at police station Kumarganj, district Faizabad on 22.04.2015, alleging therein that on 22.04.2015, a wedding procession (बारात) had come to his village. In that procession, a person from his village, Jaggu alias Jagprasad Yadav son of late Ram Naval Yadav, had torn to shreds the motorcycle etc. and when the wedding party chased him from there, he (Jaggu alias Jagprasad Yadav) went to the door of Suraju of his village and picked up a boy, Shagun, aged 3½ years and a girl aged 1 year, lying on a cot at the door, who had come to their maternal home and thrown them into a nearby well at about 11:00 in the night. Upon hearing the children crying, nearby villagers took them out of the well and rushed them to Kumarganj hospital, where the doctor declared Shagun dead, while the girl survived. The dead body is lying on the road in front of the doctor. The boy Shagun is of Scheduled Caste community and the aforesaid Jaggu is of non-Scheduled Caste community. Information is being given, the appropriate action may be taken.
- (3) On the basis of the aforesaid report, F.I.R., bearing No.102 of 2015, under Sections 302 I.P.C. and Section 3 (2) (v) of the S.C./S.T. Act was registered at police station Kumarganj, Faizabad on 23.04.2016 at 00:10 hours.
- (4) The investigation of the case was conducted by Circle Officer Navin Kumar Nayak. He, after getting copy of F.I.R., recording of the evidence of complainant and scribe of the F.I.R., reached the place of occurrence and prepared the site plan. Thereafter, S.I. Ram Bachan Ram had prepared the inquest report of the dead body of deceased Shagun. He, after collecting all the papers, sent

the dead body of Shagun for post-mortem. He also sent mother of deceased, namely, Rekha wife of Dharamraj for medical examination.

- (5) The post-mortem of the dead body of the deceased Shagun was conducted on 23.04.2015 at 03:05 P.M. at District Hospital, Faizabad by Dr. Gulrez Ahmad. On external examination, he found that height of the deceased was 81 C.M.; her body was well-built; her eyes and mouth were semi open; rigor mortis was present; and there was no visible injury on the body of the deceased. On internal examination, blackish layer seen in upper part trachea and in larynx over mucosa; left and right chamber of heart full; there was no smell from the stomach; stomach wall was normal and containing 50 ml black coloured material; in small intestine, normal pasty material with gasses fecal material with gasses in large intestine; gall bladder half full. As per his opinion, cause of death could not be ascertained, hence viscera was preserved and handed over to concerned constable.
- (6) The medical examination of the injured Rekha was conducted by Dr. Arun Kumar at Community Health Centre, Milkipur, Faizabad on 23.04.2015 at 12:05 P.M. In the medical report, following injuriers were found :-
1. Contused swelling 5 cm x 4 cm on dorsal aspect of Rt. foot just below Rt. ankle joint. Red in colour. X-ray advice.
 2. Contusion 6 cm x 3 cm on outer aspect of Rt. leg 11 cm below Rt. knee. Red in colour.
 3. Complaint of headache.

As per his opinion, duration of injuries was within 24 hours; all the injuries were caused by hard and blunt object and simple in nature except injury no.1, which was referred to District Hospital Faizabad for x-ray.

- (7) On reference, x-ray of the right foot was conducted at District Hospital, Faizabad by Dr. Gulrez Ahmad on 23.04.2015. No fracture was found.
- (8) The Investigating Officer C.O. Navin Kumar Nayak, after collecting material evidence, had forwarded charge-sheet against the accused, Jaggu alias Jag Prasad Yadav under Sections 302, 323, 307 I.P.C. and Section 3 (2) (v) of S.C./S.T. Act on 06.05.2015.
- (9) The Chief Judicial Magistrate, Faizabad took cognizance of the aforesaid charge-sheet and committed the case to the Court of Sessions by means of order dated 14.07.2015, where the case was registered as Sessions Trial No. 171 of 2015 (Computer Registration No. 792 of 2015); *State Vs. Jag Prasad Yadav alias Jaggu*. On being committal of the case, learned Special Judge (S.C./S.T.) Act, Faizabad had framed charges against the accused under Sections 302, 307, 323 I.P.C. and Section 3 (2) (v) of the S.C./S.T. Act. The accused denied the charges and pleaded for trial.
- (10) The prosecution, in support of its case, examined nine witnesses, which are as under :-

P.W.1-Ramlautan	Complainant
P.W.2-Rekha	Injured/mother of deceased Sugun and Payal
P.W.3-Suraju	Witness of Inquest Report
P.W.4-Constable Ashish Srivastava	Prepared check F.I.R. on the basis of written report of complainant
P.W.5-Dr. Gulrez Ahmad	Conducted post-mortem of the deceased Shagun and medical examination and x-ray of injured Rekha at District Hospital, Faizabad
P.W.6-C.O. Naveen Kumar Nayak	Investigating Officer
P.W.7-S.I. Ram Bachan	Prepared Inquest Report

Ram	
P.W.8-Const. Indrajeet Sharma	Witness of <i>panchayatnama</i>
P.W.9-Dr. Arun Kumar	Conducted medical examination of injured Rekha at Community Health Centre, Milkipur, Faizabad

- (11) In addition to the aforesaid, the prosecution, in order to prove its case, has placed on record following documentary evidence and proved it :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R. Inquest Report
Ext. Ka. 3	Copy G.D. entry dated 23.04.2015
Ext. Ka. 4	Letter to C.M.O. Post-mortem report of deceased Sugun
Ext. Ka.5	Sample seal of dead body of the deceased Sugun X-ray report of injured Rekha
Ext. Ka. 6	Photo lash Site Plan
Ext. Ka. 7	Challan lash Charge sheet
Ext. Ka. 8	Injury Report of injured Rekha

- (12) The prosecution had also placed on record the report dated 01.10.2015 of Forensic Science Laboratory, Uttar Pradesh, Mahanagar, Lucknow.
- (13) After closer of the evidence of prosecution, the statement of the accused Jag Prasad Yadav alias Jaggu under Section 313 Cr.P.C. was recorded, in which he stated that he is innocent and he has no connection with the incident. He has not committed the incident. The F.I.R. of the case was lodged in connivance with the police. The investigation of the case was tainted. He further states that witnesses have adduced false evidence on account of enmity on

the basis of suspicion and he would produce evidence in his defence. However, no evidence was produced in defence.

(14) The trial Court, after affording opportunity of hearing to learned Government Counsel and the defence and appreciation of oral and documentary evidence and other material on record, acquitted the accused Jag Prasad Yadav alias Jaggu for the offence under Section 3 (2) (v) of the S.C./S.T. Act, however, convicted and sentenced him by means of judgment and order dated 19.04.2019 in the manner as stated here-in-below :-

- I. Under Section 302 I.P.C. to undergo life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo 3 months' imprisonment;
- II. Under Section 307 I.P.C. to undergo 7 years' R.I. and a fine of Rs.5000/-. In default of payment of fine to undergo 2 months' imprisonment;
- III. Under Section 323 I.P.C. to undergo 6 R.I.(It would be 6 months) and a fine of Rs.500/-. In default of payment of fine to undergo one month's imprisonment.

All the sentences have been directed to run concurrently and the period already undergone would be adjusted in sentence.

(15) Being aggrieved by the impugned judgment and order of conviction and sentence, the appellant has preferred the instant jail appeal before this Court.

ARGUMENTS

(16) Heard, Shri Shreesh Kumar Mishra Atal, learned *Amicus Curiae* for the appellant and learned A.G.A. for the State.

(17) Learned *Amicus Curiae* for the appellant submitted that impugned judgment and order has been passed without considering the evidence and material on record and dealing it appropriately. He further submitted that the prosecution has failed to establish any motive for the commission of offence. There are material contradictions and discrepancies in the evidence of the

prosecution witnesses of fact. P.W.1 is not an eye witness. P.W.2 claims to be an eye witness, but her testimony is not reliable for the reason that it is highly improbable that the accused-appellant could have picked two children from near her and thrown them in a well at a distance. The post mortem report and the injuries have not corroborated the prosecution case, as no injury was found on the body of the deceased and the cause of death could not be ascertained. The Viscera report was also negative. He also submitted that the instant case is of circumstantial evidence and the prosecution has failed to establish chain of circumstances. He also submitted that if two views are possible, then the benefit of doubt must be given to the accused-appellant. There was no independent witness to the occurrence and all the witnesses are related witnesses and the evidence of the injured witness is also not reliable as he is also a related witness.

- (18) On the basis of the above submissions, learned Amicus Curiae for the appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt, therefore, the conviction of the appellant could not have been recorded and, thus, the impugned judgment and order is not sustainable in the eyes of law and is liable to be set aside and the appellant is liable to be acquitted. He relied on **Amar Nath vs The State of U.P;** 2023 SCC OnLine SC 1322, **Alauddin vs State of Assam;** AIR 2024 SC (criminal)756, **Anand Ramachandra Chougule vs Sidarai Laxman Chougule;** AIR 2019 Supreme Court 3871, **Balaji Gunthu Dhule vs State of Maharashtra;** AIR 2013 Supreme Court 264, **Abdul Wahid & another vs State of Rajasathan;** 2025 SCC OnLine SC 453, **Krishnegowda vs State of Karnataka by Arkalgud Police;** AIR 2017 Supreme Court 1657, **Baso Prasad and others vs State of Bihar;** AIR 2007 Supreme Court 1019, **Mohar Singh and others vs State of Punjab;** 1981 SCC (Cri) 638.

- (19) Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the impugned judgement and order has rightly been passed in accordance with law, by means of which the appellant has been convicted and sentenced. He further submitted that the prosecution has proved its case beyond reasonable doubt by adducing evidence of an eye witness, who was also an injured witness and mother of the deceased, which stands corroborated by the medical evidence relating not only to the injured witness but also to the deceased. Merely because she is related witness, her testimony could not have been discarded. It is settled in law that the related that too an injured witness would not implicate an innocent person, leaving the culprit. Merely because the witness is the mother of the deceased, whose three and a half year son was killed and whose 1 year daughter was also thrown and sustained injury in the eye but survived, her testimony cannot be discarded. He also submitted that the motive has also been proved by P.W.2. Thus, he submits that the impugned judgment and order has rightly been passed in accordance with law. There is no illegality or error in it, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.
- (20) We have considered the submissions of learned counsels for the parties and perused the records.
- (21) The written report dated 22.04.2015 was submitted at the Police Station by P.W.1 Ram Lotan, on the basis of which, F.I.R. was lodged at 00.10 hours on 23.04.2015, with regard to the occurrence on 22.04.2015 at 23:00 hours, i.e., within a period of 1 hour 10 minutes. The distance between the police station and the place of incident is three kilometers. P.W.1 as well as P.W.2 have

coherently deposed regarding the occurrence, which took place at 11:00 p.m. on 22.04.2015. P.W.2 has also stated in her cross examination that after about 10 minutes when the children were brought out from the well, her uncle and villagers took them to the hospital.

- (22) P.W.1 who is uncle of P.W.2 has stated that after the death of the child, he got the report written by Arvind Singh and submitted the same at Police Station, which was proved as Ex. Ka(1). Thus, looking to the time taken, for providing the medical aid and the distance of the police station, it is apparent that the F.I.R. was lodged promptly within a period of 1 hour 10 minutes of the occurrence. The prompt lodging of the F.I.R. guarantees the truthfulness of the prosecution version, as chances of consultation, concoction and embellishments are very remote or less.
- (23) The F.I.R. was lodged naming the appellant, as the accused, who has committed the crime. The report was lodged by P.W.1 Ram Lautan, who is uncle of P.W.2. He has admitted in his evidence that he was not an eye witness. He was sleeping at home on 22.04.2015 at about 11:00 p.m. in the night. His niece Rekha, alongwith her children, was sleeping in the thatch shed outside the house. A marriage procession had come in the village that night, during which the appellant Jag Prasad @ Jaggu was vandalizing a motorcycle and when the members of the marriage procession chased the accused, he ran towards the house of Suraju and picked up Shagun, a boy who was aged about three and a half years and a girl aged about one year, who were sleeping on a cot and threw them into a well. Upon hearing the cries of the children, he and the neighboring villagers brought the children out of the well and took them to the Kumarganj Hospital, where the doctor declared Shagun as dead but the girl survived. Thus, P.W.1 has not stated in his evidence either he had seen the accused throwing the children

in the well or taking away them. Thus, P.W.1 is not an eye witness, which has been admitted also by him in his cross examination. However, he has further deposed that the night of the incident was dark but the light was alight and as per his knowledge, the accused was neither mad nor intoxicated. He further deposed that after the incident, the mother of the child Rekha Devi was disturbed. Considering the evidence of P.W.1, learned trial court has recorded that P.W.1 is not an eye witness to the occurrence and has also not supported the prosecution case.

- (24) The P.W.1 is not an eye witness but he has proved that upon hearing the noise he had reached on the spot and he alongwith neighbour villagers had brought the children out of well. Thus he has proved the place of occurrence and nothing could be extracted from him in cross examination, from which it may be inferred that he has deviated from his earlier statement.
- (25) P.W.2 is an eye witness to the incident. She has deposed in his examination-in-chief that the incident had taken place one and a half year ago. It was 11:00 p.m. in the night. Ram Lautan is her uncle. At the time of the alleged incident, she was staying at her maternal home at Pithola, where she was sleeping alongwith her two children namely Shagun aged about three and a half year and Payal aged about one year under the thatched shed. At the time of incident, Jag Prasad Yadav @ Jaggu came at her house and pressed her neck. She asked him to go away. In the meantime, he kicked her on the leg, as a result of which she fell down. Thereafter Jag Prasad picked up her son Shagun and daughter Payal and threw them in the well. Upon raising alarm, her uncle and several villagers arrived at the spot and saw the accused Jag Prasad running away. Then the neighbors brought the children out of the well. Her son's condition was serious. He was taken to the

Kumarganj Hospital, where the doctor declared him dead. She was examined at the Government Hospital, Milkhipur and thereafter at District Hospital, Faizabad. She had suffered injuries in her right leg and her daughter suffered injury in her eye but she was saved. The report was lodged by her uncle.

- (26) P.W.2 further categorically stated that she had seen the accused and identified him. Her statement was recorded by the Circle Officer. She further deposed that she belongs to a scheduled caste community. Thus, she has proved the incident as an eye witness and it is apparent from her evidence that the accused-appellant had come at about 11:00 p.m. in the night and pressed her neck and upon being asked to go away kicked her also on leg, on account of which she fell down. Thereafter he took her two children and threw them in a nearby well. Upon raising alarm, the villagers had come and brought children out of well. She was also medically examined. She has also deposed that the accused-appellant Jag Prasad is a resident of her village. She has no quarrel or enmity with the family of the accused. She has also deposed that her village is Sarai Dhanethi. She also deposed that when the accused was caught after 5-6 days of the incident, she was called at the police station. She further deposed that on the date of incident, her uncle Pinku, Ram Lautan and some other villagers had assisted in bringing out the children from the well. After about ten minutes of the bringing out of the children from the well, they were taken to the hospital.
- (27) P.W.2 has further deposed that she was wearing a *mangalsutra* at the time of alleged incident, which is still kept at her home and none of her jewellery was snatched. She further deposed that she knows the accused Jag Prasad since childhood, as his sister was studying with her, therefore, she knows him well. The house of the accused is situated at a distance of about 40-45 houses away

from her house. The accused had come near her with bad intention. However, she had not spoken to the accused prior to the date of incident nor she had made any wrong talk to him prior thereto. She denied the suggestion that she had not seen the accused on the night of incident and had implicated him falsely in consultation with Arvind Singh. Nothing could be extracted from her in the cross examination, which may create any doubt regarding the occurrence or involvement of the appellant.

- (28) The aforesaid evidence of P.W.2 shows that she has clarified that she had no enmity or quarrel with the family of the accused, therefore, question of any false implication does not arise. P.W.1; the complainant and P.W.3 Suraju, who had also reached on spot have also joined the P.W.2 on the issue of enmity between the two families and have categorically deposed that there was no enmity. The P.W.1 has even said that the accused and his family had no enmity with his family and still there is no enmity and the relations between both the families are normal and they go to meet and greet each other. It shows that family members of the appellant must also be knowing that he is guilty, otherwise after his implication, they would not have kept normal relation.
- (29) P.W.2 has also deposed in cross examination that the deceased had come with bad intention. It appears that the appellant had come near P.W.2 with bad intention and on being confronted pressed her neck and when she asked him to go away, he picked up the children lying near her on the cot and threw them in the nearby well. Thus the cross examination of P.W.2 throws some light on the motive. However, Investigating Officer (P.W.6), has deposed in cross examination that he does not know the reason of incident and could not get any motive for occurrence. But the motive appears to be was of bad work with P.W.2 and not the murder of

her child. However, even if the motive is not proved, the prosecution story cannot be said to have even a dent on account of absence of motive because it is a case of eye witness account and in the case of eye witness account, the motive does not play any significant role.

- (30) In view of above, the evidence of P.W.2 is consistent and convincing and nothing could be extracted in the cross examination, which may create any doubt about the testimony of P.W.2. P.W.2 is an eye witness and there is no contradiction in her evidence. The learned trial court has also recorded a finding that there is no contradiction in the evidence of P.W.2 and she had seen the accused pressing her neck, kicking her and throwing the children in the well.
- (31) P.W.2 has deposed that the accused-appellant had kicked her in her leg, on account of which she fell down. The medical report of P.W.2 indicates three injuries, out of which two are in the right leg between knee and near ankle joint. In case a person would kick in the leg, the injury would come in the lower part of the leg. Thus, the medical report of P.W.2, who is an injured witness, has corroborated her evidence. P.W.9 Dr. Arun Kumar, who had examined the injured P.W.2 has also stated that the injuries were of within 24 hours, which could have been caused by a bangle or kudal. In the cross examination, he deposed that the injuries could have been of within 24 hours or even within 12 hours also. The post mortem report of the deceased indicates that 50 ml black coloured material was found in his stomach, which could have entered on account of falling and drowning into the well. Since cause of death could not be ascertained, therefore, the viscera was preserved and the FSL report shows that no poison was found in the body. Thus the post mortem report (Ex. Ka. 4), also supports

the prosecution case because the death could have been on account of drowning in the well. Therefore, the presence of about 50 ml liquid in the stomach further supports the prosecution version. The post mortem report has been proved by P.W.5 Dr. Gulrez Ahmad, who has also opined that since 50 ml liquid was found in the stomach of the deceased and the poison was not found, therefore, viscera was preserved. No poison was found in the viscera report, therefore, death due to drowning may not be ruled out in the facts and circumstances of the case. The post mortem examination of the deceased was conducted at about 3:05 p.m. on 23.04.2015 and as per the post mortem report, the approximate time since death was about one day. No cross examination of P.W.5 was conducted, except with regard to the cause of death mentioned in the post mortem report. Thus, his evidence in regard to the time of death is intact.

- (32) In view of above, the prosecution case stands proved not only by the testimony of the eye witness but the same is also corroborated by the medical evidence.
- (33) P.W. 3 supported the statements of P.W.1 and P.W.2, in saying that on the date of incident at about 11:00 p.m.in the night, on a alarm raised, he had gone to the house of Ram Lautan, where two children were thrown into the well by Jag Prasad. They had brought the children out of the well, in which the child Shagun, aged about three and a half years had died. The inquest was prepared by the investigating Officer. He is a witness to the inquest report and has also proved his thumb impression in inquest.(Ex. Ka 2). He has also deposed that the dead body was sealed and sent for post mortem. Thus the P.W.3 has also proved the place of incident and that the children were thrown in the well, from where they were taken out, upon which the child Shagun

was found dead, as well as the inquest report, in which opinion of witnesses is recorded, according to which the child Shagun died as he was thrown in well by Jaggu @ Jag Prasad.

- (34) P.W. 3 has also deposed that at the time of incident, when the children were thrown in the well, the name of Jag Prasad had come. The accused had ran away from the village leaving the children in the well and he was caught by the police after 4-5 days. P.W.2 the mother of the deceased was injured who had also deposed that the accused-appellant was caught after 4-5 days and upon call from the police, she had gone to the police station but she had not met the accused either at the police station or anywhere else. Thus, the conduct of the appellant also shows that though he resides after 40-45 house from the place of occurrence but he had absconded in the very night of the incident and was caught only after 4-5 days.
- (35) P.W.4, writer of the F.I.R. has proved it. P.W.5 is the Investigating Officer, who had recorded statements and prepared the site plan on the pointing out of the complainant and collected the material and filed the charge sheet and proved them. P.W.7 has also proved the inquest of the deceased Shagun. P.W.8-Constable Indrajeet Sharma helped in the preparation of the inquest and took the dead body for post mortem and proved it. Nothing could be extracted from the said official formal witnesses, which may create any doubt about their testimony or even on the prosecution case. Thus, this Court is of the view that the prosecution has proved it's case beyond reasonable doubt. Learned trial court upon considering the evidence and material on record has recorded a finding that on the basis of evidence on record, the charge of Section 302, 307 and 323 IPC has been proved against the appellant with the following findings:-

"इस प्रकार अभियोजन पक्ष की तरफ से कुल दो साक्षी तथ्य के परीक्षित कराये गये हैं जिसमें से पी०डब्ल्यू०२ रेखा चश्मदीद साक्षी है। इन्होंने अपने साक्ष्य में इस तथ्य को साबित किया है कि अभियुक्त जग प्रसाद उर्फ जग्गू रात में ११ बजे उसके घर आया और वह अपने छप्पर में अपने दोनों बच्चों के साथ रात ११ बजे सो रही थी। अभियुक्त बुरी नीयत से उसके पास आया और पी०डब्ल्यू०२ रेखा को लात से मारा, उसका गला भी दबाया। संभवतः प्रतिरोध होने के कारण उसने रेखा के दोनों बच्चों को ले जाकर कुएँ में फेंक दिया जिससे उसके बेटे सगुन की मृत्यु हो गयी और उसकी लड़की बच गयी। सगुन के पोस्टमार्टम रिपोर्ट में उसके पेट में ५० ग्राम तरल पदार्थ पाया गया है। न्यायालय के विचार से यह तभी हो सकता है जब मृतक को डुबोया गया हो अथवा वह स्वयं डूबा हो। इस प्रकार मौखिक साक्षी पी०डब्ल्यू०२ रेखा के साक्ष्य का समर्थन डाक्टरी साक्ष्य से भी होता है। पत्रावली पर उपलब्ध साक्ष्य से अभियुक्त के विरुद्ध धारा ३०२, ३०७ व ३२३ भा०दं०सं० का अपराध सन्देह से परे साबित होता है। चूँकि अभियुक्त द्वारा किये गये कार्य से पी०डब्ल्यू०२ रेखा के लड़के सगुन की मृत्यु हुई तो यह माना जायेगा कि अभियुक्त यह जानता था कि तीन वर्ष के बच्चे को यदि कुएँ में फेंक दे तो निश्चित रूप से उसकी मृत्यु हो जायेगी। इसके अलावा पी०डब्ल्यू०२ की लड़की को भी कुएँ में अभियुक्त द्वारा फेंका गया है लेकिन कुएँ से निकालकर अस्पताल ले जाने पर व दवा इलाज होने पर वह बच गयी किन्तु उसकी आंख खराब हो गयी लेकिन अभियुक्त का आशय पी०डब्ल्यू०२ की लड़की को जान से मारने का था। इसलिए उसने उसको कुएँ में फेंक दिया। इसके अलावा पी०डब्ल्यू०४ के साक्ष्य से यह साबित है कि पीड़िता के शरीर पर भी चोटें आयी है। इस प्रकार पत्रावली पर उपलब्ध साक्ष्य से अभियुक्त के विरुद्ध धारा ३०२, ३०७ व ३२३ भा०दं०सं० का अपराध साबित होता है।

- (36) The learned trial court, further considering the evidence and material on record and the provisions made under Section 3(2)(v) of SC/ST Act, found that charge under Section 3(2)(v) of SC/ST Act is not proved as the crime was not committed on the ground that the victims are of SC/ST community and recorded the following findings:-

"अभियुक्त के विरुद्ध धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का

आरोप भी विरचित किया गया है। धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के लागू होने के संबंध में यू० पी० सीआर० आर० २००० पेज-२६८ मासूमशा हसनशा मुसलमान बनाम स्टेट ऑफ महाराष्ट्र का उद्धरण महत्वपूर्ण है जिसमें माननीय उच्चतम न्यायालय द्वारा यह कहा गया है कि धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के लागू होने के लिए जरूरी शर्त है कि पीडित व्यक्ति अनुसूचित जाति या अनुसूचित जनजाति का हो और पीड़ित के साथ अपराध इस आधार पर किया गया हो कि वह अनुसूचित जाति या जनजाति का है। यदि यह दोनों शर्तें पूरी नहीं हैं तो धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का आरोप साबित नहीं होगा। न्यायालय के विचार से अभियुक्त द्वारा उपरोक्त अपराध इसलिए नहीं किया गया है कि बच्चे अनुसूचित जाति के थे बल्कि आपराधिक मानसिकता से उपरोक्त अपराध कारित किया गया है। ऐसी स्थिति में अभियुक्त के विरुद्ध धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का अपराध साबित नहीं होता है।

- (37) The judgment relied by learned Amicus Curiae for the appellant are not applicable on the facts and circumstances of the case and of any help to him, which in short, are being referred here-in-after.
- (38) In the case of *Amar Nath versus the State of Uttar Pradesh(supra)*, the Hon'ble Supreme Court, has held that when there are multiple inconsistencies in the evidence on the basis of which conviction was ordered and possibility of conviction resulting in grave miscarriage of justice, interference with a concurrent verdict is not only possible but it would be well warranted. It has further been held that when the testimonies of the eye-witnesses suffer from fatal flaws, to sustain conviction on the basis of such unreliable evidence, would surely amount to miscarriage of justice.

(39) In the case of *Alauddin versus State of Assam(supra)*, the Hon'ble Supreme Court, has dealt with the status of the statement under Section 161 Cr.P.C. and further observed that when the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act.

(40) In the case of *Anand Ramachandra Chougule versus Sidarai Laxman Chougala (supra)*, has held that The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradiction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. The fact that a defence may not have been taken by an accused under Section 313 Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. The relevant paragraphs 9 and 10 are extracted hereinbelow:-

“9. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

10. The fact that a defence may not have been taken by an accused under Section 313 CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the

circumstances it was not required to prove anything. In Sunil Kundu v. State of Jharkhand [Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] , this Court observed: (SCC pp. 433-34, para 28)

“28. ... When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt.”

- (41) In the case of ***Balaji Gunthu Dhule versus State of Maharashtra(supra)***, the Hon'ble Supreme Court, has held that since the entire evidence of the eye-witnesses has not been accepted by the High Court, it could not have merely relied upon the postmortem report to convict the appellant for an offence under Section 302 of the I.P.C. Further, in our view, the postmortem report should be in corroboration with the evidence of eye-witnesses and cannot be an evidence sufficient to reach the conclusion for convicting the appellant.
- (42) In the case of ***Abdul Shakur versus State of Rajasthan(supra)***, the Hon'ble Supreme Court has held that it is for the prosecution to connect the accused to the murder of the deceased by producing credible and legally admissible evidence.
- (43) In the case of ***Krishnegowda versus State of Karnataka by Arkalgud Police(supra)***, The Hon'ble Supreme Court has held that When there is inconsistency between medical evidence and ocular evidence, the benefit of doubt should be given to the accused.
- (44) In the case of ***Baso Prasad and others versus State of Bihar(supra)***, the Hon'ble Supreme Court has held that the exact time of death cannot be established scientifically and precisely, only because of presence of rigour mortis or in the absence of it.

- (45) In the case of *Mohar Singh and others versus State of Punjab(supra)*, the Hon'ble Surpeme Court has held that in the facts and circumstances of the case, upon consideration of which the Hon'ble Court has recorded that in view of this glaring inconsistency between the ocular and medical evidence, it will be extremely unsafe and hazardous to maintain the conviction of the appellants on such evidence. The judgment has been passed on the facts and circumstances of case.
- (46) The settled position of law discussed in the aforesaid case laws, relied by learned Amicus Curiae for the appellant, cannot be disputed and it is for the prosecution to prove it's case beyond reasonable doubt, irrespective of the contradictions or inconsistencies in the evidence and weakness of the defence and it cannot absolve the prosecution of it's liability. As discussed above, the aforesaid case laws are not of any assistance to the case of the appellant. This Court is in agreement with the acquittal of appellant under Section 3(2)(v) of SC/ST Act and none of the parties have informed that it has been challenged either by the prosecution or complainant. Even otherwise, since there is no enmity with the appellant and his family with the P.W.2 and her family and their relations are not strange even thereafter and cordial, it could not have been challenged by the complainant. This also leads us to consider as to whether the murder of the children was the motive of accused/appellant and he attempted to murder with pre-meditated mind, on account of which one of the child died.
- (47) In view of aforesaid discussion, the motive, which could be inferred from evidence of P.W.2 was not to commit murder of child, by the accused /appellant but he had come with bad intention to her. Thus, it may not be said that there was any

intention to kill any of the child, Since the motive of murder of child could not be proved, therefore, it may be a case in which the intention to kill may not be there, even if the accused/appellant was knowing that the child may die on account of throwing in well and a child is also alive. If the motive and intention to kill is not proved then it is required to be considered as to whether the offence would fall under the category of murder or not, if not, then it may be a case of culpable homicide not amounting to murder.

- (48) In view of above, it would be apt, to consider the issue emerged in the case, to refer the relevant provisions made in I.P.C., which for convenience may be extracted. Sections 299, 300, 302 and 304 I.P.C. relevant for the purpose are extracted below:-

"299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

*300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--
2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
3rdly.--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--
4thly.--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

Exception 1.--When culpable homicide is not murder.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:--

First.--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.--Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.--Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Exception 5.--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

302. Punishment for murder.-

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

- (49) In view of above to bring a case under Section 300 firstly it must be established that a bodily injury is present; secondly the nature of the injury must be proved and thirdly it must be proved that there was an intention to inflict that particular bodily injury and it was not accidental or unintentional or that some other kind of injury was intended and fourthly it must be proved that injury inflicted on the deceased is sufficient to cause death in the ordinary course of nature. If all these elements are established by

the prosecution the offence would be murder under Section 300 I.P.C.

- (50) The Hon'ble Supreme Court considered the issue, in the case of *Virsa Singh Vs. The State of Punjab; 1958 SCC Online SC 37, (AIR 1958 SC 465)*, and held that after determination of objective facts in regard to the nature of injury and the part on which it has been inflicted etc, when it comes to the question of intention, that is subjective to the offender, it must be proved that he had an intention to cause the bodily injury that is found to be present and laid down the principles as to how it is to be considered. The relevant paragraphs 13 to relevant portion of paragraph 22 are extracted below:-

13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broadbased and simple and based on common sense: the kind of enquiry that " twelve good men and true could readily appreciate and understand.

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under section 300, 3rdly "

15. First, it must establish, quite objectively, that a bodily injury is present ;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s. 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.

21. We were referred to a decision of Lord Goddard in *R v. Steane* (1) where the learned Chief Justice says that where a particular intent must be laid and charged, that particular intent must be proved. Of course it must, and of course it must be proved by the prosecution. The only question here is, what is the extent and nature of the intent that s. 300 thirdly requires, and how is it to be proved ?

22. The learned counsel for the appellant next relied on a passage where the learned Chief Justice says that:

"if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted."

We agree that that is also the law in India. But so is this. We quote a few sentences earlier from the same learned judgment:

"No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged."

- (51) The Hon'ble Supreme Court, in the case of ***Pulicherla Nagarjun Vs. State of Andhra Pradesh; (2006) 11 SCC 444***, discussed as to what is to be considered for deciding a case as to whether it falls under Section 302 or 304 Part-I or 304 Part-II and also the intention to cause death can be gathered from a combination of circumstances. The relevant paragraph-18 is extracted below:-

"18. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters # plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302.

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

- (52) The Hon'ble Supreme Court, in the case of ***Suresh Chandra Bahri Vs. State of Bihar and Others; 1995 Supp(1) SCC 80***, has held that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. However it further noticed that in a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading

to the commission of the crime. Therefore motive may only be a relevant factor to form an opinion as to whether in a given circumstances there was an intention to kill on account of which the case may fall under Section 302 I.P.C.

- (53) The Hon'ble Supreme Court, in the case of **Khuman Singh Vs State of MadhyaPradesh; (2020) 18 SCC 763**, has held that 'Exception 4' to Section 300 IPC can be invoked if death is caused; (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner and (d) the fight must have been with the person killed.
- (54) In view of the above statutory provisions and the principles laid down by Hon'ble Supreme Court, when we test the facts of the instant case on the aforesaid principles, we find that it is apparent from the evidence and material on record that the appellant had thrown the children of P.W.2 in the well in heat of passion on account of frustration of his bad intention for the P.W.2, which could not be fulfilled, as she had asked him to go away, therefore, firstly he kicked her in the leg and in the same continuation, he picked up her children sleeping with her on the cot and thrown them in the well, on account of which one of the child died and the other suffered injury in the eyes. In these circumstances, though it may be said that he had thrown the children in the Well with the knowledge that it is likely to cause death but without intention to kill, therefore, it cannot be said to be a per-medidated murder. This Court is of the view that, looking to the offence and manner of committing offence, it would fall under Section 304 Part II I.P.C. Thus, we are of the view that while upholding conviction under Section 307 I.P.C., on account of throwing of one year child in well, who suffered injury in eyes and under

Section 323 IPC on account of injuries sustained by P.W.2, conviction of offence under Section 302 IPC is liable to be modified and converted under Section 304 Part II IPC. Now we will consider as to what punishment is to be awarded.

- (55) Learned trial court has awarded with imprisonment for life and fine of Rs.10,000/- under Section 302 IPC and 7 years rigorous imprisonment under Section 307 IPC with fine of Rs.5000/- and 6 months rigorous imprisonment and fine of Rs.500/- under Section 323 IPC. However, the maximum punishment has not been awarded for any of the offence as the court has not found the crime so heinous to award the maximum punishment. Thus, this Court is of the view that the conviction and sentence under Section 302 IPC is liable to be modified to Section 304 Part II IPC, upholding the conviction and sentence under Section 307 and Section 323 IPC.
- (56) The appeal is **partly allowed**.
- (57) We, therefore, uphold the conviction and sentence awarded to the appellant by the trial Court under Sections 307 and 323 I.P.C., however, modify the conviction under Section 302 IPC to Section 304 Part II I.P.C. and award a sentence of 10 years rigorous imprisonment with a fine of Rs.50,000/-. In case of default of payment of fine, to undergo 1 year further rigorous imprisonment. On completion of the said period, the appellant is entitled to be released forthwith, if, he is not required in any other case.
- (58) On deposit of the aforesaid fine against all the punishments, if already deposited and if any amount has been deposited, deposit of the remaining amount, the same shall be disbursed to the P.W.2,

which shall be transferred in her account after calling account details from her.

- (59) The appellant is in jail since 25.04.2015. Thus, he must have completed the punishment of 10 years. Therefore, he shall be released forthwith on deposit of the fine/remaining amount of fine. In case he has already completed the sentence and not deposited the fine and completed the default period, he shall be released forthwith, if he is not wanted or required to remain in jail in any other case.
- (60) Appellant-Jag Prasad Yadav @ Jaggu is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973 within a period of two weeks.
- (61) Pending application(s), if any, stands disposed of accordingly.
- (62) Let a copy of this judgment and the trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today, for information and compliance.

(Zafeer Ahmad,J.)

(Rajnish Kumar,J.)

May 27, 2026
Akanksha Sri/-