then also the injury will be of different dimensions rather than the injury sustained by the deceased Jay Prakash in the form of deep contusion on the left side chest, lower part in an area of 5 c.m. x 4 c.m. whereas ribs 4,5, 6 and 7 were found to be broken. The injury from lathi and lathi's end (hura) i.e. assault in a piercing manner with lathi is not apparent from the post-mortem report. Thus, the manner of assault becomes doubtful as stated by P.W.1 and P.W.4.

(46) P.W.6-Dr. P.K. Srivastava, who has conducted the post-mortem of the deadbody of the deceased Jay Prakash, has stated before the trial Court in the cross-examination at page-11 that deceased Jay Prakash was not feeling well and took light food on the night of the incident. P.W.1-Jagdish has not stated before the trial Court which food was taken by the deceased at the time of sleeping and at what time, he took food. Normally, in village, people took food at around 08:00 p.m. If it is presumed that the deceased took food at 08:00 p.m. or for the sake of argument, it may be presumed that it may be taken at 09:00 p.m., then also, semi digested food would be present in the stomach within 2-3 hours. P.W.6-Dr. P.K. Srivastava has stated that the death has occurred within six hours of taking food, meaning thereby if the food was taken at 09:00 p.m., then, also the death had occurred prior to 03:00 a.m. Thus, it appears that incident took place in the dark hours and noobody has seen the occurrence and the evidence has been collected just to prove the case as setup by the prosecution.

(47) In view of the facts that the prosecution has not been able to fix the identity of the appellant by credible evidence as the assailant of the deceased, entering into the further details of the case will be futile. Moreover, the three accused persons, namely, Sadhu Prasad, Talluqdar and Shital, have already been acquitted by the trial Court by giving benefit of doubt vide impugned judgment and order dated 20.07.1995 passed by the trial Court, hence the appellant-Lot Prasad is also entitled for the benefit of doubt. Since, the identity of the miscreants was not established beyond all reasonable doubt, this is a case where appellant is entitled to acquittal on the ground of benefit of doubt.

(48) In the result, the appeal succeeds and is hereby **allowed.** The judgment and order dated 20.07.1995 passed in Sessions Trial No. 73 of 1992 so far as it relates to the appellant stands set aside. The appellant is acquitted from the charges levelled against him. The appellant is on bail. His bail bonds are hereby cancelled and sureties are discharged from their liabilities.

(49) Appellant is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure, 1973.

(50) Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

(2022)01ILR A466
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.11.2021

BEFORE

THE HON'BLE DR. KAUSHAL JAYENDRA THAKER, J.
THE HON'BLE VIKAS BUDHWAR, J.

Criminal Appeal No. 446 of 2015

Bala Prasad Kurmi ...Appellant
Versus
State Of U.P. ...Opposite Party

Counsel for the Appellant:
Sri K.K. Tripathi, Sri Prem Chandra, Sri Nand Lal Yadav, Sri Kamla Prasad, Sri R.L. Varma, Sri Anil Kumar, Sri Mohd. Kalim, Mary Punch Sheeb Zosi

Counsel for the Opposite Party:
A.G.A.

Criminal Law - Indian Penal Code, 1860 - Sections 376 & 506 - Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989- Section 3(1)XII and 3(2)V- Conviction under- Sentence of Life Imprisonment- Quantum of Sentence- Proportionate Sentence- It is the duty of every court to award proper sentence having regard to nature of offence and manner of its commission- While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced. Moreover, the judicial trend in the country has been towards striking a balance between reform and punishment- The criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective. At the same time, undue harshness should also be avoided keeping in view the reformative approach underlying in our criminal justice system- 'Reformative theory of punishment' is to be adopted and for that reason, it is necessary to impose punishment keeping in view the 'doctrine of proportionality'.

Sentence should be proportionate to the gravity of the offence, manner of commission and its impact on society and should not be unduly harsh in view of the judicial trend of adopting the corrective and reformative theory of punishment.

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989- Section 3(1)XII and 3(2)V- There is neither any serious discussion nor any finding in the judgment in question with regard to the fact that the victim belongs to SC/ST category. Apart from the same, this Court finds that there is no witness to prove the caste of the victim. the sine qua non is that the victim should be a person, who belongs to scheduled caste or scheduled tribe and that the offence under the Indian Penal Code is committed against such person on the basis that such person belongs to the same caste and the offender does not belong to the same caste. If this is proved, then only conviction under Section 3(2)(V) of the Act, 1989 can be invoked. Thus inevitable conclusion is this that no offence under Section 3(2)V of SC/ST Act is made out and thus the conviction and the sentence so made under Section 3(2)V of SC/ST Act is unsustainable in the eyes of law.

In order to secure the conviction of an accused under Section 3(1)XII and 3(2)V of the Sc/St Act, it has to be proved and established that the victim belonged to a scheduled caste/ scheduled tribe while the offender did not belong to the said category. (Para 23, 24, 25, 26, 29)

Appeal Partly Allowed. (E-3)

Judgements/ Case law relied upon:-

1. Mohd. Giasuddin Vs St. of A.P, AIR 1977 SC 1926

2. Deo Narain Mandal Vs St. of UP ,(2004) 7 SCC 257

3. Guru Basavraj Vs St. of Kar., [(2012) 8 SCC 73

4. Sumer Singh Vs Surajbhan Singh, [(2014) 7 SCC 323

5. St. of Punj. Vs Bawa Singh, (2015) 3 SCC 441

6. Raj Bala Vs St. of Har., [(2016) 1 SCC 463

7. Ravada Sasikala Vs St. of A.P. AIR 2017 SC 1166

8. Manoj Mishra @ Chhotkau Vs St. of U.P, Crl. Apl. No. 1167 of 2021, dec. on 8.10.2021

9. Hitesh Verma Vs The St. of U.K & anr, 2020 0 Supreme (SC) 653

10. Ramawatar Vs St. of M.P, 2021 0 Supreme (SC) 625

11. Crl. Apl. No.204 of 2021, Vishnu Vs St. of UP dt. 28.1.2021

12. Crl. Apl. No. 3248 of 2014, Suresh Vs St. of U.P. dt. 24.11.2021

13. Patan Jamal Vali Vs The St. Of A.P, AIR 2021 SC 2190

(Delivered by Hon'ble Vikas Budhwar, J.)

1. This appeal has been preferred against the judgment and order dated 23.1.2015 passed by Special Judge (SC/ST Act)/ Additional Sessions Judge, Banda Special Trial No. 60 of 1997 in Case Crime no. 89 of 1997, under Sections 376, 506 IPC and Section 3(1)XII and 3(2)V SC/ST Act, P.S. Bisanda, District Banda, whereby accused-appellant was convicted under Section 376 IPC read with Section 3(2)V SC/ST Act for life imprisonment and fine of Rs.30,000/- and in default of payment of fine, one year additional imprisonment.

2. Brief facts of the case are that the FIR was registered on 9.5.1997 on the basis of the application moved by the complainant on the same day, in which it was alleged that the victim, the complainant's daughter on the date of occurrence of the offence, i.e, 9.5.1997 was sleeping with her grandmother being the mother of the complainant in the courtyard. At that relevant point of time, the complainant and his wife Smt. Savitri were lying down in their room. In the night of the incident, i.e, on 9.5.1997, the grandmother of the victim, as well as the mother of the complainant had gone out of the house in the fields to answer the nature's call. However, it was alleged in the FIR dated 9.5.1997 that at about 1:00 P.M, in the night, Bala Prasad son of Guneshi Kurmi and an unnamed person silently came in the courtyard and they tied the mouth of the victim with a cloth and took her out of the house and committed a bad-act of rape outside the village, just near the mango tree of Badri Kurmi. The grandmother of the victim and the mother of the complainant became surprised, when she did not find the victim at that relevant point of time in the courtyard, so she immediately rushed to the room of the complainant, awaking the complainant and apprising him that the victim is nowhere found in the house and she is missing. Thereafter rapid search was being made to find out whereabouts of the victim and then it was discovered that the victim was coming towards her house and she was found near the pond, the victim thereafter narrated the entire incident and agony both physical and mental sustained by her. Thereafter accordingly the complainant accompanied her daughter and approached the relevant police station while filing a complaint on 9.5.1997, which culminated into lodging of the FIR in Case Crime No.89 of 1997 under Sections 376 IPC and Section 3(1)XII SC/ST Act.

3. One Sri Shailendra Kumar Yadav, Addl. S.P, tookup the investigation, visited the spot, prepared site plan, recorded statements of the prosecutrix and witnesses and after completing investigation submitted charge sheet against the accused under Section 376 and 506 IPC and Sections 3(1)XII and 3(2)V SC/ST Act. The matter being triable by court of sessions was committed to the sessions court.

4. The learned trial court framed charge under Section 376, 506 IPC and

Sections 3(1)XII and 3(2)V SC/ST Act, which was read over to the accused. The accused denied the charge and claimed to be tried. The prosecution so as to bring home the charge, examined the following witnesses, who are as under:-

1.	Victim	P.W.1
2.	Bhura son of Swamideen	P.W.2
3.	Dr. R.P. Gupta	P.W.3
4.	Dr. Pramod Kumar	P.W.4
5.	Addl. S.P. Shailendra Kumar Yadav	P.W.5

5. After completion of prosecution evidence, the accused was examined under Section 313 Cr.P.C. The accused did not examine any witness in defence.

6. In support of the ocular version of the witnesses, following documents were produced and contents were proved by leading evidence:

1.	Written report	Ext. Ka-1
2.	Recovery Memo of Sari of victim	Ext. Ka-2
3.	X-ray report prepared by the Doctor at District Hospital, Banda	Ext. Ka-3
4.	Medical Report of Victim of District Hospital, Banda as well as Pathology Test Report	Ext. Ka-4
5.	Site Plan	Ext. Ka-5
6.	Charge Sheet	Ext. Ka-6
7.	FIR and G.D.	Ext. Ka-7

7. Heard Shri K.K. Tripathi, learned counsel for the appellant, the learned AGA for the State and also perused the record.

8. Perusal of record shows that occurrence took place on 9.5.1997 and the victim was medically examined on the same day, i.e, 9.5.1997 in District Hospital, Banda. In the medical examination, no marks of external injuries were found on the body of the victim. In the medical report, it was also mentioned that vaginal smear is positive for immotile spermatozoa, i.e, the dead spermatozoa were found. Further the medical report also reveals that at the time of the occurrence of the incident, the age of the victim was above 16 years and below 18 years.

9. The victim was examined by prosecution as PW-1 and she had stated that the accused had committed bad-act with her as when she was all alone in the courtyard, the accused came and forcibly took her while putting the cloth in the mouth of the victim, so as to create a situation, whereby there is no hue and cry at the end of the victim and thereafter the accused took her near the mango tree of one Badri Kurmi outside the village and committed rape. When searches were made regarding her whereabouts, then she was found coming to her house through a pond. Record further reveals that PW-1 in her statement has categorically named the accused and further so far as PW-2 being the father of the victim is concerned, he also gave his testimony, which is in conformity, in consonance and in line with the version of the prosecution while

narrating the fact that when the mother of the complainant being the grandmother of the victim had gone to answer the nature's call, then from the said moment, the victim was found to have been illegally taken away forcibly by the accused and the victim was recovered, when search was being made near the pond, wherein the victim narrated the entire incident with regard to the fact that the bad-act of rape had been committed forcefully by the accused. PW-4 being the Dr. Pramod Kumar in his statement has mentioned that dead spermatozoa was found in the vaginal smear. PW-5 Shailendra Kumar Yadav, Addl. S.P, in his statement dated 29.9.2014 has deposed that he had taken the statement of the victim, Smt. Maiki, Smt. Savitri, Kanhaiya Kori and Dasai and on the basis of the statement, so recorded with the permission of the Court, additional offence under Section 506 was also included.

10. Learned trial court after considering the evidence available on record, concluded that the appellant is to be sentenced under Section 376 IPC read with Section 3(2)V SC/ST Act and sentenced him for life imprisonment and a fine of Rs.30,000/- and in case of default, an additional imprisonment of one year.

11. After some arguments, learned counsel for the appellant has confined its argument with regard to the fact that the offences under Section 3(2)V of the SC/ST Act are not made out against the appellant, particularly, in view of the fact that there was neither any evidence adduced by the prosecution nor the issue has been dealt by the court below in the judgment under challenge.

12. Learned counsel for the appellant submitted that he is not pressing this appeal on its merits as far as Section 376 IPC is concerned, but he prays only for reduction of the sentence as the sentence of life imprisonment awarded to the appellant by the trial court is very harsh. Learned counsel also submitted that appellant is languishing in jail for the past more than 6 years and 11 months.

13. This case pertains to the offence of 'rape', defined under Section 375 IPC, which is quoted as under:

[375. Rape.*- A man is said to commit "rape" if he-*

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions :-

First.*- Against her will.*

Secondly*.- Without her consent.*

*T**hirdly.**- With her consent, when her consent has been obtained by putting*

her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- *With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

Fifthly.- *With her consent when, at the time of giving such consent, by reason of unsoundness of mind of intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

Sixthly.- *With or without her consent, when she is under eighteen years of age.*

Seventhly.- *When she is unable to communicate consent.*

Explanation 1.- *For the purposes of this section, "vagina" shall also include labia majora.*

Explnation 2.- *Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.*

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.- *A medical procedure or intervention shall not constitute rape.*

Excpetion 2.- *Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]*

14. Once, the appellant is not pressing the appeal on merits and as far as conviction under Sections 376 and 452 IPC is concerned, the scope of the present appeal gets narrowed down to the question of the quantum of punishment. The Hon'ble Supreme Court in the case of ***Mohd. Giasuddin Vs. State of Andhra Pradesh, reported in*** AIR 1977 SC 1926 had in paragraphs-16, 17, 18, 19 and 20 has observed as under: -

"16. The new Criminal Procedure Code, 1973 incorporates some of these ideas and gives an opportunity in s. 248(2) to both parties to bring to the notice of the court facts and circumstances which win help personalize the sentence from a reformative angle. This Court, in Santa Singh (1976) 4 SCC 190, has emphasized how fundamental it is to put such provision to dynamic judicial use, while dealing with the analogous provisions in s. 235(2) "This new provision in s. 235(2) is in consonance with the modern trends in penology and sentencing procedures. There was no such provision in the old Code,. It 'was realised that sentencing is an important stage in the process of administration of criminal justice- as important as the adjudication of guilt-and it should not be con-signed to a Subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the court to impose an appropriate punishment on the

criminal and sentencing should, therefore, receive serious attention of the Court. (p. 194.).

Modern penology regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalise the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the court when the actual sen- tence is determined. (p. 195).

A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravating-of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. (p.

195).

The hearing contemplated by section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the ac- cused to place before the court facts and material relating to various factors' bearing on the question of sentence and if they are contested by other side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings." (p. 196).

17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors , enter his calculations Even so, the judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to, be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion.

18. Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment viz. imprisonment simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the judge if he is to fulfil his tryst with cruing the criminal in a hospital setting. Maybe in an appropriate case actual hospital treatment

may have to be prescribed as part of the sentence. In another case, liberal parole may have to be suggested and, yet in a third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of the sentencing prescription. The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be.

19. Sentencing justice is a facet of social justice, even as redemption of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age.

20. The sentencing stance of the court has been outlined by us and the next question is what 'hospitalization' techniques will best serve and sentencee, having due regard to his just deserts, blending a feeling for a man behind the crime, defence of society by a deterrent component and a scientific therapeutic attitude at once correctional and realistic. The available resources for achieving these ends within the prison campus also has to be considered in this context. Noticing the scant regard paid by the courts below to the soul of S. 248 (2) of the Code and compelled to gather information having sentencing relevancy, we permitted counsel on both sides in the present appeal to file affidavits and other materials to help the Court make a judicious choice of the appropriate 'penal' treatment. Both sides have filed affidavits which disclose some facts pertinent to the project. "

15. In the case of ***Deo Narain Mandal vs. State of UP*** r*eported in (2004) 7 SCC 257,* in paragraphs-11 and 12, the Hon'ble Apex Court has held as under: -

"11. To find out whether the period already undergone by the appellant would be sufficient for reducing the sentence we had called upon the learned counsel appearing for the State to give us the necessary information and from the list of dates provided by the State, we notice that the appellant was arrested on 12th of January, 1983 and was granted bail on 14th of January, 1983 by the Trial Court which shows he was in custody for two days that too as an under trial prisoner. Trial Court sentenced the appellant on 31st of May, 1988 and the High Court released the appellant on the 8th of July, 1988. It is not clear from the list of date when exactly the appellant surrendered to his bail after the judgment of the Trial Court. Presuming the fact in favour of the appellant that he was taken into custody on the date of the judgment i.e. 31st of May, 1988 itself. Since he was released on bail by the High Court of 8th of July, 1988, he would have been custody as a convict for 38 days which together with the two days spent as an under trial, would take the period of

custody to 40 days. On facts and circumstances of this case, we must hold that sentence of 40 days for an offence punishable under Section 365/511 read with Section 149 is wholly inadequate and disproportionate.

12. For the reasons stated above, we are of the opinion that the judgment of the High Court, so far as it pertains to the reduction of sentence awarded by the Trial Court will have to be set aside."

16. In the case of ***Jameel vs State of UP*** *[(2010) 12 SCC 532*, the Hon'ble Supreme Court in paragraphs- 14, 15 and 16 held as under:

"14. The general policy which the courts have followed with regard to sentencing is that the punishment must be appropriate and proportional to the gravity of the offence committed. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.

15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It was the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

17. In the case of ***Guru Basavraj vs State of Karnatak***, [(2012) 8 SCC 734, the Hon'ble Apex Court observed in paragraphs- 30 to 34 has held as under: -

"30. From the aforesaid authorities, it is luminous that this Court has expressed its concern on imposition of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. That apart, the concern has been to impose adequate sentence for the offence punishable under Section 304-A of the IPC. It is worthy to note that in certain circumstances, the mitigating factors have been taken into consideration but the said aspect is dependent on the facts of each case. As the trend of authorities would show, the proficiency in professional driving is emphasized upon and deviation therefrom that results in rash and negligent driving and causes accident has been condemned. In a motor accident, when a number of people sustain injuries and a death occurs, it creates a stir in the society; sense of fear prevails all around. The negligence of one shatters the tranquility of the collective. When such an accident occurs, it has the effect potentiality of making victims in many a layer and creating a concavity in the social fabric. The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect. It

has its impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether. Grant of compensation under Section 357(3) with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence.

31. Recently, this Court in Rattiram & Ors. v. State of M.P. Through Inspector of Police, (2012) 4 SCC 516 , though in a different context, has stated that:

"64. ... The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries... It is the duty of the court to see that the victim's right is protected."

32. We may note with profit that an appropriate punishment works as an eye-opener for the persons who are not careful while driving vehicles on the road and exhibit a careless attitude possibly harbouring the notion that they would be shown indulgence or lives of others are like "flies to the wanton boys". They totally forget that the lives of many are in their hands, and the sublimity of safety of a human being is given an indecent burial by their rash and negligent act.

33. There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored. In Siriya alias Shri Lal v. State of M.P. (2008) 8 SCC 72, it has been held as follows: (SCC pp.75-76, para 13)

"13. "7. ... Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.' * "

34. In view of the aforesaid, we have to weigh whether the submission advanced by the learned counsel for the appellant as regards the mitigating factors deserves acceptance. Compassion is being sought on the ground of young age and mercy is being invoked on the foundation of solemnization of marriage. The date of occurrence is in the month of March, 2006.

The scars on the collective cannot be said to have been forgotten. Weighing the individual difficulty as against the social order, collective conscience and the duty of the Court, we are disposed to think that the substantive sentence affirmed by the High Court does not warrant any interference and, accordingly, we concur with the same."

18. The Hon'ble Supreme Court, in the case of ***Sumer Singh vs Surajbhan Singh***, [(2014) 7 SCC 323, in paragraphs-36 and 37 held as under:-

" *36. Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, striking the balance we are disposed to think that the cause of justice would be best subserved if the respondent is sentenced to undergo rigorous imprisonment of two years apart from the fine that has been imposed by the learned trial judge.*

37. Before parting with the case we are obliged, nay, painfully constrained to state that it has come to the notice of this Court that in certain heinous crimes or crimes committed in a brutal manner the High Courts in exercise of the appellate jurisdiction have imposed extremely lenient sentences which shock the conscience. It should not be so. It should be borne in mind what Cicero had said centuries ago: -

"it can truly be said that the magistrate is a speaking law, and the law a silent magistrate."

19. Further in the case of ***State of Punjab vs Bawa Singh,*** (2015) 3 SCC 441, the Hon'ble Apex Court in paragraphs-16 to 18 had observed as under: -

"16. We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm

to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society.

17. Recently, in the cases of State of Madhya Pradesh vs. Bablu, (2014) 9 SCC 281 and State of Madhya Pradesh vs. Surendra Singh, 2014 (12) SCALE 672, after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.

18. Perusal of the impugned order passed by the High Court would show that while reducing the sentence to the period already undergone, the High Court has not considered the law time and again laid down by this Court. Hence the impugned order passed by the High Court is set aside and the matter is remanded back to the High Court to pass a fresh order in the revision petition taking into consideration the law discussed hereinabove after giving an opportunity of hearing to the parties. The appeal is accordingly allowed with the aforesaid direction."

20. In the case of ***Raj Bala vs State of Haryana,*** [(2016) 1 SCC 463, the Hon'ble Apex Court in paragraph-16 held as under:-

"A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the

patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective."

21. Following the consistent view of the Hon'ble Apex Court with regard to proportionality of a punishment in ***Ravada Sasikala vs. State of A.P.*** AIR 2017 SC 1166, it was held as under: -

"15. In Shyam Narain v. State (NCT of Delhi) (2013) 7 SCC77: (AIR 2013 SC 2209), it has been ruled that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. The Court further observed that on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. It has to be borne in mind that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

16. In State of Madhya Pradesh v. Najab Khan and others, (2013) 9 SCC 509: (AIR 2013 SC 2997), the High Court of Madhya Pradesh, while maintaining the conviction under Section 326 IPC read with Section 34 IPC, had reduced the sentence to the period already undergone, i.e., 14 days. The two-Judge Bench referred to the authorities in Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359: (2006 AIR SCW 436), Ahmed Hussain Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254: (AIR 2010 SC (Supp) 846), Jameel v. State of Uttar Pradesh (2010) 12 SCC 532: (AIR 2010 SC (Supp) 303), and Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734 : (2012 AIR SCW 4822) *and held thus:- "In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of the victim of the crime but also the society at large while*

considering the imposition of appropriate punishment." In the said case, the Court ultimately set aside the sentence imposed by the High Court and restored that of the trial Judge, whereby he had convicted the accused to suffer rigorous imprisonment for three years.

17. In Sumer Singh v. Surajbhan Singh & others, (2014) 7 SCC 323: (AIR 2014 SC 2840), while elaborating on the duty of the Court while imposing sentence for an offence, it has been ruled that it is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the court's accountability to remind itself about its role and the reverence for the rule of law. It must evince the rationalised judicial discretion and not an individual perception or a moral propensity. The Court further held that if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined and law does not tolerate it; society does not withstand it; and sanctity of conscience abhors it. It was observed that the old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. The conception of mercy has its own space but it cannot occupy the whole accommodation. While dealing with grant of further compensation in lieu of sentence, the Court ruled:-

"We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society."

18. In *State of Punjab v. Bawa Singh,* (2015) 3 SCC 441: (AIR 2015 SC (Supp) 731), this Court, after referring to the decisions in State of Madhya Pradesh v. Bablu, (2014) 9 SCC 281 : (AIR 2015 SC 102) and State of Madhya Pradesh v. Surendra Singh, (2015) 1 SCC 222: (AIR 2015 SC 298), reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the nature of crime regard being had to the manner in which the offence is committed. It has been further held that one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it would shock the conscience of the society. Emphasis was laid on the solemn duty of the court to strike a proper balance while awarding the sentence as imposition of lesser sentence encourages a criminal and resultantly the society suffers.

19. Recently, in Raj Bala v. State of Haryana and others, (2016) 1 SCC 463: (AIR 2015 SC 3142), on reduction of

sentence by the High Court to the period already undergone, the Court ruled thus:-

"Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability." And again:-

"A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked."

20. Though we have referred to the decisions covering a period of almost three decades, it does not necessarily convey that there had been no deliberation much prior to that. There had been. In B.G. Goswami v. Delhi Administration, (1974) 3 SCC 85: (AIR 1973 SC 1457), the Court while delving into the issue of punishment had observed that punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentence.

21. The purpose of referring to the aforesaid precedents is that they are to be kept in mind and adequately weighed while exercising the discretion pertaining to awarding of sentence. Protection of society on the one hand and the reformation of an individual are the facets to be kept in view. In Shanti Lal Meena v. State (NCT of Delhi), (2015) 6 SCC 185: AIR 2015 SC 2678), the Court has held that as far as punishment for offence under the Prevention of Corruption Act, 1988 is concerned, there is no serious scope for reforming the convicted public servant. Therefore, it shall depend upon the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected. The case at hand is an example of uncivilized and heartless crime committed by the respondent No. 2. It is completely unacceptable that concept of leniency can be conceived of in such a crime. A crime of this nature does not deserve any kind of clemency. It is individually as well as collectively intolerable. The respondent No. 2 might have felt that his ego had been hurt by such

a denial to the proposal or he might have suffered a sense of hollowness to his exaggerated sense of honour or might have been guided by the idea that revenge is the sweetest thing that one can be wedded to when there is no response to the unrequited love but, whatever may be the situation, the criminal act, by no stretch of imagination, deserves any leniency or mercy. The respondent No. 2 might not have suffered emotional distress by the denial, yet the said feeling could not to be converted into vengeance to have the licence to act in a manner like he has done."

22. Recently in the matter of ***Manoj Mishra @ Chhotkau vs. State of Uttar Pradesh, Criminal Appeal No. 1167 of 2021, decided on 8.10.2021***, the Hon'ble Apex Court in paragraphs- 16 and 17 has held as under: -

"16. On arriving at the conclusion that the appellant is liable to be convicted under Section 376 IPC and not under Section 376 D IPC, the appropriate sentence to be imposed needs consideration. The incident in question is based on the complaint dated 09.08.2013. In this circumstance, though it is noted that Section 376 has been amended w.e.f. 21.04.2018 providing for the minimum sentence of 10 years, the case on hand is of 2013 and the conviction of the appellant was on 20.05.2015. The incident having occurred prior to amendment, the pre-amended provision will have to be taken note. The same provides that a person committed of rape shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine. In the instant case, taking into consideration all facts including that no material is available on record to indicate that the appellant has any criminal antecedents and that he is also a father of five children and the eldest son is more than 18 years, it appears that there is no reason to apprehend that the appellant would indulgence similar acts in future. In that circumstance, we deem it appropriate that the sentence of 7 years would have been sufficient deterrent to serve the ends of justice. From the custody certificate dated 05.12.2017 issued by the Jail Superintendent, District Jail, Bahraich, it is noticed that the appellant has been in custody from 20.09.2013. If that be the position, he has been in custody and served the sentence for more than 8 years which shall be his period of sentence. As such he has served the sentence imposed by us except payment of fine. The fine and default sentence as imposed by the trial court is maintained.

17. In the result we make the following order:

(i) The conviction and sentence under Section 363, 366, and Section 4 of POCSO Act is confirmed.

The conviction under Section 506 IPC is set aside.

(ii) The conviction order made by the trial court and confirmed by the High Court under Section 376 D IPC is modified. The appellant is instead convicted under Section 376 IPC and is sentenced, for the period undergone. The fine and default sentence as imposed by the trial court shall remain unaltered.

(iii) Since the custody certificate dated 20.09.2013 indicates that the

appellant has undergone sentence for more than 8 years, the appellant is ordered to be released on payment of fine as all the sentences have run concurrently and if he is not required to be detained in any other case.

(iv) The appeal is accordingly allowed in part.

(v) Pending application, if any, shall stand disposed of."

23. In view of the legal proposition, so culled out from the aforesaid judgments, the facts and the given circumstances of each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. Needless to point out that it is the duty of every court to award proper sentence having regard to nature of offence and manner of its commission. The Apex Court has gone even to the extent that the courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced. Moreover, the judicial trend in the country has been towards striking a balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers.

24. Generally speaking, law, as a tool to maintain order and peace, should effectively meet challenges confronting the society, as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective. At the same time, undue harshness should also be avoided keeping in view the reformative approach underlying in our criminal justice system.

25. Keeping in view the facts and circumstances of the case and also keeping in view criminal jurisprudence in our country which is reformative and corrective and not retributive, this Court considers that no accused person is incapable of being reformed and therefore, all measures should be applied to give them an opportunity of reformation in order to bring them in the social stream.

26. As discussed above, 'reformative theory of punishment' is to be adopted and for that reason, it is necessary to impose punishment keeping in view the 'doctrine of proportionality'. It appears from perusal of impugned judgment that sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence. Hon'ble Apex Court, as discussed above, has held that undue harshness should be avoided taking into account the reformative approach underlying in criminal justice system.

27. Learned AGA has confirmed that appellant is in jail since conviction, i.e, for the last 6 years and 11 months. Since, the appellant has already served 6 years and 11 months in jail, ends of justice will be met if sentence is reduced to 8 years remission and maintaining fine and default sentence.

28. Learned counsel for the appellant has placed reliance on the decisions of the Apex Court in ***Hitesh Verma Vs. The State of Uttarakhand and another, 2020 0 Supreme (SC) 653, Ramawatar Vs. State of Madhya Pradesh, 2021 0 Supreme (SC) 625*** and the reported judgments of this Court in ***Criminal Appeal No.204 of 2021, Vishnu vs. State of UP*** dated 28.1.2021 as well as in ***Criminal Appeal No. 3248 of 2014, Suresh Vs. State of U.P.*** dated 24.11.2021, penned by one of us (Dr.Kaushal Jayendra Thaker, J.) contending that no case under Section 3 (2) (v) of SC/ST Act is made out and the conviction under the said section requires to be upturned. Learned counsel for the appellant has also relied on the judgment in ***Patan Jamal Vali vs The State Of Andhra Pradesh, AIR 2021 SC 2190*** and contends that as the prosecutrix has not laid any evidence to prove that the offence was committed knowing that the victim belongs to scheduled caste category within a meaning of Section 3(2)(v) of S.C./S.T.Act.

29. We have carefully gone through the judgment and order dated 23.12015 passed by the court below under challenge and we find that in paragraph-18 of the judgment itself the learned trial court has observed that the onus to prove that the offences have been committed by the accused-appellant under Section 376 IPC read with Section 3(2)V of SC/ST Act is upon the prosecution. However, there is neither any serious discussion nor any finding in the judgment in question with regard to the fact that the victim belongs to SC/ST category. Apart from the same, this Court finds that there is no witness to prove the caste of the victim. Thus inevitable conclusion is this that no offence under Section 3(2)V of SC/ST Act is made out and thus the conviction and the sentence so made under Section 3(2)V of SC/ST Act is unsustainable in the eyes of law.

30. The conviction of the appellant under the provisions under Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the SC/ ST Act') is not made out. The provisions under Section 3(2(V) of SC/ST Act reads as follows:-

*"**Section 3(2)(v)** Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property* belongs to such member, shall be punishable with imprisonment for life and with fine"

31. The learned counsel for the appellant has contended that the judgment of this High Court in Criminal Appeal No. 204 of 2021, Vishnu vs. State of Uttar Pradesh, passed on 28.1.2021 will come to the aid of accused. There is no case as enumerated in the said section is made out. The learned counsel for the appellant has further submitted that the ingredients of Section 3(2)(V) of SC/ST Act are not made

out and the finding and punishment is contrary.

32. In view of the decision in ***Patan Jamal Vali (supra)***, the sine qua non is that the victim should be a person, who belongs to scheduled caste or scheduled tribe and that the offence under the Indian Penal Code is committed against such person on the basis that such person belongs to the same caste and the offender does not belong to the same caste. If this is proved, then only conviction under Section 3(2)(V) of the Act, 1989 can be invoked.

33. The evidence goes to show that there was no utterance by accused, which would prove that the ingredients of Section 3(2)(V) of the SC/ST Act are fulfilled. The judgment in ***Patan Jamal Vali (supra)*** applies to facts in this case, and therefore, when the prosecutrix and her witnesses are silent on the factum of the incident occurring due to she being of caste, which falls within the purview of SC/ST Act, the conviction cannot be sustained.

34. We pass the following orders:-

(I) The sentence awarded to the appellant by the learned trial-court for the commission of offence under Section 376 read with Section 506 of IPC is reduced to a period of 8 years with fine of Rs.5,000/- and the default sentence is maintained looking to the poverty of the appellant.

(ii) As far as Section 3(2)(V) read with Section 3(1)XII) of the SC/ST Act is concerned, this Court upturns the sentence both of incarceration and fine and the same is quashed if the fine is deposited, which is a fine under Section 325 IPC, same shall be refunded. The accused is acquitted of the said charges.

(iii) As far as Section 326 IPC is concerned, we lessen the fine to Rs.2000/-, which should be paid to the father of the prosecutrix.

35. The appeal is **partly allowed**. The records be sent back to the court below.

(2022)01ILR A484
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.11.2021

BEFORE

THE HON'BLE DR. KAUSHAL JAYENDRA THAKER, J.
THE HON'BLE VIKAS BUDHWAR, J.

Criminal Appeal No. 2137 of 2015

Smt. Sudha & Anr. ...Appellants
Versus
State Of U.P. ...Opposite Party

Counsel for the Appellants:
Sri Nipun Singh, Sri Manoj Vashisth, Sri Santosh Kumar Tiwari, Sri Santosh Tripathi

Counsel for the Opposite Party:
A.G.A.

Criminal Law – Indian Penal Code, 1860 – Section 304(1) - Allegation-dowry death-burn injuries-husband admitted in the hospital-dying declaration-cause of death-septicimia-accused had no intention to cause death-injuries though sufficient to cause death-hence incident fall under Ex.1 and 4 to section 300 IPC-offence will fall under section 304 (1) IPC-conviction u/s 302 IPC converted into under section 304 (1) IPC.

Appeal partly allowed. (E-9)

List of Cases cited:

1. St. of U.P. Vs Ramesh Prasad Misra & anr. 1996 AIR (Supreme Court) 2766