



2026:AHC:187547-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2843 of 1987

Ram Kunwar and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Anand Kumar Singh, Sanjay Kumar
Counsel for Respondent(s)	:	A.G.A.

AFR

Judgment reserved on 05.08.2026

Judgement delivered on 09.09.2026

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

(Per : Jai Krishna Upadhyay, J)

1. This criminal appeal has been preferred by the accused appellants against the judgment and order dated 30.11.1987 passed by the III Addl. Sessions Judge, Mirzapur in Session Trial No. 32 of 1987 (State vs. Ram Kunwar and others) convicting and sentencing the appellants for the offences punishable under Section 302 read with Section 34 IPC for life imprisonment and for the offence under Section 201/34 IPC for five years rigorous imprisonment.

2. The brief facts of the case, as unfolded from the First Information Report is that the deceased, Smt. Shanichari (wife of Sumer Chauhan, resident of Village Bishunpura, P.S. Balua, District Varanasi), was related as aunt (Bua) to the accused Ram Kewal. On the intervening night of 21/22.10.1985, the accused-appellants, Ram Kunwar and Ram Kewal, in furtherance of their common intention, brought Smt. Shanichari along with her two minor daughters Km. Pramila (aged about 5–6 years) and Km. Leela (aged about 1 year) from Village Bishunpura to Village Baharanaganj. There, at a secluded spot near the Mirzapur–Varanasi Road, the accused Ram Kewal held the deceased while accused the Ram Kunwar inflicted fatal knife blows upon her neck, causing her death. In order to screen themselves from legal punishment, the accused persons threw the weapon of offence into nearby

bushes, left her dead body hidden in the drain, and abandoned the two minor girls at the scene of the crime and fled. Later these minor girls went to Chunar Bus Station crying and stayed there near the betel shop of one Shyam Ji. On 22.10.1985 at around 10:00 AM, PW-2 Nandu Lal noticed the abandoned children and informed this at Police Station Chunar, whereupon PW1 Constable Pursottam Pandey reached the bus station and handed over the custody (Supurdagi) of both minor girls to Ram Preet Singh. Later that evening, at around 6:00 PM, the dead body of Smt. Shanichari was found near the drain.

3. An Oral report at P.S. Chunar was lodged, giving rise to the Chick FIR on 22.10.1985 at 20:00 p.m. for the offence under Section 302/34 and 201/34 IPC and G.D. report was prepared. Investigation in the matter started. The Investigating Officer visited the place of occurrence, prepared a site plan, inquest report and other papers. After completing the necessary formalities, the Investigating Officer submitted charge sheet in the matter.

4. Dr. Mohan Lal conducted the postmortem examination of the deceased on 23.10.85 at around 2:00 p.m. He found an incised wound on the front of the neck. The cause of the death was shock and haemorrhage as a result of ante mortem injuries.

5. The accused persons appeared and were charged under Sections 302/34 IPC and 201/34 IPC. They denied the charges, pleading not guilty and claimed to be tried.

6. The trial proceeded and in order to prove its the prosecution examined eight witnesses, namely, informant Purosattam (P.W.-1), Shyam ji (P.W.-2), Parmila (P.W.-3), Ram Avtar Yadav (P.W.-4), Dukkhi Yadav (P.W.-5) Subedar Mishra (P.W.-6), Dr. Mohan Lal (PW-7) and Ram Sajeewan Singh (P.W.-8).

7. As for documentary evidence, documents / papers exhibited as Ext.Ka. -1 to Ext. ka-20 respectively have been proved

8. P.W.-1 – Purushottam Pandey, stated that he was posted as a Constable at P.S. Chunar, District Mirzapur. On that day in the morning, one Nand lal had given information at the police station that there were two abandoned girls at the Chunar bus station. Upon receiving this information, he went there and

found both the girls; their names were Parmila, aged about 5-6 years, and Leela, aged about 1 year. He gave both these girls into the custody of one Shri Ram Prit Singh. Thereafter, at around 6:00 PM he got information about the dead body of a laborer-class woman which was lying near village Bahramganj. Upon receiving this information, he reached the spot and found the dead body of a woman. He saw that the front right side of the neck was cut and significant amount of blood had also fallen there on the ground. He went to the police station and lodged the oral report of this incident. The Head Constable had written the report. In his cross examination he stated that the girls were on the pavement of the road in front of Shyam ji betel seller's shop. The girls were crying and they had also not told anything to him about the incident.

9. P.W.-2 Nand lal son of Bechan, Age 30 years Resident of Village Biraullipur, P.S. Chunar, District Mirzapur, stated that about 1 and a half years ago around 8:00-9:00 AM, he had gone to the betel shop of Shyam ji situated at the Chunar Bus Stand. Shyam ji told him that two girls had come crying in the night, and he had kept them with him and asked him to inform the police. Thereafter, he informed the police and the constables of the police station were sent to make arrangements for those girls. Three-four days after this, the Sub-Inspector brought the accused Ram Kewal after catching him at the bus stand. The Sub inspector called him and Bhola. At that time, accused Ram Kewal, the Sub-Inspector and Pramila were also present there. The accused Ram Kewal told them that he had seen the bloodstained knife which Ram Kunwar had thrown in the 'Sarpat' (reed) bushes in the drain towards the north, and that he could get it recovered. They went behind him and found one bloodstained knife from the 'Sarpat' bushes on the north-east side of the drain, and he also told them that with this very knife Ram Kunwar had cut the throat of deceased Shanichari. Taking the knife at the spot, the Sub-Inspector sealed it. In his Cross-examination he states that he had also seen the girls at his shop. He often used to come to the Chunar bus stand around 8:00-9:00 AM in the day. The Sub-Inspector told him 3-4 days later that the accused had been arrested.

10. P.W. - 3 Shyamji, son of Gullu, Age 35 years, Resident of Station Road, Town Chunar, P.S. Chunar, District Mirzapur, stated in his examination in chief that he has a betel shop at the Chunar Bus Station. During fairs,

Navratri etc., the shops remain open all night. It had been over 1 and a half years since when he was present at his shop and at about 11:00-12:00 in the night, two girls came crying. In his cross -examination he stated that the police never made any inquiries from him in this regard. He stated that he had neither kept any girl at his place nor made them sit. And he neither had any information about the girls. He did not have any conversation with anyone regarding the girls. The girls were crying on the pavement of the road and they had not come to his shop. On the day of the incident, Nand Lal had not come to his shop. He added that the Sub-Inspector had not recorded his statement, nor had he ever interrogated him. He also stated that it is wrong to say that he had made the girls sleep near his shop in the night.

11. PW-4 Parmila, daughter of Sumer, approximate age 6 years, child witness, stated that her mother's name was Shanichari. Seeing the photo available on record the witness stated that the photo was of her mother. Seeing both the accused, the witness described them, Ram Kunwar as Chacha and Ram Kewal as her Dada. She stated that her mother was killed by Dada and stated that he had stabbed her with a knife. After killing her mother, both ran away; leaving her and her sister right where they had killed their mother. It was night time. These people had brought her mother, her, and her younger sister leela from her village Bishunpura on foot and went into the jungle on foot as well. After these people left, she took her sister leela and came to the station on foot. She and her sister were sitting near the betel seller's shop. In her cross examination she stated that those people did not say anything to her at the time of killing her mother and running away. And she also did not say anything. She went to the station carrying her sister in her arms. She reached the station in the night itself.

12. P.W. 5, Dukkhi Yadav Head Constable, P.S. Karma, District Gorakhpur stated that on 22-10-85, he was posted at P.S. Chunar in the capacity of Head Moharrir. On the basis of the oral information given by PW-1, he registered the FIR and entered the case in the G.D.

13. PW-6 - Subedar Mishra, Const., P.S. Chunar, District Mirzapur took the dead body of the deceased for the post-mortem.

14. PW-7 - Dr. Mohan Lal, Primary Health Centre, Chunar, District Mirzapur, stated that on 23-10-85, he was posted as a Doctor at this Health

Centre. The dead body of Smt. Shanichari Devi arrived at the hospital in a sealed condition on 23/10/85 at about 2:00 PM. He conducted its post-mortem. An incised wound on the front of the neck, exactly below the prominence of the Larynx, whose size was measuring 36 cm x 14 cm x bone deep was found on the body and apart from this, there was no other external injury on the body. The cause of death was due to excessive haemorrhage and shock. He opined that the death of the deceased could be of 19/20/21-10-85 because the post-mortem stiffness in her body had completely passed off. This injury could have been caused by a knife, but the knife would have to be very heavy. The blade of the knife should be of more than 40 cm long, which is not easily available. Injury according to him is most likely caused by pickaxe or fodder- cutting axe (*gadasa*).

15. P.W. 8: Ram Sajivan Singh, S.I., Mirzapur, stated that on 22-10-85, he was posted at P.S. Chunar. The investigation was undertaken by him. He prepared the inquest report (Ex. Ka-8), site plan (Ex. Ka-15), recorded the statement of Km. Pramila on 23.10.1985, and subsequently arrested accused Ram Kewal on 25.10.1985. At the pointing out of accused Ram Kewal, a blood-stained knife of about 5 inches and its blade of about 6 inches long and about 1 inch wide was recovered from the bushes near the drain. Upon completion of investigation, charge-sheet was submitted. He also proved other documents.

16. After the closure of prosecution evidence, statement of accused appellants under Section 313 CrPC was recorded in which they denied the prosecution case and stated that they have been falsely implicated due to pre-existing enmity. They had not killed the deceased rather she had been killed by someone else.

17. The Trial court found that prosecution has fully succeeded in bringing home the charges against the accused appellants beyond reasonable doubt and convicted and sentenced the accused appellants, as mentioned above. Hence this appeal.

18. We have heard Shri Anand Kumar Singh, learned Counsel for appellants and Shri A.N. Mulla and Ms. Divya Ojha, learned A.G.As appearing for the State at length.

19. Learned Counsel for the appellants submitted that the impugned judgment and order of conviction passed by the learned trial court is perverse and unsustainable in the eyes of law as it rests entirely upon the uncorroborated, contradictory, and tutored testimony of a sole child witness. It was argued that the prosecution miserably failed to establish the guilt of the appellants beyond a reasonable doubt, and the learned trial court erred in ignoring the grave material contradictions and lacunae in the prosecution narrative. Counsel emphasized that the entire case hinges on the testimony of Kumari Pramila (PW-3), who was a child of 5 to 6 years at the time of the alleged incident, and whose deposition was recorded after a long delay of four years without administering any oath. It was further submitted that the conduct of the alleged child witness (PW-3) immediately following the incident was highly unnatural and inconsistent with human probabilities. Though she moved to a paan shop and thereafter found by police personnel (PW-1 Constable Purshottam Pandey) and handed over to Sardar Ram Prit Singh, she did not utter a single word about the alleged murder of her mother to anyone for over 24 hours. Learned Counsel highlighted that her statement under Section 161 Cr.P.C. was recorded with a delay on 23.10.1985.

20. Learned Counsel strongly assailed the alleged recovery of the weapon of offence (knife) under Section 27 of the Indian Evidence Act. It was submitted that the recovery was affected after an unexplained delay of four days from an open, unsealed, and publicly accessible place near a drain (nala) overgrown with wild bushes. Furthermore, no independent public witnesses were joined during the alleged discovery, and the disclosure statement of the appellant was not recorded in accordance with the mandatory statutory requirements. Learned Counsel pointed out that the sealed Knife was never sent for chemical analysis due to which it was never established that the blood found on the recovered weapon was that of the deceased, rendering the recovery memo a fabricated police paper with zero evidentiary value.

21. Attention of the Court was also drawn to the fact that the key independent witness, Shyam Ji (PW-4), the paan seller who allegedly harboured the children on the night of the incident did not support the prosecution in his cross examination. PW-4 unequivocally denied that the children stayed at his shop or that he made any statement to the police or to

PW-2 (Nand Lal). With the turning hostile of PW-4, the essential chain of circumstances collapsed entirely.

22. Additionally, learned counsel argued that the medical evidence adduced by Dr. Mohan Lal (PW-7) sharply contradicted the ocular account regarding the dimensions of the knife and the nature of the fatal incised wound. After examining the injuries on the body of the deceased PW-7 vehemently opined that the blade of knife should be of more than 40 cm long, which is not easily available. The injury according to him is most likely caused by pickaxe or fodder- cutting axe (*gadasa*). This fact corroborated with the fact that knife was never sent to FSL, further demolishes the case of prosecution.

23. There was also no motive established on record for the appellants to commit the alleged crime. Learned Counsel concluded that the appellants are not guilty of any offence and had not committed the murder of the deceased.

24. *Per contra*, the learned Additional Government Advocates (AGAs) appearing on behalf of the State defended the judgment of conviction, submitting that the learned trial court meticulously appreciated the evidence on record before arriving at a finding of guilt. It was contended that the testimony of the child witness, Kumari Pramila (PW-3), is natural, truthful, and inspiring confidence. The learned AGAs argued that a child who has witnessed the gruesome murder of her own mother would naturally suffer severe psychological trauma and shock, which fully explains her temporary silence and minor discrepancies in her deposition. He added that witnesses are inherently innocent and incapable of concocting complex false stories unless deliberate tutoring is proven, which the defence failed to establish during cross-examination. The learned AGA further submitted that the Rule of Prudence requiring corroboration for a child witness is not an absolute rule of law, and a conviction can legally be founded on the solitary, uncorroborated testimony of a child witness if the Court finds it trustworthy. Regarding the recovery of the weapon of offence, the learned AGA contended that the knife (Exhibit K-3) was recovered pursuant to the specific disclosure statement made by appellant Ram Kewal while in police custody. The mere fact that the recovery was made from bushes near a drain does not ipso facto render it invalid when the exact hidden location was known exclusively to the appellant. It was lastly submitted that the hostility of PW-

4 (Shyam Ji) does not dilute the direct ocular testimony of PW-3.

25. We have considered the rival submissions advanced by learned Counsel for the parties, carefully perused the trial court record, the testimonies of all prosecution witnesses, the medical evidence, as well as the impugned judgment.

26. The structure of the prosecution case primarily rests upon the solitary ocular testimony of Kumari Pramila (PW-3), who was of 5 to 6 years of age at the time of the occurrence of the crime and around 9 to 10 years of age when her testimony was recorded. It is a well-settled principle of law that while the testimony of a child witness is admissible, it must be evaluated with extraordinary care and caution, as children are highly susceptible to tutoring, suggestion, and environmental influence. The Hon'ble Supreme Court in **Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341** laid down that a child witness if found competent to depose to the facts could be the basis of conviction. But as a rule of prudence the court should look for corroboration to his testimony from other reliable evidence on record. A child witness, by reason of his tender age is a pliable witness who can be easily tutored, molded or influenced.

27. A similar rule of caution was reiterated by the Hon'ble Supreme Court in **Pradeep v. State of Haryana, 2023 SCC OnLine SC 811** holding that where the court finds that a child witness was exposed to tutoring or where significant material contradictions exist in her deposition without independent corroboration, it is extremely unsafe to base a conviction thereon. In the present case, the evidence of the child witness, Km. Pramila (PW-3), cannot be safely relied upon. At the time of the incident, she was only 5 to 6 years old, and her evidence was recorded in court after a long delay of four years. Most importantly, her conduct after the incident was completely unnatural. Even though she met Constable Purshottam Pandey (PW-1) and stayed with Shri Ram Prit Singh on the very next morning, she did not tell anyone about the murder of her mother for more than 24 hours. She spoke about it for the first time only when the police recorded her statement on 23.10.1985. This long and unexplained silence, along with her confusion about the identity of the accused, clearly shows that her statement is not natural and appears to be tutored. Such prolonged, unexplained silence

and material contradictions severely tarnish her credibility. Also, since no independent witness has supported her testimony, it is extremely unsafe to convict the accused persons solely on the basis of such weak and uncorroborated child testimony.

28. Further, according to prosecution the children went to the paan shop of Shyam Ji (PW-4), near the bus stand. Now, here it is important to highlight that he did not support the prosecution story in his cross examination at all. According to the prosecution, the two minor girls reached his shop after the incident and stayed there during the night. However, in his evidence, PW-4 clearly denied that the girls ever came to his shop or slept near it. He also denied talking to PW-2 (Nand Lal) or giving any information to the police. Since this independent witness has completely denied the prosecution's claims, the chain of events connecting the crime scene to the arrival of the children at the bus stand is completely broken. As held by the Hon'ble Apex Court in **Suraj Mal v. State (Delhi Administration), (1979) 4 SCC 725**, where key witnesses turn hostile and the ocular testimony is riddled with inherent improbabilities, the benefit of doubt must mandatorily accrue to the accused.

29. Next, heavy reliance had been placed on the alleged recovery of the weapon of offence (knife,) at the pointing out of appellant Ram Kewal. It is to be noted that for an recovery to be admissible under section 27 certain conditions need to be fulfilled which includes that the information must emanate directly from the accused, the accused must be in police custody at the time of giving the information, distinct physical fact (e.g., weapon, stolen property, dead body, clothes) must be discovered in consequence of the statement, the physical location/object must be known exclusively to the accused and concealed from public view and lastly the exact statement made by the accused must be recorded verbatim by the Investigating Officer (IO) in a memo prior to heading out for recovery. In the instant case, we find that the recovery of knife is fraught with fatal procedural and substantive infirmities. The recovery was purportedly made days after the incident from wild bushes (sarpat) situated alongside an open, public drain (nala). It is undisputed on record that the place of recovery was an open area accessible to the public at large. Furthermore, no independent public witnesses were joined to attest the recovery memo. The Hon'ble Supreme Court in

Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 SCC OnLine SC 1396 held that if an object is recovered from an open place accessible to one and all, such recovery cannot be relied upon under Section 27 of the Evidence Act. The court must be satisfied that the discovery was made from a place of concealment known exclusively to the accused, and the disclosure statement must be recorded verbatim prior to the recovery. This principle was reaffirmed in **Subramanya v. State of Karnataka, (2023) 11 SCC 255**, and it was held that Section 27 is an exception to the ban on custodial confessions, and strict compliance with recording the precise disclosure statement made by the accused before the actual discovery is mandatory. In the present case, the IO failed to prove the exact contemporaneous recording of the disclosure statement, and the place being an open bush near a public drain, the alleged recovery under Section 27 is completely devoid of evidentiary worth and hit by illegality.

30. Added to this, one graver lacuna is the medical evidence of Dr. Mohan Lal (PW-7), who conducted the postmortem examination of the deceased. It is important to note that it is physically impossible to cause such a large and deep wound measuring 36 cm in length, 14 cm in width, and going deep to the bone using a small knife with only a 6-inch blade. An injury of this huge size clearly requires a heavy, long-bladed chopping weapon used with great force, like a *gadasa* (fodder-cutting axe). The medical expert (PW-7) has clearly stated this in his evidence. This major difference between the size of the recovered weapon and the medical findings clearly proves that the eyewitness account of a knife attack is false. This raises grave suspicion as to the recovery of the knife, about how the attack happened and what weapon was used. Where ocular evidence is weak and tutored, medical conflict assumes significant weight, as established in **Mahavir Singh v. State of M.P., (2016) 10 SCC 488**. Lastly, the prosecution failed to establish any motive for the appellants to kill the deceased, an impoverished woman. While motive may take a backseat in cases of sterling direct ocular evidence, in a case like the present where the ocular witness is highly suspect and circumstantial links are broken, the complete absence of motive further strengthens the doubt in favour of the defence, as held in **Nandu Singh v. State of M.P., 2022 SCC OnLine SC 218**. The distance between "may be true" and "must be true" is long and divides vague conjectures from sure conclusions.

31. In view of the detailed analysis, consideration of evidence, and settled legal principles discussed hereinabove, we are of the considered opinion that the prosecution has miserably failed to prove the charges under Sections 302/34 and 201/34 of the Indian Penal Code against the appellants beyond reasonable doubt. Hence the appeal deserves to be allowed.

32. Accordingly, the present criminal appeal is **allowed**. The impugned judgment and order dated 30.11.87 passed by the learned III Additional Sessions Judge, Mirzapur, in Sessions Trial No. 32 of 1987 (State v. Ram Kuwar & another), convicting and sentencing the appellants Ram Kuwar and Ram Kewal under Sections 302/34 and 201/34 I.P.C., is hereby **set aside**. The appellants, Ram Kuwar and Ram Kewal, are acquitted of all the charges leveled against them. They are on bail; their bail bonds stand cancelled and their sureties are discharged.

33. Let a certified copy of this judgment along with the lower court record be transmitted forthwith to the court concerned for necessary compliance.

34. Before parting with, I acknowledge the assistance of Ms. Anjali Singh, Research Associate, who assisted the Court relating to the present case.

(Jai Krishna Upadhyay,J.) (Atul Sreedharan,J.)

September 9, 2026
S.K.S.