



2026:AHC:34447-DB

Order Reserved On:-04.02.2026

Order Delivered On:-17.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2769 of 1983

Chunnu Alias Jabir

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	A.K. Singh Solanki, Apul Misra, Devvrat Misra, Pankaj Satsangi, S.Banerji
Counsel for Respondent(s)	:	Dga

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Delivered by Hon'ble Siddharth,J.)

1. Heard Sri Apul Misra, learned Senior Counsel assisted by Sri Devvrat Misra, learned counsel for the appellant no.2 and Sri Prem Shankar Prasad, learned A.G.A. for the State and perused and material on record and the judgment of trial court.

2. The present criminal appeal has been preferred against the judgment and order dated 11.11.1983 passed by Addl. Sessions Judge, Budaun, in Sessions Trial No. 380 of 1981 convicting and sentencing the appellants under section 302/34 IPC for life imprisonment and under section 323/34 IPC for six months of rigours imprisonment each of the appellants. All the sentences have been directed to run concurrently.

3. The prosecution story is that on 08.03.1980 at about 10:00 p.m., in the night the tube well operator, Qamar Raza Khan, P.W.-4 of the tube well no. 134 situating in the vicinity of village, Behta Dumber Nagar, gave water from the tube well to Mangli, Buddhho, and others to irrigate their fields. Mangli and his brother Shamshad were doing work at the field and the deceased Buddhoo was present at the tube well looking after the flow of water. In the same night of 8/9.03.1980 at about 04:00 a.m., the accused person, Subedar @ Jabir, Sabir Khan and Deputy Khan went at the tube well. They diverted the water of the tube well for their field which was resented by Buddhho started belabouring him with *lathis*. Buddhoo raised hue and cry whereupon, Mangli and Shamshad also reached there and intervened. Buddhho was also wielding *lathi* in self defence and when Mangli and Shamshad intervened they were also beaten with lathis. Baboo and Hashmat had also reached who saw the occurrence and upon their intervention the accused person went away. Buddhho was seriously injured and had fallen down at the tubewell. On inquiry, Buddhho, Shamshad and Mangli informed that the accused persons had come to divert for their field, and when they prohibited them from doing so, they had beaten them with *lathis*.

4. A bullock cart was arranged and having placed Buddhho in the said bullock cart,

Mangli, Shamshad and Baboo took him to the police station at about 10:00 a.m. They reached the police station at about 2:30 p.m. On 09.03.1980 and Mangli lodged F.I.R., Ex.Ka.1, which was scribed by H.C. Mahendra Pal Singh, who made entries in the G.D. Ex.Ka. 21 and registered a case of murder. Before the said persons had reached the police station, Buddhho had died on the way in between the villages- Chaudera and Noorpur.

5. S.I. Raghunath Singh Verma (P.W.-5) was entrusted with the investigation. The case was registered in his presence and the I.O. recorded the statement of H.C. Mahendra Pal Singh. The dead body of Buddhoo was lying in the bullock-cart in front of the police station. The investigating officer saw the dead body, held an inquest in the dead body and prepared inquest report Ex.K.5 in presence of the witnesses. He also prepared Naash Ex.ka.6, Challan Naash Ex.K.7, a letter to the R.I. Ex.Ka-8, a letter to the C.M.O. Ex.Ka.14 and got the dead body sealed in a piece of cloth, having prepared sample soul Ex.Ka.9. The dead body was entrusted to the constables, Suresh Chand and Sohan Pal, were instructed to escort the dead body to the District Head Quarter for post mortem. The I.O., recorded the statement of Mangli, Shamshad, Baboo and Hashmat Ali at the police station and on the same day he reached the place of occurrence at about 9 or 9:30 p.m., but could not do anything because of it being night. During the night, the I.O. was making search of the accused persons, who were not found. Next morning he made local inspection of the place of occurrence and prepared site plan Ex.Ka. 10. He also made search for the accused persons but they were not available. Tube well operator was also searched but he was also not found. On 12-03-1980 a search for the accused persons was made but they were not available and, therefore, the I.O. obtained processes under sections 82/83 Cr.P.C for compelling the attendance of the culprits. The accused persons surrendered in court on 15-3-1980. On 24-3-1980 they were interrogated by the I.O. and on 20-3-80 the statements of the tube well operator, Qamar Raza, has been recorded. The I.O., submitted charge sheet against the accused persons on 24-3-1980.

6. The injured persons Mangli and Shamshad were sent to P.H.C., Qadarchow, where they were medically examined by Dr. S.K. Saxena on 09.03.1980 at 05:00 p.m. The medical officer found the following injuries on the person of Shamshad:-

i. Abraided contusion 5 cm x 4 cm on the back of right brow and upper third of right upper arm.

ii. Contusion 8 cm x 2 cm on the left side back 6 cm above the left iliac spine.

iii. Contusion 10 cm x 1.5 cm on the front outer side of right thigh middle one third part.

7. The doctor prepared injury report Ex.Ka.19. He also examined Mangli and found one contusion 4 cm x 2 cm on left forearm towards back. According to the medical officer, injuries of these two persons were simple and could have possibly been caused on 09.03.1980 at about 04:00 a.m., by some blunt weapon like *lathi*.

8. Autopsy on the dead body was conducted by Dr. V.P. Kulshrestha(P.W.-3) on 10.03.1980 at 11:00 a.m. He found the following injuries on the dead body:-

i. Lacerated wound 1 cm x 0.5 cm bone deep on right side eye brow.

ii. Contusion 4 cm x 1 cm on left side occipital region of skull extending up to the parietal region of skull left side.

9. Besides the aforesaid injuries the medical officer also found that there was crack fracture of left side parietal bone extending up to the occipital region left side with blood clot being present under injury no.2, membranes were contested and blood clot was present, brain was also congested and hemorrhage was present on left side of skull. Pleura and lungs were congested, stomach was empty, small intestine contain fluid and gases and large intestine was full of fluid and faecal matter, spleen and kidney were congested and bladder was full, According to the medical officer the death was caused due to shock and hemorrhage as a result of ante mortem injuries. The medical officer took off the one shirt and one *Tahmad* from the dead body and sealed them in a bundle which was handed over to the constables escorting the dead body. The medical officer also prepared post mortem examination report Ex.Ka. 2.

10. In defence the accused persons have given a cross version. According to them Chunna Khan and Deputy Khan were irrigating the field in the night of 8/9-3-1980 from 1:00 a.m. The electricity had come in that night at about 1:00 a.m., and the tube well operator, Qamar Raza, had given them water at about 04:00 a.m., when the field of the accused persons was not fully irrigated, Mangli, Shamshad, Buddhoo, Shafat Ali and Lufty Ali reached there and diverted water for their field. At the order of Shafat Ali and Lufty Ali, Mangli, Shamshad and Buddhoo had beaten Chunna and Deputy Khan with *lathis* and in self defence they also wielded *lathis*. The F.I.R. of Deputy Khan and Chunna Khan was not recorded at the police station and then they filed criminal complaint. In respect of this another S.T. No. 381 of 1981 is also pending and going on with this S.T. No. 380/81.

11. In order to prove its case, the prosecution examined Mangli and Baboo who deposed about the incident and denied the cross version of the defence. Then the prosecution examined Dr. V.P. Kulsharestha (P.W.3) who deposed about the postmortem examination and proved his report Ex.Ka.2. Qmar Raza, (P.W.4) tube well operator was also examined, who has also supported the version of the defence and turned hostile. Then the prosecution examined, S.I. Raghunath Singh Verma (P.W.5), who deposed about the investigation. Sri Jasvir Singh, Junior Engineer (P.W.-6.), of Hydrel Department supported the prosecution version and deposed about the time during which the electric current was running on 08.03.1980 and 09.03.1980. Then the prosecution examined, Dr. S.K. Saxena, who deposed about the injuries of Mangli and Shamshad and proved their injury reports. In the last the prosecution examined H.C. Mahendrapal Singh who proved the F.I.R. and entries in the G.D., and Sri Udaiveer Singh Tyagi was examined as C.W.-1.

12. From the side of defence, Bishan Dayal, Moharrir Zildar of Tube Well Department, Budaun, was examined as D.W-4. He brought the registers of tube well to show the time during which the electricity was received by these tube wells in the night of 8/9-3-1980.

13. During the pendency of this appeal, appellant no.1, Chunnu @ Jabir, has died and the appeal has been dismissed as abated against him vide order dated 06.10.2025. Hence, the appeal has only been heard on behalf appellant no.2, namely, Deputy

Khan, son of Subedar Khan.

14. Learned counsel for the appellant no.2 has submitted that the correct facts are that in the night of 08.03.1980 at about 10:00 p.m., the tube well operator started the tube well of the region to irrigate the farm of the complainant. The water flowed from the tube well up to 04:00 a.m., on 09.03.1980; at 04:00 a.m., on 09.03.1980 the accused persons allegedly came to the tube well armed with *lathis* and told the deceased that the water from the tube well henceforth will now flow to the farms of the accused and they directed the flow towards their farm forcefully; the deceased objected against the accused for changing the course of the flow of water; on this the accused started assaulting the deceased with *lathis*; on the alarm of the deceased the complainant and his other injured brothers came to rescue but were also beaten by the accused persons; the deceased while being taken to the hospital died on the way.

15. Learned counsel for the appellant has submitted that the accused in fact acted in self defence; the persons on the prosecution side were the real aggressor in the incident and not the appellant side who also suffered injuries, but it could not be proved; the plea of private defence was taken by the deceased appellant no.1, Chunnu Khan, in his statement recorded under section 313 Cr.P.C. which was confirmed by the appellant no. 2 in his statement recorded under section 313 Cr.P.C.; P.W.-4, Qamar Raza Khan, tube well operator supported the defence; the deceased suffered a single blow on his head which proved to be fatal for his life; two injured suffered only simple injuries; the author of the only fatal injuries caused to the deceased was not defined, hence the conviction of the appellant no.2 with the help of section 34 IPC for committing the offence of murder is not justified.

16. Learned AGA has vehemently opposed the submissions made by counsel on behalf of the appellant no.2 and has submitted that the plea of private defence set up by the appellants was not proved before the trial court. He has submitted that there was no injury suffered by the appellants which may prove that they were initially assaulted by the prosecution side and they then exercised their right to private defence and in resisting the attack on them, the death of Buddhu was caused. Simple injuries were suffered by Shamshad and Mangli. He has also pointed out that the trial court convicted the appellants and relying upon the statements of C.W.-1 and other prosecution witnesses. He is unable to inform about the fate of the cross case, but admitted that a cross case was filed in the form of complaint which was not decided along with this case as admitted by P.W.-1.

17. After hearing the rival submissions, we find that right to private defence set up by the appellants was not found proved before the trial court and the findings recorded by the trial court that the appellant's side was the aggressor are justified since they are based on the material on record. The findings of the trial court are confirmed. However, we find from the record that the deceased has suffered only one fatal head injury in the occipital region extending up to parietal region of skull which proved fatal for his life. The other injury caused to him was only a lacerated wound 1 cm x 0.5 cm bone deep on right side eye brow.

18. In the F.I.R., there were four assailants out of which two of them namely, Sabir Khan and Subedar Khan, were given benefit of doubt by the trial court but the deceased, appellant no.1, Chunnu @ Jabir, and the surviving appellant no.2, Deputy Khan, have been convicted and sentenced under section 302 read with section 34 IPC.

19. We have found from the record, that at the time of recording of the statement of the appellant no.2 in the year 1983 he was aged about 18 years. The incident in dispute took place in the year 1980 and, therefore, at the time of incident the appellant no.2 may have been aged about 15 years and was minor. The plea of his minority was never raised before the trial court and even before this Court. At this belated stage and keeping in view the order we propose to pass in this appeal, no useful purpose would be served by directing inquiry regarding the age of the appellant no.2 by the Juvenile Justice Board, concerned as per the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which is now applicable. The life imprisonment awarded to appellant no.2 cannot be justified, keeping his age in view at the time of incident in dispute.

20. We have not found any specific role assigned either to the appellant no.1 or surviving deceased-appellant no.2. We have further found that the dispute took place between the parties all of a sudden due to diversion of flow of water to their agricultural fields. There is no evidence of any prior motive or enmity between them. Therefore, there does not appears to be any premeditation and intention on the part of appellant no.2 to cause death of deceased.

21. Keeping in view the fact that only one fatal injury was caused to the deceased by one of the appellants(or perhaps by the acquitted accused), and relying on the principle laid down by Hon'ble Apex Court in **Chmaru Budhwa Vs. State of M.P. AIR 1954 SC 652**, wherein it was held that a **crime committed without premeditation, in a sudden fight, on heat of passion, without taking undue advantage, falls within the Exception 4 of Section 300 IPC**. We find that prosecution has not been able to prove beyond reasonable doubt that the act of the appellant was done with the intention of causing death, though he had the knowledge and that it may result in death. Prosecution has been able to prove that the offence at best comes under **Section 304 Part II/34 IPC**.

22. Consequently, conviction of the appellant no.2 under section 302 IPC is modified to conviction under **Section 304 Part II/34 IPC**. The sentence is also modified from imprisonment for three years, along with fine of Rs. 10,000/-, payable to the informant or his legal heirs, as the case may be.

23. Appellant is on bail. His bail bonds is cancelled and sureties are discharged. He shall surrender forthwith and carry out the remaining sentence. Period of sentence already undergone shall be adjusted.

24. Appeal is **partly allowed** to the extent stated above.

25. Let the trial court record be returned along with copy of this judgment for necessary compliance.

February 17, 2026
Abhishek

(Jai Krishna Upadhyay,J.) (Siddharth,J.)