

Reserved on 16.3.2026
Delivered on 30.3.2026



2026:AHC:66073-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2667 of 2005

Chhote Kachhi

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: P.n. Dixit, Surendra Kumar Singh
Counsel for Respondent(s)	: Govt. Advocate

In Chamber

HON'BLE SIDDHARTH, J.
HON'BLE JAI KRISHNA UPADHYAY, J.
(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Ashutosh Yadav, learned Amicus Curiae for the appellant; Sri Pawan Srivastava, learned AGA for the State and perused the material on record.
2. The above-noted criminal appeal has been preferred by the appellant against the judgment and order dated 5.5.2005 passed by Additional Sessions Judge, Court No.1, Hamirpur in Sessions Trial No.111 of 2002, State Vs. Chhote Kachhi, convicting and sentencing the appellant under Sections 376, 302 IPC to undergo life imprisonment and fine of Rs.1000/-. In default of the payment of fine, the appellant shall go additional imprisonment for three months.

3. As per the prosecution story, on 21-5-02 at 11:00 pm, in an open room near the rented house of Gayatri Devi W/o Shambhu Singh located at Mohalla Nai Basti, Gurguj Kasba, PS- Sumerpur, district- Hamirpur, the accused Chhote Kaachhi had sexual intercourse with Kajal D/o Smt, Gayatri Devi, age about 5 years, due to which she died. At that very moment while the accused was committing the rape, Smt. Gayatri Devi, who had gone out on an errand, returned. She lit a matchstick and observed Chhote Kaachhi engaging in sexual intercourse with Kajal. Upon witnessing this, she raised an alarm, called out to her neighbour Chhote Chamar, and attempted to apprehend the accused; however, the accused, Chhote Kaachhi, escaped through the room's window which lacked protective grills.

4. The complainant/informant, Smt. Gayatri Devi, lodged an oral report regarding the aforementioned rape and murder at the Sumerpur Police Station at 00:10 hours on 22-5-02; based on this report, the *Chik* of FIR (Exhibit *Ka-1*) was registered against the accused, Chhote Kaachhi, under Sections 376 and 302 of the IPC. Entry regarding the registration of the case was made in the General Diary (GD) as Report No. 2, time 00:10 hrs on 22-5-02 (Exhibit *Ka-3*), and the investigation into the case was initiated immediately.

5. Commencing the investigation into the matter on 22-5-2002 itself, the Investigating Officer (I/O) transcribed copies of the *Chik* FIR and the General Diary (GD) entry regarding the case registration into the Case Diary; furthermore, he recorded the statements of the FIR *Chik* scribe,

Ranjit Singh, the complainant/informant, Smt. Gayatri Devi, and the witness, Chhote Chamar. Additionally, he prepared a site map of the place of the incident (Exhibit *Ka-9*) and prepared a memo (Exhibit *Ka-10*) regarding the collection of blood-stained earth and plain earth. During this process, SI Shri Krishna Gupta (now deceased), who was present alongside the I.O., filled out the inquest report (Exhibit *Ka-4*) for the deceased child, Kajal, and prepared the necessary documents required for conducting the post-mortem examination, including photographs of the body, the challan of the dead body, a letter to the R.I., and a letter to the CMO (Exhibits *Ka-5* to *Ka-8*). In accordance with the prescribed rules, after sealing and stamping the body, he dispatched it to Hamirpur for the post-mortem examination. Subsequently, he arrested the accused, Chhote Kaachhi, recorded his statement, and after taking his underwear into his custody prepared a memo to that effect (Exhibit *Ka-11*).

6. On 23-05-2002, upon receipt of the post-mortem report (Exhibit *Ka-2*), the I/O recorded the cause of death in the case diary and incorporated a copy of the inquest report therein; simultaneously, he recorded the statements of witnesses Ram Shankar, Jagdish, and Sachin, as well as the statements of the witnesses to the inquest report, Chhatanku, Rakesh, Bhim alias Brahmprakash, and Chhote Chamar and other witnesses, Shambhu Singh and Surendra Kumar Nigam.

7. On 27-5-02, S.I. Shri Krishna Gupta recorded the statements of Constable Emrat Singh and Constable Harnam Singh, the personnel

responsible for taking the deceased's body to Hamirpur for a post-mortem examination, and after completing all formalities related to the investigation, submitted the charge sheet (Exhibit *Ka-12*) against the accused to the competent court through the proper channel.

8. The case was committed to the Sessions Court by the concerned Magistrate's Court on 24-03-2003, the then Presiding Officer framed charges against the accused for offenses punishable under Sections 376 and 302 of the Indian Penal Code, which the accused denied and demanded trial.

9. The prosecution examined the following witnesses: PW-1 Smt. Gayatri Devi (the complainant/informant) as the witness of fact; and PW-2 Dr. Akhilesh Kumar, PW-3 Constable Moharrir Ranjit Singh, and PW-4 SO Rajpal Singh (the Investigating Officer) as formal witnesses.

10. Furthermore, the following documentary evidence were submitted: the First Information Report (Exhibit *Ka-1*), Post-mortem Report (Exhibit *Ka-2*), Copy of the Case Registration Entry (Exhibit *Ka-3*), Panchayatnama (Exhibit *Ka-4*), Photograph of the dead body (Exhibit *Ka-5*), Challan of dead body (Exhibit *Ka-6*), Letter to the R.I. (Exhibit *Ka-7*), Letter to the CMO (Exhibit *Ka-8*), Site Map (Exhibit *Ka-9*), Memo regarding the Seizure of Blood-stained and Plain earth (Exhibit *Ka-10*), Memo regarding the Seizure of the Accused's Underwear (Exhibit *Ka-11*), and the Charge Sheet (Exhibit *Ka-12*).

11. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he denied the entire prosecution

narrative and expressed ignorance regarding the same. He professed ignorance concerning all proceedings related to the investigation and asserted that the complainant had colluded with the police to fabricate a false charge sheet. With respect to the testimonies of all the prosecution witnesses, he contended that they had given false statements, further claiming that he had been falsely implicated due to enmity and that, at the time of the incident, he was in a semi-deranged state.

12. The accused was afforded opportunity to present his defense; however, no evidence was adduced on his behalf in support thereof.

13. We have heard the arguments advanced by the learned counsel for appellant and by the learned AGA for State and have perused the evidence available on record.

14. In this case, the sole eyewitness presented by the prosecution is PW-1, Smt. Gayatri (the Complainant/ Informant). While supporting the prosecution's story in her examination-in-chief dated 04-12-03, she stated that she knows the accused present in court, 'Chhote', who resides at a short distance away in her neighborhood. She further stated: "This incident occurred approximately one and a half years ago. I had gone to work at a an event of *Bhagwat* being held at Surendra Nigam's residence, leaving behind at home my daughter Kajal (aged 5 years), my daughter Rakhi (aged 9 years), and my son Akash (aged 3 years)." When I returned around 11:00 PM, both children were asleep, but the girl, Kajal, was nowhere to be seen. I heard sounds coming from the adjacent room, which was currently under construction and noticed that it was

open. I lit a matchstick to look inside and saw that Chhote was sexually assaulting Kajal. I then called out to Chhote Chamar. Chhote Chamar arrived carrying a stick (lathi). When Chhote Chamar and I attempted to apprehend Chhote Kaachhi, he escaped through a window in the room that lacked protective grills. Chhote Chamar and I lit a matchstick to examine the scene; we found Kajal lying naked, with injuries on her cheeks and neck, and bleeding from her genital area. She lay there dead.”

15. This witness has, in her examination-in-chief, fully supported the prosecution story. In her cross-examination, this witness has stated, “My husband, Shambhu Singh, was not present in home at that time. He went to work at a girl's wedding. My husband works as picker of leaf plates (*pattal*). He has a house in village Baki and does not possess any agricultural field. Shambhu Singh has been my husband for four years. I have been living with him for four years. The age of Shambhu is about 20-25 years. Ravi and Kajal are not Sambhu’s children, only Akash is the son of Shambhu. My first husband was Naval, he lived in Modaha. He is alive but has abandoned me. After 5-6 years of leaving my first husband, Naval, I started living with Shambhu. I did not observe circumambulations (*bhanwars*) with Shambu, we got married in a temple by garlanding each other. I stayed in my maternal home for 5-6 years after Naval left me. On the day of the incident, Shambhu Singh was already out of home. He came back on the second day after the incident. I had gone to work at Surendra Nigam’s house where sermons on *Bhagwat* were going on. I was not going daily. That day was the last

day of sermons on *Bhagwat*; the feast went on till 11 o'clock at night, due to which I was late in arriving back to the house. I had taken a room on rent in the house of Lala Gupta. The other room was taken on rent by Chhote Chamar. Lala Gupta did not reside there. There are no houses or shops in the nearby area of the house abutting the place of occurrence. There are only two rooms which are under construction. Doors were installed in one room while they were yet to be installed in the other. A *chakki* (flour mill) is installed in front of my room. There's a unpaved road in the middle. The path is about 10 hands wide. The mill's door faces the road. The mill operates when there's electricity. Lakshmichandra's house is adjacent to the mill. The wall between my room and the place of incident had collapsed, leaving a vacant space. My children, Kajal, Rakhi and Akash, were lying outside the room because it was hot. The mill belongs to Lakshmichandra. Lakshmichandra's children had all gone to a wedding. I went to Surendra Nigam's house at 5:00 pm. My children were playing at that time. I didn't leave them unattended. I gave the room key to Rakhi and told them to eat and go to sleep. Chhote Kachhi's house is a mile away from my room. His house is a bricked house on the main road. Shops are built around the house. The land there is quite valuable. His father is old. He has four brothers, three of whom are younger than him. Near me is Shyam Tent House, where people come for work. Shyam Tent House calls me and makes bookings for work. I often have to go out for work. I return late at night. Chhote Chamar was lying inside his room, locking it from the inside. Satyaveer's house is four or five lanes away from our house. Chhote

Kachhi used to visit their house. He never came to my house. It was a dark night. There was no light. There was no electricity at that time, so I lit a match and checked. When I returned to my room, my daughter was not with the children. The boys were lying on the floor. I went looking for the girl nearby, lighting a match. First, I searched for Kajal in the neighbourhood. I asked at Shyam Tent House. I asked Chhote Chamar's mother, and she told me she was just lying there. When I searched everywhere and couldn't find the girl, I called Chhote Chamar, and Chhote Chamar and his mother came out. I told them to look for Kajal. Chhote Chamar and I were standing there talking when the accused lit a match in the room. That's when we realized someone was in the room. We then saw Chhote doing something inappropriate with Kajal. Kajal was already dead before we saw Chhote. When I told Chhote Chamar, "Look, someone has entered the room," the accused immediately jumped out of the window and ran away. I went inside the room with Chhote Chamar and found her lying dead inside. When I came back inside, I didn't hear any sound from Kajal. When I returned to my room, Kajal was no longer alive. I showed the sub inspector where the children were sleeping. I can't say why the sub inspector didn't mention the place for the children to sleep, so I can't explain why. It's wrong to say the children were sleeping inside. It's not true that I and Chhote Chamar saw Kajal being raped inside the room. As I've mentioned in my report, I first lit a match and saw Chhote Kachhi committing indecent acts with Kajal. Seeing me, he didn't run away but continued. From there, I called out to Chhote Chamar to bring a stick. "Chhote Kachhi is committing indecent

acts with Kajal," I said. It took Chhote Chamar two minutes to arrive. When Chhote Chamar arrived at my door, Chhote Kachhi ran away. Chhote Chamar didn't see him committing indecent acts, but rather saw him leave. It must have taken about 4-5 minutes for me to go into the room, call Chhote Chamar, and then return. It's wrong to say that all kinds of people come to my house. It's also wrong to say that I trouble the neighbours. I don't know if Chhote Kachhi is mentally unstable; rather, he's sane. When I saw Chhote Kachhi committing indecent acts with Kajal, I tried my best to catch him, but I couldn't catch him. When I and Chhote Chamar tried to catch him, he ran away through the window.

16. In her further cross-examination the witness further stated that she had left 'Chhote Chamar' near Kajal's dead body and proceeded to the police station to lodge a report; at the police station, she lodged the report by verbally narrating the details to the Diwan-ji. The Diwan-ji recorded exactly what she had narrated and read it back to her, whereupon she affixed her thumb impression to it. In court, the 'First Information Report' (FIR) was read out to the witness; she affirmed that it was indeed the same report she had lodged, and she identified her thumb impression affixed to the 'Chik FIR' as 'Exhibit Ka-1'.

17. PW-2, Dr. Akhilesh Kumar, stated in his examination-in-chief that, on 22-5-2002, he was posted as a Senior Radiologist at the District Hospital, Hamirpur. On that day, at 3:00 PM, he conducted a post-mortem examination on the body of Kumari Kajal aged 5 years,

daughter of Shambhu Singh, a resident of Nai Basti, Gurguj, Sumerpur which had been brought in by Constables Emrat Singh and Harnam Singh of the Sumerpur Police Station; he indicated the probable time of death as approximately one day prior.

18. On external examination of the body, the witness found that the deceased was a girl of average build, approximately five years of age. Her eyes and mouth were closed. Blood was oozing from the right side of her mouth. Post-mortem staining was present on the abdomen and abdomen was appeared slightly distended. Rigor mortis was present in the lower limbs and had passed from the neck and upper arms. The witness observed the following ante-mortem injuries on the deceased's body:

i- Swelling and an abrasion, measuring 8 cm x 7 cm, present on the right cheek directly in front of the right ear.

ii- Multiple scratch marks present in an area measuring 6 cm x 5 cm on the upper part of the neck, below the right ear.

iii- Multiple scratch marks present in an area measuring 6 cm x 3 cm on the left side of the neck.

19. Upon examining the genitalia, the witness observed that blood was present all around the genital area. The hymen was ruptured. The labia minora was ruptured, from which a serum like fluid stained with blood was oozing. The posterior wall of the vagina was torn, as was the outer wall of the rectum; upon applying pressure, fecal matter exuded from it. The posterior fornix and the lower segment of the uterus were also ruptured.

20. Upon internal examination of the body, the witness found the skull and cranium to be in a normal condition; the membranes and brain were found to be congested. The vertebral rings were normal, and the spinal cord was not opened. The walls, ribs, and bones were normal. There was mild congestion in the trachea and in both main cavities of the respiratory system. Both lungs were congested. The pericardium was normal; the right chamber of the heart was full, while the left chamber was empty. The abdominal walls, abdominal cavity, and hole appeared normal. Both the oral cavity and the pharynx were congested. The dental count was 10/10. The stomach contained approximately 4 ounces of semi-solid food. The small intestine contained gas and partially digested food material, while the large intestine contained gas and fecal matter. The liver was normal, and the gallbladder was half-filled. The pancreas, spleen, and both kidneys were normal. The urinary bladder was empty.

21. The witness stated that the cause of death was shock resulting from severe injuries sustained in the genital region, and affirmed that death could plausibly result from injuries inflicted during the act of rape. Furthermore, the witness identified the post-mortem report prepared by him. The witness also testified that it is plausible that the deceased, Kajal, died on 21-5-2002, at approximately 11:00 PM, as a result of genital injuries sustained during the rape.

22. PW-3, Constable Moharrir Ranjit Singh, in his examination-in-chief, stated that on 22-05-02, he was posted as a Constable Moharrir at Sumerpur Police Station. He further deposed that on that day, at 00:10 hrs in night, he prepared the Chik FIR based on the oral information

provided by the complainant, Smt. Gayatri Devi, wife of Shambhu Singh; he affirmed that he wrote exactly what she narrated, read it back to her, obtained her thumb impression on the Chik FIR, and made an entry regarding this incident at that very time in the General Diary (GD) as Report No. 2, dated 22-5-02, at 00:10 hrs. The witness identified the Chik First Information Report as being in his own handwriting and bearing his signature, and duly proved the aforementioned GD entry regarding the registration of the case as Exhibit *Ka-3*.

23. PW-4, S.O. Rajpal Singh is the investigating officer of this case and has proved in his examination-in-chief about all the steps taken by him during the investigation of the case. He has proved all the prosecution papers prepared by him and stated that inquest report of the deadbody of the deceased was filled by S.I. Shri Krishna Gupta, who is no more. He knows and recognizes the handwriting and signature of late S.I. Shri Krishna Gupta and this witness has proved the inquest report (Exhibit *Ka-4*) and the related papers (Exhibit *Ka-5* to *Ka-8*) prepared by him.

24. The learned counsel of the appellant has argued that the aforesaid statement of the doctor, post mortem report and circumstances reflect that the death of the deceased, Kajal, occurred on 21-05-02 at around 08.00 pm, and because of this, the medical evidence do not corroborate the evidence of the eye witness.

24. We do not concur with the said argument of the learned counsel of the appellant because PW-1, the doctor, has clearly stated in his examination-in-chief that the death of the deceased, Kajal, was possibly the result of the injuries inflicted on her genitals during the commission

of rape on her at around 11.00 pm on 21-05-02. In the cross examination of this witness, the facts which have come to light, do not determine that the death of the deceased, Ku. Kajal, did not occur at 11.00 pm on 21-05-02.

25. The inquest of the dead body of the deceased was done by the S.I., Shri Krishna Gupta, on 22-05-02 at 6.30am and the Sub-Inspector found a *sameej* (used and stained), one underwear and blood near the dead body. The sub-inspector found the dead body lying in a supine position behind three sacks of salt in an open room which was under construction. The head of the deceased was in east-north position and her legs were south-west position. Both legs were spread from the knees and the knees were around 6 inches above the ground. Blood has oozed out of the genitals and the body had become slightly stiffed. There were stains of blood in the region around the genitals, on the thighs and on the fingers of the hand. In the opinion of the Panchs and the Sub-Inspector, a brutal rape was committed on the deceased. The dead body was sealed in a cloth as per rules by the sub-inspector, who prepared the necessary papers (Exhibit *Ka-5* to Exhibit *Ka-8*) and handed it over to the constables Emrat Singh and Harnam Singh, for post-mortem.

26. From the above facts and evidences we find this fact proven that at around 11.00 pm on 21-05-02, in an open room of an under construction building, situated parallel to the house of Smt. Gayatri Devi, the deceased, Km. Kajal, an innocent girl of age around 05 years, was subjected to sexual intercourse in a very inhuman manner, causing her death due to the injuries caused to her.

27. The learned counsel for the appellant has submitted that FIR is delayed. We find that crime was committed on 21-5-02 at around 11.00 pm and the information regarding the crime was given verbally by Smt. Gayatri Devi at the police station Sumerpur on 22-05-02 at 00.10 am. The place of incident is at distance of around 1/ 2 furlong in the north from the police station. We do not agree with the aforesaid argument of the learned counsel. The crime is related to the commission of rape followed by death of the daughter, Km. Kajal aged 05 years, of the complainant/informant Smt. Gayatri Devi and information regarding this incident was given by Gayatri Devi after 01 hour 10 minutes of the incident. Here, we find it necessary to mention that the incident is alleged to have taken place at around 11.00 o' clock in the night and subsequent to the happening of such a grave incident, it is natural that mental balance of Smt. Gayatri Devi, who is the mother of Km. Kajal, would have surely been disturbed given the fact that her husband was also not present in the house on the night of the day of the incident and therefore the delay of 01 hours 10 minutes in reporting the incident could not be considered as delay given the circumstances prevailing at that time. The said delay, as alleged, is reasonable, proper, and natural and does not in any manner casts adverse effect on the evidence of the prosecution and the prosecution story.

28. The next argument of learned counsel for appellant is that he has been implicated due to village rivalry. In the statements given by the accused under section 313 CrPC, he has stated the statement given against him by Smt. Gayatri to be false and stated to have been falsely

implicated in the case out of rivalry. He has stated himself to be semi-deranged mentally at the time of the incident. From the facts stated above, it is evident that the accused has nowhere alleged that he had any rivalry with Smt. Gayatri Devi; although he has asserted that he has been implicated in the case out of rivalry, but he has not revealed with whom he was having the rivalry. Even in the statement of PW-1, Smt. Gayatri Devi, who is the mother of the deceased, no such lead question has been asked on behalf of the accused that establishes any rivalry of Smt. Gayatri Devi with the accused. In the cross-examination, it was asked from Gayatri Devi whether she had falsely implicated the accused at the behest of his enemies, and she was also asked the lead question whether a merchant from Sumerpur, had sought to take possession of the house of the accused, Chhote Kaachhi and if she had indeed falsely implicated the accused at his instigation. Gayatri Devi has no rivalry with the accused, furthermore, no evidence has been put forth by the accused regarding the rivalry between the accused Chhote Kaachhi and his enemies which can prove that Smt. Gayatri was having any close association with the enemies of the accused, Chhote Kaachhi, and she was under their influence. Hence we turn the argument advanced.

29. The next argument of learned counsel for the appellant is about lack of source of light at the place of incident. It is on record that the incident took place at around 11.00 pm on 21-05-02. Place of occurrence is an open room in a semi constructed building situated in Mohalla Nai Basti, Gurguj Kasba, PS- Sumerpur and there was no source of light. It was dark at the time of incident. Regarding the source of light, PW-1, Smt.

Gayatri Devi, who is the eyewitness of the incident, has clearly stated in her deposition that, "I had lit the matchstick and saw Chhote committing wrongful acts against Kajal." Regarding the same, this witness has during cross-examination stated, "...it was a dark night, there was no light. Power was out at that time, so, I had lit the matchstick for visibility. I had searched for the girl in the light of matchstick." The foregoing testimony is also supported by the FIR because this witness has verbally reported the incident in the police station in which she has stated, "Sensing something, I went to the room nearby which remains vacant and saw in the light of matchstick that Chhote Kaachhi s/o Ganga was committing wrongful acts against my daughter, Kajal, on the ground." There is no suspicion regarding the presence of a light source, and the light of the matchstick was adequate enough for the informant, Smt Gayatri Devi, to very well identify the accused, who was already well known to her.

30. The learned counsel for the appellant has also argued that Gayatri is not a woman of good character and that antisocial elements or individuals with bad reputations used visit her house, and that one of them must have committed the crime and falsely implicated the accused and that statement of PW-1 is unreliable. Furthermore, the prosecution did not produce the other witness, Chhote Chamar, as witness, and this fact also makes this statement of PW-1 unreliable.

31. We do not agree with the learned counsel of the appellant. It is true that Smt Gayatri admitted in her statement that her former husband deserted her, that she lived at her parents' home for approximately 5-6

years after the desertion, and that she subsequently married Shambhu Singh, and that Kumari Kajal and Rakhi are his children. However, this fact alone does not renders this witness's statement unreliable; rather, it strengthens her credibility because she has revealed the truth about her life to the court. The appellant did not produced any evidence in his defence that would prove that antisocial elements and individuals with a shady reputation in society frequented Smt Gayatri Devi's house. Furthermore, the accused has not presented any evidence in his defence that may question character of Smt Gayatri.

32. It is true that Chhote Chamar came to the place of the incident when PW-1 called him, and the prosecution did not produce Chhote Chamar as witness. However, the prosecution made considerable efforts to produce Chhote Chamar as witness, but found him unavailable. On the summons sent to Chhote Chamar for evidence, police reports were received that to Chhote Chamar was a native of Baraur Mohalla, near Degree College, PS – Baraur, and he does not currently resides at the temporary address where he was staying at the time of the incident. These reports were dated 20-11-2003 and 4-4-2004. Subsequently, summons against Chhote Chamar were sent to his permanent address in Kanpur Dehat district, and police reports were also received from there stating that no person with this name and address resides there. After this,ailable warrants were again issued against Chhote Chamar at the address given at the time of the incident, on which a report was again received on 23-8-04 that no person with this name lives at the said address and he is living in Kanpur Dehat town and PS – Baraur. From the above facts, it is clear that the

prosecution made proper efforts to produce Chhote Chamar in witness box, but even after that the said Chhote Chamar was not available and due to this reason his evidence could not be recorded and thus the prosecution has not committed any negligence in not producing Chhote Chamar in court and due to his not being examined, the statement of Smt. Gayatri Devi cannot be declared unreliable.

33. The learned counsel for the appellant also contended that no chemical examination has been done of the underwear of the accused, which the investigating officer had taken into custody at the time of his arrest on 22.05.02 around 11:30 A.M. and, no spot of semen were found on the underwear of the accused. This fact is fatal for prosecution story and makes the prosecution story suspicious.

34. We do not agree also with the said contention of the learned counsel for the appellant. It is true that the investigating officer P.W.-4 i.e., S.O. Rajpal Singh, has stated in his statement that he had taken the underwear of the accused into possession because the semen might be found on the same. It was not mentioned in the memo that the spots of semen were visible on the underwear because spots of semen were not visible clearly on the underwear and I did not get the underwear examined medically. The investigating officer has stated clearly that spots of the semen were not visible clearly on the underwear of the accused which was taken into possession by him and, therefore, he did not mentioned this fact in the memo and, therefore, he did not get the chemical examination done. The said criminal incident took place on 21.05.02 around 11:00 O' Clock in the night and the investigating officer arrested the accused Chhote

Kaachhi on 22.05.02 around 11:30 O' Clock in the day and in this long interval, the accused can change his underwear easily, if he worn it at the time of the incident, and the absence of the spots of the semen particle on the underwear of the accused which he worn at the time of arrest, does not weakens the prosecution story and, on the said ground, the prosecution story does not become suspicious.

35. It is true that the sole eye-witness of the incident is P.W.-1 Smt. Gayatri Devi and none is the witness of the incident. It is well settled law that merely on the ground of the sole eye-witness, whose evidence is supported from the other evidence on record, the accused can be convicted. In the criminal case in question, there is allegation of murder of an innocent girl by committing horrific and brutal sexual intercourse with her and it is not possible to have an eyewitness to such an incident because the accused certainly tried to commit the act of sexual intercourse secretly from the public and it is also necessary to mention here that the incident in question took place in the night around 11:00 O' Clock.

36 The learned counsel for the appellant has also stated in his argument that the accused was mentally unsound at the time of the incident and due to this reason, he cannot commit such an incident.

37. We do not agree with the said argument of the learned counsel for the accused also because the accused did not produce any such a evidence from which it can be proved that the accused was mentally unsound at the time of the incident.

38. The complainant/informant (P.W.-1) Smt. Gayatri Devi's evidence is found to be reliable and the evidence produced by her is also supported by the medical evidence of the prosecution side. Identifying already known accused in the light of match stick is completely natural and possible. There is no delay in the first information report. The accused had no grudge with Smt. Gayatri and there is least possibility to implicate an innocent person by saving the real culprit who has committed the murder of minor child aged about 5 years of PW-1 by committing brutal sexual intercourse on her.

39. We have not found any infirmity in the findings recorded by the trial court.

40. The judgment and order of the trial court is well merited and deserves to be confirmed.

41. The above noted criminal appeal is **dismissed**.

42. The appellant is in jail. He shall carry out the remaining sentence.

43. Office is directed to send the trial court record to the trial court and also notify this judgment to the trial court.

44. We appreciate the assistance rendered Sri Ashutosh Yadav, learned Amicus Curiae and it is directed that he shall be paid Rs 15,000/ (Rs.fifteen thousands) towards his professional fees within a month from raising the bill.

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

March 30, 2026
Ruchi Agrahari