



2025:AHC-LKO:74250-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CAPITAL CASES NO.- 4 OF 2021

State of U.P. Appellant(s)
Versus
Premchandra @ Pappu Dixit Respondent(s)

Counsel for Appellant(s) : Dr. V.K. Singh, GA, Sri Raj
Deep Singh, AGA
Counsel for Respondent (s) : Rajesh Kumar Dwivedi

Connected with
CRIMINAL APPEAL NO.- 1626 OF 2021

Prem Chand @ Pappu Dixit Appellant(s)
Versus
State of U.P. and another Respondent(s)

Counsel for Appellant(s) : Rajesh Kumar Dwivedi
Counsel for Respondent (s) : Dr. V.K. Singh, GA, Sri Raj
Deep Singh, AGA

Court No.10

RESERVED ON 19.08.2025
DELIVERED ON 18.11.2025

HON'BLE RAJNISH KUMAR, J.
HON'BLE RAJEEV SINGH, J.

(Per : Rajnish Kumar, J.)

(1) The instant Capital Case No. 4 of 2021 arises out of the
reference made by the trial Court/Special Judge (POCSO Act)/

Additional Sessions Judge, Lucknow under Section 366 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) to this Court for confirmation of the death sentence of convict Premchandra *alias* Pappu Dixit (here-in-after referred as convict/appellant) awarded by means of judgment and order dated 30.09.2021 in Sessions Trial No. 399 of 2020 (C.N.R. No. UPLK01-003380 2020): *State Vs. Premchandra alias Pappu Dixit*, arising out of Case Crime No. 164 of 2020, under Sections 376 (Ka) (Kha), 364, 302 of Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and Section 6 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as ‘POCSO Act, 2012’), Police Station Madiyaon, District Lucknow.

- (2) Criminal Appeal No. 1626 of 2021 has been preferred by convict Premchandra *alias* Pappu Dixit against the aforesaid judgment and order dated 30.09.2021. Jail Appeal No. 1579 of 2021 was also preferred on behalf of convict Premchandra *alias* Pappu Dixit against the aforesaid judgment and order, which has been consigned to record with liberty to the convict/appellant Premchandra *alias* Pappu Dixit to pursue his Criminal Appeal No. 1626 of 2021 through his Counsel Shri

Rajesh Kumar Dwivedi by means of order dated 14.03.2022 passed by a Co-ordinate Bench of this Court.

- (3) Section 366 (1) of the Code of Criminal Procedure, 1973 provides that when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. Section 368 of the Criminal Procedure Code, 1973 provides power of High Court to confirm sentence or annul conviction. Proviso to Section 368 of the Code of Criminal Procedure, 1973 provides that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. In the present case, an appeal has been filed by the convict/appellant also, therefore, the said appeal is to be disposed of before taking decision on reference made by learned trial Court. Thus, both Capital Case No. 4 of 2021 and Criminal Appeal No. 1626 of 2021 arising out of one and the same judgment and order dated 30.09.2021 have been clubbed and are being decided together by means of this common judgment and order.
- (4) The prosecution case, as per the F.I.R., is that on 16.02.2020, the marriage of daughter of Rajkumar Mishra of the village of

complainant Satya Prakash Dixit was in S.R. Marriage Lawn, Daud Nagar, Near Jaglal Petrol Pump, Lucknow, in which wife of the complainant and his sister-in-law (bhabhi) along with children had come. At about 07:00 in the evening of 16.02.2020, the real nephew of the complainant, Premchandra *alias* Pappu Dixit, son of Ram Prakash Dixit, took his daughter aged about five months from his wife on the pretext of playing and went away. For a long time, Premchandra *alias* Pappu Dixit did not return along with his daughter, therefore, his wife searched for her but she could not find her. After extensive search for a long time, it came to light that his daughter has been found lying in an unconscious condition amidst the bushes of a vacant plot at some distance from the marriage lawn, who was got admitted in K.G.M.U., Trauma Centre, where his daughter died. Thus, the nephew of the complainant Premchandra *alias* Pappu Dixit had killed his daughter after kidnapping and doing misdeed with her, who died at about 04:00 in the morning. Accordingly, on the written complaint of Satya Prakash Dixit, F.I.R. No. 0164 dated 17.02.2020 under Sections 302, 364, 376 (2) (i) I.P.C. and Sections 5m and 6 of POCSO Act, 2012 was registered at Police Station Madiyaon district Lucknow.

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- (5) The investigation was conducted in pursuance of the aforesaid F.I.R. The Investigating Officer, after collecting material evidences, recording statements of witnesses and preparing site-plans, submitted the charge-sheet. The cognizance on the charge-sheet was taken on 26.02.2020. Thereafter, compliance of Section 207 Cr.P.C. was made on 02.03.2020 and the report of the F.S.L. was provided to the convict/appellant on 19.02.2021. On an application moved by accused, Premchandra *alias* Pappu Dixit, an *amicus curiae* was appointed on the Government expenses by the trial Court.
- (6) The charge against the accused/convict was framed on 07.03.2020 under Sections 376 (Ka) (Kha), 364, 302 I.P.C. and Section 6 of the POCSO Act, 2012. Accused/convict denied the charges and prayed for trial.
- (7) To prove its case, the prosecution produced complainant-Satya Prakash Dixit (father of the victim/deceased) as P.W.1, Satya Devi *alias* Mahalaxmi (mother of the victim/deceased) as P.W.2, HC 411 Suresh Kumar (scribe of chik F.I.R.) as P.W.3, Kailash Baba as P.W.4, Dr. Anamika Gupta as P.W.5, Avdhesh Sahu as P.W.6, S.I. Shah Alam as P.W.7, Dr. Ramesh Kumar as P.W.8, Mohd. Anish as P.W.9, and S.I. Brijraj Yadav; the Investigating Officer as P.W.10.
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- (8) In order to prove its case, the prosecution also placed on record and proved written complaint given by Satya Prakash Dixit (P.W.1) as Ext. Ka.1, Chik F.I.R. as Ext. Ka.2, GD recording the F.I.R. as Ext. Ka.3, inquest report (*panchayatnama*) as Ext. Ka.4, Form No.33 (Challan lash) filled by Police Chowki Medical College, Chowk, district Lucknow for post-mortem dated 17.02.2020 as Ext. Ka.5, photo lash as Ext. Ka.6, challan in Police Form No.13 sent along with dead body as Ext. Ka.7, post-mortem report as Ext. Ka.8, Birth Registration Register of Community Health Centre, Bharawan, Tehsil Sandila, District Hardoi showing date of birth of the deceased as 03.09.2019 as Registration No. 3637 dated 26.12.2019 as Ext. Ka. 9, site plan-II showing the place from where the deceased and bluish golden colour button and three heirs were recovered and also the place from where inner of the deceased was recovered as Ext. Ka.10/A, site plan-I showing the place from where the deceased was taken away by the accused and the place of recovery of the deceased as Ext. Ka. 10/B, recovery memo of one golden-bluish colour button, three heirs, one inner and upper from the place where the deceased was recovered as Ext. Ka.11, Arrest Memo of the accused as Ext. Ka. 12, recovery of clothes of the accused as Ext. Ka. 13, Birth Certificate of the

deceased as Ext. Ka. 14, charge-sheet as Ext. Ka.15, Reports of Forensic Science Laboratory (F.S.L.) as Ext. Ka. 16, Ext. Ka.17, Ext. Ka. 18 and Ext. Ka. 19, Supplementary F.S.L. report as Ext. Ka. 20, Certificate issued by Shri Swami Muktinathananda, Secretary, Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow dated 23.07.2021 as Ext. Ka. 21 in documentary evidence.

- (9) After recording the evidences of prosecution witnesses, two Court witnesses, namely, Dr. Nazreen Khatoon as C.W.1 and Dr. Satyajeet Maurya as C.W.2, were summoned and examined in pursuance of orders dated 31.03.2021 and 16.07.2021. C.W.2-Dr. Satyajeet Maurya has placed on record and proved the photocopy of registration slip of Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow issued in the name of the deceased as Ext. Ka. 21.
- (10) The statement of accused Premchandra *alias* Pappu Dixit under Section 313 Cr.P.C. was recorded on 15.03.2021 and his additional statement under Section 313 Cr.P.C. was recorded on 27.07.2021. The additional statement was recorded on account of the examination of two Court witnesses. In his statement under Section 313 Cr.P.C., accused denied the incident and stated that P.W.1, P.W.2, P.W.4 and P.W.6 have given false

evidences. In regard to the evidence of P.W.3, he stated that on account of the enmity, the prosecution has lodged false case. He has stated nothing in regard to the statements of P.W.5, P.W.7, P.W.8 and P.W.9. In regard to the statement of P.W.10, he stated that wrong investigation has been done and he has falsely been implicated on account of enmity. He also stated that the report of F.S.L. dated 22.12.2020, 15.01.2021, 16.1.2021 (two reports of the date) and 19.02.2021 are wrong. He, in regard to prove of cloths of the accused and articles recovered from the place of the incident by the Investigating Officer, stated that they have wrongly been proved by the Investigating Officer and similarly in regard to Inner of the victim (Ext. Ka.5), it has wrongly been proved. In regard to the evidence of C.W.1 and C.W.2, he stated that he does not want to say anything. He stated that witnesses have given false evidence on account of enmity and the Investigating Officer out of greed had made wrong investigation and falsely implicated him. He also stated that he had not attended the marriage connected with the incident. The complainant on account of co-tenure holder and enmity has implicated him as an accused. The deceased was his cousin sister. He is sorry for the incident. He also stated for giving evidence in defence.

(11) In defence, two witnesses, namely, Raju as D.W.1 and Rakesh Baba as D.W.2, have been examined. D.W.1-Raju also placed on record the medical documents of victim/deceased of Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow as Ext. Kha. 1, Ext. Kha. 2 and Ext. Kha 3.

(12) After hearing the Special Public Prosecutor and Amicus Curiae on behalf of the defence and considering the evidence and material on record, learned trial Court convicted the appellant, Premchandra alias Pappu Dixit and after affording opportunity of hearing on sentence, awarded following sentences :-

- i. Under Section 302 I.P.C. death sentence to be hanged from neck till he is dead and fine of Rs.50,000/-. In default of payment of fine to undergo additional three years' rigorous imprisonment;
- ii. Under Section 376 (ka) (kha) I.P.C. read with Section 6 of POCSO Act, 2012 death sentence i.e. to be hanged from neck till he is dead; and
- iii. Under Section 364 I.P.C. to undergo life imprisonment and a fine of Rs.20,000/-. In default of payment of fine to undergo additional one year rigorous imprisonment;

It has further been provided that all the sentences shall run concurrently and the period of incarceration would be adjusted in the period of sentence. It has further been provided that the death sentence would not be executed unless it is confirmed by

the High Court under Section 366 (1) Cr.P.C. The fine awarded by the trial Court has been directed to be paid to the father of the victim as compensation. Accordingly, the reference along with the records have been sent by the trial Court by means of the order dated 30.09.2021. Criminal Appeal No. 1626 of 2021 has also been filed by the convict raising several grounds.

(13) Heard Shri Rajesh Kumar Dwivedi, learned Counsel for the convict/appellant and Dr. V.K. Singh, learned Government Advocate assisted by Shri Raj Deep Singh, learned A.G.A.-I for the State of U.P.

(14) Learned Counsel for the convict/appellant submitted that convict/appellant has falsely been implicated in the case with a false and concocted story on account of enmity, whereas he had not attended the marriage and was not present at the place of incident. He further submitted that the F.I.R. of the case was lodged with inordinate delay and it is ante-dated and ante-timed also, which is apparent from the evidence of the mother of the victim, who appeared as P.W.2. The prosecution has not produced the scribe of the written report, on the basis of which F.I.R. was lodged and the Report was not forwarded to Ilacqua Magistrate forthwith.

- (15) Learned Counsel for the convict/appellant has further submitted that nobody has identified the accused, allegedly seen with the victim in the plot and no identification parade of convict was conducted. He also submitted that there was no source of light in the plot, where the convict/appellant and the victim were allegedly seen by the witnesses. There is no eye-witness of the alleged occurrence. Thus, the prosecution case rests entirely on the circumstantial evidence and the chain of circumstances proved by the prosecution is not complete to bring home the guilt of the convict/appellant only. The prosecution has failed to establish the motive to commit the crime and there is contradiction in recovery of the victim also from the alleged plot, therefore, he could not have been convicted and sentenced.
- (16) Learned Counsel for the convict/appellant has further submitted that P.W.1 and P.W.2 are related, interested and inimical witnesses. Further, there are variations, inconsistencies and major contradictions in the testimonies of prosecution witnesses, therefore, they could not have been relied. He also submitted that the medical evidence does not corroborate the prosecution case. Even otherwise, convict was not medically examined.

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- (17) Lastly, learned Counsel for the convict/appellant submitted that the extreme penalty of death sentence has been awarded to the convict/appellant by the learned trial Court, which is too harsh and excessive in nature. Thus, submission is that the impugned judgment and order of the conviction and sentence suffers from material irregularity and infirmities, which does not sustain in law and is liable to be set-aside and the appeal is liable to be allowed and reference dismissed. Consequently, appellant is liable to be acquitted.
- (18) In support of his submissions, learned Counsel for the convict/appellant has relied on **Marudanal Augusti Vs. State of Kerala ; (1980) 4 SCC 425, Ishwar Singh Vs. the State of Uttar Pradesh ; AIR 1976 SC 2423, Ganpat Singh Vs. State of Madhya Pradesh ; (2017) 16 SCC 353, State of U.P. Vs. Satish ; 2005 (51) ACC 941, Mani Ram Vs. State of U.P. ; 2004 (48) ACC 767, Ubhan Yadav alias Abhai Kumar Yadav Vs. State of U.P. (Criminal Appeal No. 1202 of 2014) connected with Capital Sentence No. 6 of 2014 ; State of U.P. Vs. Ubhan Yadav alias Abhay Kumar Yadav, decided on 02.06.2021, Anjan Kumar Sarma and others Vs. State of Assam ; (2017) 14 SCC 359, Harendra Narain Singh and others Vs. State of Bihar ; (1991) 3 SCC 609, Sujit Biswas**

Vs. State of Assam ; (2013) 12 SCC 406, Krishan Kumar Malik Vs. State of Haryana ; AIR 2011 SC 2877, Prem Singh Prajapati Vs. State of U.P. and another ; Capital Cases No. 17 of 2021 decided on 17.05.2024, Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh; Criminal Appeal Nos. 64-65 of 2022 decided on 13.10.2022, Vijay Kumar Vs. State of J & K ; 2019 (107) ACC 731 and Shivaji Sahabrao Bobade and another vs. State of Maharashtra ; (1973) 2 SCC 793.

- (19) Learned Government Advocate vehemently opposed the submissions of learned Counsel for the convict/appellant. He submitted that the impugned judgment and order has rightly been passed in accordance with law by the trial Court after considering the evidence and material on record. He further submitted that the prosecution witnesses have proved the prosecution case beyond reasonable doubt, which is supported by the evidence of doctor and the Investigating Officer and nothing could be extracted by the defence which may create any doubt about the veracity of evidence of the prosecution witnesses. He further submitted that a very brutal offence has been committed by the convict with a minor child of five months and also killed him. Thus, he submitted that on account

of brutal crime committed by the convict, the learned trial Court has rightly and in accordance with law has convicted him after considering the evidence and material on record and awarded the sentence after affording opportunity of hearing by reasoned and speaking order, which does not suffer from any illegality, error or perversity, therefore, the appeal filed by the convict/appellant is liable to be dismissed and the reference made by the learned trial Court is liable to be confirmed by this Court.

(20) We have considered the submissions of learned Counsel for the parties and perused the records.

(21) The deceased, who was aged about 5 months at the time of incident on 16.02.2020, was brought by her mother Satya Devi *alias* Mahalaxmi (P.W.2) wife of Satya Prakash Dixit (P.W.1-complainant) to attend the marriage ceremony of daughter of one Rajkumar Mishra of her village, who was also a distant relative of her, along with sister-in-law (*bhabhi*) at S.R. Marriage Lawn, Daud Nagar, Near Jaglal Petrol Pump, district Lucknow. In order to prove the age of the deceased, the prosecution placed on record the Birth Certificate issued by the Government of U.P. as Ext. Ka. 14 and also the Birth

Registration Register of Community Health Centre, Bharawan, Tehsil Sandila, district Hardoi as Ext. Ka. 9 and the date of birth of the deceased recorded in the same is 03.09.2019. To prove the Birth Registration Certificate, the prosecution had produced Mohd. Anish, Computer Operator of Community Health Centre, Bharawan, Tehsil Sandila, district Hardoi, as P.W.9, who proved the date of birth of the deceased registered from the original Birth Registration Register, which was brought by him. He proved the date of birth of the deceased as 03.09.2019 recorded as Registration No. 3637 in the Birth Registration Register and he also filed photocopy of the same with his signature as Ext. Ka.9. The Birth Certificate placed on record as Ext. Ka.14 was proved by the Investigating Officer S.I. Brijraj Yadav (P.W.10), which was received by him from the father of the deceased. Learned trial Court, after considering the evidence of P.W.9-Mohd. Anish and P.W.10-S.I. Brijraj Yadav and the documentary evidence placed on record, has recorded a finding that on the basis of evidence of P.W.9-Mohd. Anis and documentary evidence placed on record as Ext. Ka.9 and the evidence of P.W.10-S.I. Brijraj Yadav and Birth Certificate placed on record as Ext. Ka.14, the date of birth of the deceased has been proved as 03.09.2019. It has further been recorded by the learned trial Court that the date of incident

is 16.02.2020 and on the basis of date of birth of the deceased as 03.09.2019, it is proved that the age of the deceased was 5 months and 13 days on the date of the incident. This Court does not find any irregularity or illegality in the finding recorded by the trial Court in this regard.

(22) The F.I.R. of the incident dated 16.02.2020 was lodged on the basis of written complaint submitted by Satya Prakash Dixit (P.W.1, complainant), which was lodged on 17.02.2020 at 11:19 hours under Sections 302, 364, 376 (2) (i) of I.P.C. and Sections 5m and 6 of POCSO Act, 2012 at Police Station Madiyaon, district Lucknow as Ext. Ka. 2.

(23) Though it has been argued by the learned Counsel for the convict/appellant that F.I.R. was not forwarded to Ilauqa Magistrate forthwith but the learned Counsel for the convict/appellant has failed to indicate as to when it was forwarded and what was the delay, whereas the F.I.R. on records indicates that the Assistant Police Commissioner, Aliganj, Lucknow had directed to send F.I.R. to concerned Court, therefore, the contention in this regard of the learned Counsel for the convict/appellant is misconceived and not tenable.

(24) Learned Counsel for the convict/appellant has also argued that the F.I.R. was ante-dated and ante-timed. The lodging of the F.I.R. and date and time mentioned in the same is as 17.02.2020 at 11:19 hours, which have been proved by the prosecution by producing Head Constable 411 Suresh Kumar as P.W.3, who proved the typing of the chik F.I.R. by him on computer along with lodging Report No.27 at 11:19 hours on 17.02.2020, which is Ext. Ka.2. P.W.1-Satya Prakash Dixit (complainant) also proved the written complaint given by him as Ext. Ka.1, stating that since he is illiterate and is able to make signature only, the same was got scribed by one of his relative, who, after scribing it, read it over to him and thereafter he put signature thereon and proceeded to Police Station Madiyaon, District Lucknow, where the F.I.R. was lodged on the basis of his complaint on 17.02.2020 at 11:19 hours.

(25) The plea of the convict/appellant that F.I.R. was ante-dated and ante-timed, was raised on the basis of evidence of P.W.2-Satya Devi alias Mahalaxmi, mother of the deceased, on the ground that she stated that after post-mortem, the dead body of the deceased was received by them and they went to their village, where cremation of the deceased was done and the F.I.R. of the incident was lodged by her husband on the next date after

coming from the village. When we see the said statement of P.W.2 in cross-examination, then, we found that the contention of learned Counsel for the convict/appellant is misconceived and not tenable for the reason that two separate sentence written in continuation have been shown as one and on the basis thereof, the plea of lodging the F.I.R. ante-dated and ante-timed has been raised. The evidence is “पोस्टमार्टम के बाद शव हमको मिला तो उसको लेकर हम अपने गांव चले गये वहीं पर उसका दाह संस्कार किया। थाने पर मेरे पति ने अगले दिन आ कर घटना के बाबत FIR पंजीकृत करायी।”

- (26) In view of above, it is apparent that answers have been given by P.W.2 in reference to two separate questions. When we consider it in the light of evidence of P.W.1-Satya Prakash Dixit, who stated in regard to the lodging of the F.I.R. that information of the incident was given to him by brother-in-law Karan of Raju at about 04:00 in the morning on the next day, then, he came in the morning at about 07:00 and reached Medical College directly. Then he came to know about the incident and thereafter on 17.02.2020, he got the written complaint scribed by his relative, who, after scribing it, read it over to him and thereafter he put signature thereon and proceeded to Police Station Madiakon, district Lucknow, where

he filed it, on the basis of which, F.I.R. was lodged, which is proved by P.W.3-HC411 Suresh Kumar, who proved the lodging of the F.I.R. on 17.10.2020 at 11:19 hours. Merely because just before the statement of P.W.2 that her husband (P.W.1) had lodged the F.I.R. after coming to police station on the next day, she stated that dead body was received by them after post-mortem and thereafter they went to the village, where cremation was done and after the statement of lodging of the F.I.R., her separate statement is that she came on the next day to Lucknow and thereafter she stated that she went along with *darogaji* to the place of the incident, where the deceased was found, it cannot be said that F.I.R. was lodged by the complainant on the next day of cremation after coming back from village. It is only because of the manner of cross-examination with a village illiterate lady. However, when we consider it in connection with the record, we do not find any such reference.

- (27) The Hon'ble Supreme Court, in the case of **Murudanal Augusti Vs. State of Kerala (supra)**, has held that the High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence

and any number of witnesses could be added without there being anything to check the authenticity of their evidence.

(28) The Hon'ble Supreme Court, in the case of **Ishwar Singh Vs. State of Uttar Pradesh (supra)**, has held that the extraordinary delay in sending the F.I.R. is a circumstance which provides a legitimate basis for suspecting that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence.

(29) In view of above, the contention of learned Counsel for the convict/appellant in this regard is misconceived and not tenable. Even otherwise, the minor discrepancies in the evidence of an illiterate village lady, whose five months daughter was killed after misdeed with her could not give any benefit to the defence.

(30) An argument was also raised by the learned Counsel for the convict/appellant that the convict/appellant, Prem Chand alias Pappu Dixit, had not come to attend the marriage of the daughter of Rajkumar Mishra on 16.02.2020 at S.R. Marriage

Lawn, therefore, the incident of committing any crime by him does not arise.

- (31) In order to prove the presence of convict/appellant at S.R. Marriage Lawn, where the deceased along with her mother and aunt (chachi) had also come to attend the marriage of Rajkumar Mishra of their village, the Investigating Officer Brijraj Yadav (P.W.10) procured CCTV footage of Camera installed at S.R. Marriage Lawn in Pen Drive alongwith a certificate under Section 65(B) of Evidence Act and it was placed on record of the trial Court in a Compact Disc. The said Compact Disc was found broken by this Court on 17.07.2025, therefore, this Court directed the Manager of S.R. Marriage Lawn Shri Santosh Mishra, who had given certificate under Section 65 (B) of the Indian Evidence Act and the CCTV footage in the Pen Drive to the Investigating Officer, to find out whether he has retained a duplicate recording of the CCTV footage of 16.02.2020, when the alleged incident of rape of minor child of five months took place. In compliance thereof, on 24.07.2025, learned AGA had produced before this Court a copy of the letter sent by Amit Kumar Sahu, Sub-Inspector, Police Station Madiakon, district Lucknow dated 24.07.2025, wherein it has been stated that Shri Santosh Mishra (supra) has informed that he did not keep any

record relating to CCTV footage in question with regard to the incident that occurred in the night of 16.02.2020 and he had handed over it to the then Investigating Officer, therefore, this Court had summoned the Investigating Officer Sri Brij Raj Singh, by means of order dated 24.07.2025. In deference to the order dated 24.07.2025, the Investigating Officer Brij Raj Singh appeared before this Court on 11.08.2025 and informed that on the basis of Pen Drive procured by him, the Compact Disk was prepared, which was made part of the charge-sheet, but Pen Drive was not made part of the charge-sheet, therefore, he had not presented the Pen Drive during the trial before the trial Court. Thus, the Compact Disc of the CCTV footage of the date of incident i.e. 16.02.2020 is not available, therefore, we have to examine on the basis of evidence and material on record as to whether convict/appellant was present at S.R. Marriage Lawn on the date of the incident or not and as to whether he had taken away the deceased from her mother (P.W.2) from the S.R. Marriage Lawn or not.

- (32) The Investigating Officer Sri Brij Raj Yadav (P.W.10) has stated in examination-in-chief that he had procured the CCTV footage of the date of the incident at S.R. Marriage Lawn along with the certificate under Section 65 (B) of the Indian Evidence Act

issued by the Manager of S.R. Marriage Lawn. After procuring the CCTV footage in Pen Drive, it was seen in Laptop. Then, it was found that convict/appellant, Premchandra alias Pappu Dixit, after taking his niece 'X' (however she was his cousin) from the lap of her mother in S.R. Marriage Lawn at 18:28:29 in his lap, is going and it is being seen clearly that he went out of gate of S.R. Marriage Lawn at the said time. The convict/appellant was wearing the same clothes, which were recovered from him at the time of his arrest. In cross-examination by defence, P.W.10 reiterated the same and nothing could be extracted from him, which may create any doubt about the testimony of the Investigating Officer in this regard.

- (33) The presence of convict/appellant at S.R. Marriage Law and taking away girl child i.e. his cousin from the custody of her mother also cannot be doubted and is proved because mother of the convict/appellant and aunt (chachi) of the deceased, namely, Smt. Kusuma Devi wife of Ram Prakash Dixit, was indisputably present in S.R. Marriage Lawn and sitting alongwith the mother of deceased (P.W.2) as stated by her in cross-examination, which could not be contradicted by any evidence and she was also a witness of the inquest report dated 17.02.2020, which has been proved not only by P.W.7-S.I. Shah

Alam, who had conducted and prepared the inquest report but by P.W.1-Satya Prakash Dixit and P.W.2-Satya Devi alias Mahalaxmi also, who were also witness of the inquest report. In the inquest report, the opinion of the witnesses of inquest is recorded that ‘the deceased was taken away by her cousin brother for playing and thereafter committed misdeed with her and tried to kill her and she was brought in an unconscious condition to the Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow for treatment, from where he was referred to Medical College, Lucknow, where during treatment, she died. However, to know the exact reason of her death, post-mortem may be got conducted.’ This opinion was signed by the mother of the convict/appellant Smt. Kusuma Devi also, who has not disputed the presence of convict/appellant at the place of incident, otherwise, it would have been got mentioned in the inquest report. Thus, the contention of learned Counsel for the convict/appellant that convict/appellant had not attended the marriage ceremony in S.R. Marriage Lawn is misconceived and not tenable and it cannot be discarded only on the basis of evidence of D.W.1-Raju son of Ram Prakash, as, he is not only the real brother of the convict/appellant but may have given a false evidence to save his brother from conviction. The mother of the convict/appellant, who was a member of the inquest

report, has not stated that the convict/appellant was not present, so it does not create any doubt about the opinion of the members of inquest in the inquest report. Thus, the learned trial Court has rightly recorded the finding of presence of the convict/appellant in S.R. Marriage Lawn.

- (34) So far as the plea of false implication of the convict/appellant on account of enmity is concerned, the same also could not be proved because, firstly, admittedly, the deceased and her brother had come with sister-in-law (bhabhi) and secondly it has been stated by P.W.1-Satya Prakash Dixit in his evidence that the relation with his elder brother Ram Prakash is right, therefore, merely on the basis of his statement that they do not come and go in their family, it cannot be said that there was enmity between the family of the deceased and the convict/appellant. If the relations between the family members were not good, the deceased and her mother would not have come with her and the mother would not have given the girl child to the convict/appellant for playing. P.W.2 has also stated in cross-examination that relation between her and Jethani (sister-in-law) were good. Nothing could be extracted from P.W.1 and P.W.2, which may create any doubt about their testimony in this regard.

(35) The deceased was taken away from the lap of her mother (P.W.2) and she was found in an open field at some distance from S.R. Marriage Lawn, from where she was taken away. She was found by Kailash Baba (P.W.4), who was warming from fire at the house of Rakesh Baba, who has been produced by defence as D.W.2. Kailash Baba (P.W.4) has stated in his statement that while he was warming from fire at the house of Rakesh Baba at about 11:00 in the night, Avadhesh Sahu (P.W.6), who has a sweet shop in front of the house of Rakesh Baba, came and informed that a man is sitting in the vacant plot in front of his house clinging a girl child. Then he went to the spot along with Rakesh Baba and Avadhesh Sahu. They saw a man sitting on the vacant plot under the bushes with the girl child, who was naked and cloth on the lower part of her body was missing and there was blood all over her clothes and body. On asking his name from the man, instead of telling his name, the said man gave a mobile number. He called on the said mobile number, upon which Raju Dixit answered from the other side. He gave information of the incident to him. After some time, Raju Dixit and 3-4 persons came and on seeing them, accused fled from the spot leaving the girl child. The condition of the girl child was very bad. Her family members also came

on the spot and took her to hospital. He came to know from them that the accused is Premchand alias Pappu Dixit, who is younger brother of Raju Dixit and small girl child is the daughter of uncle (chacha) of Raju. Subsequently, he came to know that girl child died in the hospital. He recognized the accused, who was present in Court. Though in cross-examination, he stated that there was dark, when he saw the accused with a girl child but he further said that he had seen the face of the accused in the light at the door of Rakesh Baba.

- (36) P.W.2-Satya Devi alias Mahalaxmi, mother of the deceased, has also stated that after the deceased was taken away from her lap by her real nephew Premchand alias Pappu Dixit on 16.02.2020, he had not returned, therefore, they started searching for him and she found the deceased at about 02:00 in the night near the bushes. At the said time, her nephew Raju, his brother-in-law Karan, Pankaj and her other relatives of village were present. Premchand alias Pappu Dixit upon seeing them ran away from the spot and when they reached near the deceased, she was unconscious. In cross-examination also, P.W.2 has reiterated that on hearing her noise, Premchand alias Pappu Dixit ran away in her opposite direction. She and Pankaj had tried to catch him but could not catch him.

(37) Avadhesh Sahu, who appeared as P.W.6, has stated that persons, who came on call after recovery of the deceased, took the girl child from Rakesh Baba (D.W.2), then, the said boy, who was caught by Kailash Baba (P.W.4), started running away. Then, Rakesh Baba (D.W.2) said to catch him as he was running away, on which the said boys, who had come to take girl child on telephonic call, said that let him run away as he has to go home after running and it is a matter of family. The same thing has been said by D.W.2-Rakesh Baba, on query from the Court. Therefore, the fact that the deceased was found with convict/appellant, although caught but he ran away from the spot, has been proved by two independent witnesses; one of whom is defence witness. P.W.4-Kailash Baba has also stated that when Raju Dixit and 3-4 persons came on the spot on the information given by him, the accused ran away leaving the girl child.

(38) Rakesh Baba, who appeared in defence as D.W.2, has also not disputed that he along with Kailash Baba were warming from fire at his residence, which is at some distance from S.R. Marriage Lawn and there is a vacant plot in front of his house, where there are bushes. He also does not dispute that at 10:00-11:00 in the night, Avdhesh Sahu, who is servant of Sahu Sweet

Namkin Bhandar near his house, came and informed that sound of weeping of a child is coming from the vacant plot and then he, Kailash Baba and Avadhesh went to the said plot and saw that a middle aged man running away from the plot, who probably was wearing lungi and kurta. He could not see the face in the dark, therefore, he could not recognize him. They found a girl on the plot, whose clothes were totally wet in dew (ओस) and she was in a wretched condition by shivering from cold. They brought the girl to his residence and after putting down wet clothes wrapped her in jacket. In the meantime, two persons came there from bike and made inquiry in regard to the missing child and when they showed the child, then, one person stated that she is his cousin sister and they were searching her and went away with the child. In cross-examination, he reiterated that the information of the incident was given to them by Avadhesh Sahu. He had also given statement to the Inspector that a man was sitting along with the child in his lap. Kailash Baba had made inquiry from the said man but he did not say and he only gave his mobile number and then Kailash Baba called on the said mobile number but he does not know as to what name was told by the person to whom he had contacted. On information, certain persons came on the spot and then the said man ran away from there. He does not know who has been

made an accused. He also stated that he does not know Raju Dixit. On the question asked by the Court, he reiterated the same and further stated that when they had taken the girl child from him and were going, he came behind them and then the said person, who was sitting with girl child in the plot, started running and then some persons tried to catch him and some persons were saying that let him run away as it is a matter of family.

(39) In view of above, upon consideration of the aforesaid evidence coupled with the opinion of the members of inquest report, it has been proved that it was the convict/appellant, who had taken away the deceased from her mother (P.W.2) from S.R. Marriage Law and he was found with her in vacant plot at some distance and when P.W.2 and brother of the convict/appellant and other family members reached on the spot, where he was sitting with girl child keeping her in his lap without clothes on lower part of her body and remaining clothes wet, ran away from the spot, therefore, presence of convict/appellant at both the places and in the intervening period cannot be denied.

(40) The deceased was brought by her mother, brother of the convict/appellant, who appeared in defence as D.W.1 and family members from the place of incident and they went to

Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow, where she was treated by Dr. Nazreen Khatoon (C.W.1) and Dr. Satyajeet Maurya (C.W.2).

- (41) C.W.1-Nazreen Khatoon has stated in her evidence that he was on duty in Pediatric Ward on 17.02.2020 when a girl child had come for treatment in the night whose Registration Slip Number is 021776. The said girl child was in gasping condition and his pulse was also not running. She had immediately given Life Saving Procedure (CPR) and for the breath, intubation was done and the girl child was referred to K.G.M.C. The girl child was alive but at that time, her condition was serious. She was brought in naked condition and mud and sand was there on the body. Marks of abrasion and bruise were present on her eyes, face and body. Blood was in perenial and anal region of the girl child. She further stated that the persons, who brought her to hospital, informed that girl was taken away by her uncle and after 2-3 hours, the girl was found in such condition. The papers of treatment was prepared by Dr. Satyajeet in her presence. The original is given to the patient or his/her family members and carbon copy is being kept in the hospital, however, carbon copy of the treatment of the deceased was not traceable, therefore, a certificate has been given by the Secretary of the Hospital,

namely, Swami Muktinathanand, for placing it before the Court, which has been marked as Ext. Ka. 21. In cross-examination by the prosecution, she stated that she cannot say as to whether misdeed with the girl was done by her uncle or by her cousin brother. She further stated that looking to the private part of the girl/victim, it appeared that incident of rape like had been committed with her. In cross-examination by defence, she stated that she had not examined the girl child internally and after treatment of the girl child about 10 minutes, she was referred to K.G.M.U. She does not recollect as to whether she was in wet condition when she was brought or not but sand and mud were all on her body. She proved Ext. Ka. 21.

- (42) C.W.2-Dr. Satyajeeet Maurya has stated that he was on duty in NICU on 17.02.2020. He, on perusal of Paper No. A-19/1, admitted that it was prepared by him in his handwriting, original of which is given to patient and carbon copy remains in hospital, however, on account of shifting of papers in hospital, carbon copy is misplaced somewhere, therefore, the Secretary of the Hospital has given certificate to this effect. He further stated that Dr. Nazreen had informed him that the victim of misdeed has come in the gasping condition. Then he went there and saw the girl child, who was alive but her pulse and

heartbeat could not be heard. She was not able to breathe, therefore, CPR was given on account of which heartbeat was restored. A pipe was put inside her neck for breathing and Oxygen and she was referred for further treatment to K.G.M.U. because ventilator was not available in the hospital. He also stated that there were injuries in the whole body of the girl child and blood was deposited in the eyes and private parts and sand was on her body. He proved Paper No. A-19/1, which was marked as Ext. Ka. 21. In cross-examination by the defence, he reiterated the same and also stated that marks of injury in vagina and anas were present. The victim/girl was in serious condition when she was brought to hospital. He had informed Senior Doctor Dr. Neeta Bhargava about the victim but she could not come. He had not informed to the police because one Constable had come with them. Thereafter, she was referred to K.G.M.C.

- (43) The deceased died in K.G.M.C. during treatment around 04:00 in the morning. Her inquest was prepared by the Inspector Shah Alam (P.W.7), who was posted on the post of Sub-Inspector in Medical College Police Station on 17.02.2020. P.W.7 stated that he got the information of death of four month's victim/deceased, then, he went to mortuary of the

medical college with Head Constable 544 Balbir Singh. The proceeding of inquest was started at 10:30 a.m. and completed at 11:00 a.m. The proceedings of inquest were conducted after appointing father, mother and aunt (chachi) of the victim/deceased, Ashwani Prasad and Vinod Tiwari as members of inquest. Blood was oozing out from the private parts of the deceased. Recording the opinion of the members of the inquest, body of the deceased was sent for post-mortem, therefore, he proved the inquest report and opinions of members of inquest recorded in it marked as Ext. Ka. 4 (Paper No. A-16/6). He also proved Police Paper No. 13, challan lash, photo lash and police form-13. The inquest report was prepared on the spot and accordingly it were exhibited as Ext. Ka.5, 6 and 7, respectively.

- (44) The post-mortem of the deceased was conducted and report was prepared by a panel of doctors, namely, Dr. A.K. Sharma, Dr. Ramesh Kumar (P.W.8), Dr. Sangeeta Kumari and Dr. Anamika Gupta (P.W.5), who conducted the examination of private parts of the deceased. Dr. Anamika Gupta (P.W.5) has stated in her statement that she had conducted the post-mortem along with panel of the aforesaid three doctors. The dead body was identified by Head Constable Balvir Singh, Police Chowki

Chowk as well as father and mother of the deceased. The post-mortem had started at 03:00 p.m. and completed at 04:00 p.m. The videography of the same was also done. She could not tell who made the videography of the same. P.W.5 has stated that height and weight of the deceased were 60 cm and 6.7 kg, respectively. In the internal examination, it was found that labia minora was completely torn. There were contusion of 4 x 2.5 cm in vaginal vault of the deceased. Lacerated wound was from vagina to anus. Complete perineal tear hymen were completely torn off. There were contusion of 3 x 3 cm on all sides of anus. The front side of anus was completely torn and ecchymosis was present beneath lacerated wound. Deposited blood was on anus, vagina and perineum. The samples were collected for F.S.L. and D.N.A. report examinations and sent for the same. She, on perusal of post-mortem report no. 585/2020 on record, has stated that she had examined internal parts with Dr. Sangeeta Kumari and took her opinion also. The report in regard to the internal examination of the post-mortem report is in her handwriting. She, on query from the Court, has stated that the deceased was aged about 5-6 months old. She also stated that if any person tries to commit rape with such a small girl, then, the said type of injuries could come. She further stated that in the medical examination, she had found torn injuries from vagina

to anas, on account of which the vagina and anas of the victim had become one.

(45) Dr. Ramesh Kumar (P.W.8), a member of joint panel of doctors of the post-mortem, has stated that post-mortem of the deceased was done by the aforesaid joint panel. The videography was done by Amitabh Singh, Police Control Room, Qaiserbagh, Lucknow. He further stated that the joint panel of doctors found the following ante-mortem injuries on the body of the deceased :-

“A. Ante Mortem Injuries :

1. Abrasion 3 cm x 3 cm present on Lt. side of forehead just above Lt. eyebrow.
2. Multiple Abrasion present on both side of face, extending from lower eye lid upto mandible. Size varying from 0.1 cm x 0.3 cm to 0.3 cm x 0.5 cm.
3. Abraded contusion 2 cm x 2 cm present on both lower eyelid.
4. Abraded contusion 0.5 cm x 0.2 cm present on both side of bridge of nose.
5. Contusion and frenulum tear present in inner aspect of upper lip.
6. Contusion 8 cm x 7 cm present on rt. side of head, just above the rt. ear.
7. Contusion 18 cm x 4 cm present on back of head at occipital.

8. Contusion 8 cm x 7 cm present on rt. side of head, just above the rt. ear.

On opening :- Echymosis present underneath all abovementioned injuries, both side temporal & parietal bone are fractured. Extradural haemorrhage present on rt. side of brain & subdural hemorrhage present all over the brain.

B. Labia Minora completely torn off contusion 4 x 2.5 cm present in the inner wall of vagina on both sides lacerated wound extending from vagina upto anus with complete perineal (posterior commissure & fourchette ruptured) tear noted. Hymen torn off completely contusion of 3 x 3 cm present around the anus. Anterior anal wall torn off.

On opening - echymosis present underneath the injury. Clotted blood present around and inside the vagina and Perineum.

The immediate cause of death spelt out in the autopsy report of the victim/ deceased 'X' was coma due to ante-mortem head injuries, which she had suffered.

- (46) Dr. Ramesh Kumar (P.W.8) has also stated in his evidence that aforesaid injuries could come on account of pressing of mouth and nose by hand, consequent to which on account of shortage of oxygen, blueness (नीलापन) could come in the nails, lips and tongue of the deceased. He also stated that both parietal and temporal bones of the deceased were broken, which could have been on account of pushing on hard floor or on account of beating her by hard thing. Since the age of the deceased was very less, therefore, the said injuries could have come on

account of knocking her head on hard surface and pressing her head with force by hand. He also stated that on account of force from both sides, bones could have been broken.

(47) The P.W.2, Investigating Officer P.W.10-Brijraj Yadav and D.W.1-Raju have proved that after the deceased was recovered from open plot, she was taken to Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow for treatment and on being referred from there, she was taken to K.G.M.U. Two doctors, who had examined the deceased at Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow, have been examined as C.W.1 and C.W.2 and two members of joint panel of doctors, who conducted the post-mortem, have been examined as P.W.5 and P.W.8. Considering the same in the light of the relevant provisions of the Evidence Act, learned trial Court has recorded a finding that the prosecution has clearly proved that the deceased had died on account of aforesaid ante-mortem injuries. Thereafter, the trial Court proceeded to decide as to whether ante-mortem injuries were caused by the accused or in any other circumstances. Similarly, as to whether injuries on the private part of the victim has been caused by the accused on account of rape committed against her by the accused or in any other circumstances.

(48) Learned trial Court, considering the evidence and material on record, as discussed above, recorded findings that taking away of the girl child from the lap of her mother by the convict/appellant, recovery in aforesaid condition and medical treatment given to her and inquest and post-mortem, has found them proved. However, recorded that the facts and circumstances, as discussed above, show that there is no direct evidence of committing rape and causing death of the victim by the convict/appellant. Thus, it is a case of circumstantial evidence and for the same, the evidence of father of the deceased P.W.1, mother of the deceased P.W.2, P.W.4-Kailash Baba, P.W.6-Avdhesh Sahu, Investigating Officer P.W.10-S.I. Brijraj Yadav and defence witnesses, namely, D.W.1-Raju and D.W.2-Rakesh Baba, are important.

(49) In a case based on circumstantial evidence, the normal principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances on the basis of which inference of guilt is drawn, should be of a definite tendency unerringly pointing towards the guilt of the accused only. The circumstances, on the basis of which inference of guilt is sought to be drawn after considering cumulatively, should form a complete chain

showing that in all human probability, the crime was committed by the accused only. However, if the prosecution fails to show and prove the chain of circumstances and exclude every hypothesis other than the guilt of the accused, the conviction on the basis of circumstantial evidence cannot be made and it will not sustain. The last seen together is also a theory, on the basis of which the guilt of the accused may be established on proof of the chain of circumstances pointing out towards the guilt of the accused only. This theory can be applied where time gap between the pointing of time, when accused and deceased was seen last alive, and, when the deceased is found dead, and the probability of other than accused being the author of crime becomes impossible.

- (50) The Hon'ble Supreme Court, in the case of **Ganpat Singh Vs. State of Madhya Pradesh (supra)**, has held that in case which rests on circumstantial evidence, the law postulates a two-fold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been formulated as under :-

“The normal principle in a case based on circumstantial evidence is that, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the Accused and inconsistent with his innocence.”

The Hon'ble Supreme Court has further held that evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point, when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The relevant principle, as enumerated, is as follows :-

“ The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

- (51) Similar view has been reiterated by Hon'ble Supreme Court in **State of U.P. Vs. Satish (supra)** after referring the judgments of Hon'ble Supreme Court in the cases of **C. Chenga Reddy Vs. State of A.P.; 1996 (10) SCC 193, Padala Veera Reddy Vs. State of A.P.; 1990 (27) ACC 32 (SC), State of U.P. Vs. Ashok Kumar Srivastava; 1991 (Suppl.) ACC 325 (SC), Hanumant Govind Nargundkar Vs. State of M.P.; AIR 1952 SC 343** and leading case on circumstantial evidence in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra;**

AIR 1984 SC 1622, which has been referred in paragraph-14

and the same is extracted hereinbelow :-

*“14. A reference may be made to a later decision in **Sharad Birdhichand Sarda v. State of Maharashtra**, AIR (1994) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence must be fully established. They are:*

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the-innocence of the accused and must show that in all human probability the act must have been done by the accused.”

(52) The Hon’ble Supreme Court, in **Harendra Narain Singh and others Vs. State of Bihar (supra)**, has considered the conviction based on circumstantial evidence and has held that prosecution cannot rely on absence of defence to sustain the guilt and it must succeed on its own evidence. Where two reasonably possible views exist in the circumstances, Court should adopt the view in favour of the accused’s innocence.

(53) A Division Bench of this Court, in the case of **Prem Singh Prajapati Vs. State of U.P. and another (supra)**, has allowed

the appeal on the ground that three important links of the circumstantial evidence i.e. last seen, extra judicial confession and D.N.A., could not be proved by the prosecution giving benefit of doubt. This judgment is also of no assistance to the learned Counsel for the appellant as the facts and circumstance of the present case are different from that case.

(54) The Hon'ble Supreme Court, in the case of **Ramanand alias Nandlal Bharti vs. State of U.P. (Supra)** also, has reiterated the principles of law relating to appreciation of circumstantial evidence.

(55) A Division Bench of this Court, in the case of **Mani Ram Vs. State of U.P. (Supra)**, has held that on the solitary circumstance that the appellant was last seen alongwith the deceased and the corpse of the deceased was recovered thereafter, which may be a strong suspicion against the accused but the conviction cannot be recorded against the same and allowed the appeal. This judgment is of no assistance to learned Counsel for the appellant for the reason that it is in the different facts and circumstances of that case and in the present case, the deceased was found with the convict/appellant. The judgment of Co-ordinate Bench of this Court, in **Ubhan Yadav alias Abhai Kumar Yadav Vs. State of U.P. (supra)**, is also of

no assistance as the same is in different facts and circumstances of the case.

(56) The Hon'ble Supreme Court, in the case of **Anjan Kumar Sarma and others Vs. State of Assam (supra)**, has held that it is no more *res integra* that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of "may be true". But there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. Similar view has been reiterated in the case of **Sujit Biswas Vs. State of Assam (supra)** by Hon'ble Supreme Court.

(57) Adverting to the facts of the present case, after considering the evidence of aforesaid witnesses and material on record, we have already come to the conclusion that the deceased was taken away by the convict/appellant, Prem Chand alias Pappu Dixit, from the custody of mother of the deceased (P.W.2) on 16.02.2020 at about 07:00 in the evening from S.R. Marriage Lawn, where she along with her mother (P.W.2) and sister-in-law (bhabhi) had come to attend the marriage ceremony of the daughter of Rajkumar Mishra of her village, on the pretext of playing, however, they did not return after considerable period

of time, therefore, her mother (P.W.2) along with family members started searching for them. After extensive search, her daughter was found in open plot, near the S.R. Marriage Lawn, from where the deceased was taken away by her cousin brother, in the aforesaid circumstances and condition, which is apparent from the evidence of D.W.1-Raju also, who has stated in his examination-in-chief that he could not say as to who had done this brutality (हैवानियत) with the girl child. Thus, he admitted that the brutal crime was committed with the girl child. It is to be noticed here that name of the girl child given in medical papers of Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow and other documents of prosecution are of one and the same girl child because as admitted by D.W.1, she was taken to Vivekanand Polyclinic & Institute of Medical Sciences, Lucknow by him and other family members and he also filed certain medical papers at the time of his evidence as D17/1 to D 17/3 and marked as Ext. Kha.1 to Kha.3. Thus, he has admitted the brutality done with the deceased. Though D.W.1 has denied that his brother (convict/appellant) had not attended the marriage in S.R. Marriage Law but the same has been proved by P.W.2-Satya Devi alias Mahalaxmi (mother of the deceased) and on the basis of the CCTV footage by P.W.10-S.I. Brijraj Yadav, the Investigating Officer and nothing could

be extracted from them, which may create any doubt about the veracity of their testimonies, which is corroborated with the opinion of the members of inquest, in which mother of the convict/appellant Kusuma Devi was also a member, who has not been produced in the evidence. The said condition of the deceased is proved by the C.W.1 and C.W.2 and the post-mortem report also. Thus, in view of aforesaid facts and circumstances and on the basis of evidence and material on record, it is proved that it was convict/appellant, who was real cousin of the deceased and he had committed the brutal crime with the girl child and made her condition such that on account of same, she succumbed to injuries.

- (58) Learned Counsel for the convict/appellant has also submitted that the complicity of the convict/appellant in the crime, could not be proved because the medical examination of the convict/appellant was not done. Supplementary F.S.L. Report dated 19.02.2021 (Ext. Ka. 20) indicates that biological fluid of woman origin was found on the 'Jeans, Pant, Shirt and Inner (banyan)' of the convict/appellant. The alleged crime was committed by the convict/appellant in the night of 16.02.2020 and he was arrested on 18.02.2020. As per evidence of P.W.10; the Investigating Officer, the convict/appellant was arrested in

the same clothes in which he was seen going along with the girl child after taking her from the lap of her mother from S.R. Marriage Lawn and the said clothes were taken in custody and sent for examination. The availability of the biological fluid of women origin, on clothes of the convict/appellant, could not be explained or disputed in any manner. D.N.A. could not be matched with the sample of the victim/appellant on account of partial generation of the D.N.A. profile of victim/deceased as per the report dated 22.12.2020 (Ext. Ka. 16). The F.S.L. report dated 16.01.2021 (Ext. Ka. 18) indicates that two buttons of shirt of the deceased were missing and button on the shirt of the convict/appellant were matched with the button, which was recovered from the open plot from where the girl child was recovered. Thus also, the presence of the convict/appellant on the said place and recovery of the girl child from him is also proved.

- (59) The Hon'ble Supreme Court, in the case of **Krishan Kumar Malik Vs. State of Haryana (Supra)**, has held that after incorporation of Section 53 (A) in the Criminal Procedure Code, w.e.f. 23.06.2006, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused.

Prior to 2006, even without the aforesaid specific provision in the Cr.P.C. prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a fool proof case. In this case, looking to the matter from all angles, Hon'ble Supreme Court held that the conviction of the appellant cannot be upheld. This case is not of any assistance to the learned Counsel for the convict/appellant for the reason that the prosecutrix in the present case was found without any clothes on the lower part of her body and her inner was found lying separately in the field. The samples were collected and sent for D.N.A. test but on account of partial generation of the D.N.A. profile in the sample of the prosecutrix, it could not be matched. However, on the clothes of convict/appellant recovered from his body, biological fluid of woman origin was found, which could not be explained. It is also proved by the Investigating Officer (P.W.10) that the convict/appellant was arrested in the same clothes in which he had taken away the deceased and committed the crime on which blood stains were found.

(60) The Hon'ble Supreme Court, in the case of **Veerendra Vs. State of Madhya Pradesh; (2022) 8 SCC 668**, has held that

solely on account of defects or shortcomings in investigation an accused is not entitled to get acquitted and, thus, lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, can not be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder. Even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. It is further held that in a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances forms a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour. The relevant paragraph No.53 is extracted herein below:-

“53. In view of the nature of the provision under Section 53A Cr.P.C and the decisions referred (supra) we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of criminal justice would become the victim. The upshot of this discussion is that even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances forms a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour.”

(61) The Hon'ble Supreme Court, in the case of **State Of West Bengal vs Mir Mohammad Omar & Ors; (2000) 8 SCC 382**, has observed that in our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. The relevant portion of paragraph No.41 is extracted herein below:-

"41In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation."

(62) In view of above and considering the over all facts and circumstances of this case, this Court is of the view that the prosecution has been able to prove the prosecution case on the basis of circumstantial evidence and all the chain of circumstances, as discussed above, refers only towards the guilt of the convict/appellant only without reasonable doubt and that heinous crime of rape with a minor girl of about five months

was committed by the convict/appellant only and thereafter she was put in such condition, on account of which she succumbed to the injuries sustained by her and died. Thus, the trial Court has rightly and in accordance with law recorded the findings on the basis of evidence and material on record holding the convict/appellant guilty and convicted him. This Court does not find any illegality, error or perversity in the findings recorded by the trial Court on the basis of evidence and material on record, which may call for any interference by this Court.

(63) Adverting to the point of ‘sentence’ awarded to the convict/appellant i.e. the death penalty, it cannot be disputed that heinous crime of rape was committed by the convict/appellant with a minor girl of five months and, thereafter, the convict/appellant had put the victim/deceased in such a condition, on account of which, she died during treatment. The conviction of the convict/appellant has been made on the basis of circumstantial evidence except for the conviction and sentence under Section 364 I.P.C. The brutality committed with the minor girl child has not be disputed by the brother of the convict/appellant, who appeared as D.W.1. The learned trial Court, after affording opportunity of hearing, has passed the order of sentence, recording detailed reasons and

considering the various circumstances as well as case laws of the Hon'ble Supreme Court in similar circumstances.

(64) A question in regard to the constitutional validity of death penalty of murder provided in Section 302 Penal Code and the sentencing procedure embodied in Sub-section (3) of Section 354 of the Cr.P.C., 1973 was referred to the Constitution Bench and the Hon'ble Supreme Court in Criminal Appeal No. 273 of 1979; **Bachan Singh Vs. State of Punjab; (1980) 2 SCC 684**, clubbed with other writ petitions has upheld the constitutional validity of the same by the majority judgment. The Hon'ble Supreme Court observed that all murders are cruel and in same cruelty may vary in its degree of culpability and it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist. The Hon'ble Supreme Court, thereafter, had referred the 'Aggravating Circumstances' as suggested by Dr. Chitale in particular and Clauses (2)(a), (b), (c) and (d) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in paragraph-202. However, thereafter, it has been observed that there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive

enumeration one way or the other. Thereafter, the Hon'ble Supreme Court also referred the 'Mitigating Circumstances' as suggested by Dr. Chitale. The Hon'ble Supreme Court has indicated that there are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation and has held that death penalty ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. The relevant paragraphs 207 to 209 are extracted hereinbelow :-

"207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special enactments, according to which a 'child', that is, 'a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children.

208. According to some Indian decisions, the post-murder remorse, penitance or repentance by the murderer is not a factor which may induce the Court to pass the lesser penalty (e.g. Mominaddi Sardar). But those decisions can no longer be held to be good law in views of the current penological trends and the sentencing policy outlined in Section 235(2) and 354(3). We have already extracted the view of A.W. Alchuler in Cr. Y.E. by Messinger and Bittner (ibid), which are in point.

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be blood-thirsty. Hedging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, Courts have inflicted the

extreme penalty with extreme infrequency-a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz, that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

(65) The Hon'ble Supreme Court, in the case of **Sundar @ Sundarrajan Vs. State of Inspector of Police; 2023 SCC Online SC 310**, deals with the conviction of the appellant for charge under Sections 302, 364-A, 201 I.P.C., in which death penalty was awarded. Hon'ble Supreme Court considering the award of sentence to death commuted the death sentence awarded to the appellant therein, for a murder of a seven year old child, considering Constitution Bench judgment in the case of **Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and others; (2014) 9 SCC 737**. The relevant portion of paragraphs 29 and 30 of Mohd. Arif alias Ashfaq are extracted hereinbelow :-

"29. [...] death sentence cases are a distinct category of cases altogether. Quite apart from Article 134 of the Constitution granting an automatic right of appeal to the Supreme Court in all death sentence cases, and apart from death sentence being granted only in the rarest of rare cases, two factors have impressed us. The first is the irreversibility of a death penalty. And the second is the fact that different judicially trained minds can arrive at conclusions which, on the same facts, can be diametrically opposed to each other. Adverting first to the second factor mentioned above, it is well known that the basic principle behind returning the verdict of death sentence is that it has to be awarded in the rarest of

rare cases. There may be aggravating as well as mitigating circumstances which are to be examined by the Court. At the same time, it is not possible to lay down the principles to determine as to which case would fall in the category of rarest of rare cases, justifying the death sentence. It is not even easy to mention precisely the parameters or aggravating/mitigating circumstances which should be kept in mind while arriving at such a question. Though attempts are made by Judges in various cases to state such circumstances, they remain illustrative only.

30. [...] A sentence is a compound of many factors, including the nature of the offence as well as the circumstances extenuating or aggravating the offence. A large number of aggravating circumstances and mitigating circumstances have been pointed out in *Bachan Singh v. State of Punjab* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580], SCC at pp. 749-50, paras 202 & 206, that a Judge should take into account when awarding the death sentence. Again, as pointed out above, apart from the fact that these lists are only illustrative, as clarified in *Bachan Singh* [*Mohd. Arif v. Supreme Court of India*, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408] itself, different judicially trained minds can apply different aggravating and mitigating circumstances to ultimately arrive at a conclusion, on considering all relevant factors that the death penalty may or may not be awarded in any given case. Experience based on judicial decisions touching upon this aspect amply demonstrate such a divergent approach being taken. Though, it is not necessary to dwell upon this aspect elaborately, at the same time, it needs to be emphasised that when on the same set of facts, one judicial mind can come to the conclusion that the circumstances do not warrant the death penalty, whereas another may feel it to be a fit case fully justifying the death penalty,.....”

(66) The Hon’ble Supreme Court, in the case of **Sundar @**

Sundarrajan (Supra), has held as under in paragraphs 76 to 79

:-

“76. In terms of the aggravating circumstances that were taken note of by this Court in appeal, our attention has been drawn to the following circumstance: (*Sunder case* [*Sunder v. State*, (2013) 3 SCC 215 : (2013) 3 SCC (Cri) 98], SCC pp. 239-40, para 42.7)

“42.7. The choice of kidnapping the particular child for ransom, was well planned and consciously motivated. The parents of the deceased had four children — three daughters and one son. Kidnapping the only male child was to induce maximum fear in the mind of his parents. Purposefully killing the sole male child, has grave repercussions for the parents of the deceased. Agony of parents for the loss of their only male child, who would have carried further the family lineage, and is expected to see them through their old age, is

unfathomable. Extreme misery caused to the aggrieved party, certainly adds to the aggravating circumstances.”

77. We wish to note that the sex of the child cannot be in itself considered as an aggravating circumstance by a constitutional court. The murder of a young child is unquestionably a grievous crime and the young age of such a victim as well as the trauma that it causes for the entire family is in itself, undoubtedly, an aggravating circumstance. In such a circumstance, it does not and should not matter for a constitutional court whether the young child was a male child or a female child. The murder remains equally tragic. Courts should also not indulge in furthering the notion that only a male child furthers family lineage or is able to assist the parents in old age. Such remarks involuntarily further patriarchal value judgments that courts should avoid regardless of the context.

78. In Rajendra Pralhadrao Wasnik v. State of Maharashtra [Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420] , a three-Judge Bench of this Court took note of the line of cases of this Court which underline the importance of considering the probability of reform and rehabilitation of the convicted accused before sentencing him to death. The Court observed: (SCC pp. 482-84, paras 43 & 45-47)

“43. At this stage, we must hark back to Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] and differentiate between possibility, probability and impossibility of reform and rehabilitation. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.

45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the “special reasons” requirement of Section 354(3)CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

46. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But

there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580], the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and in Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] 'In the sentencing process, both the crime and the criminal are equally important.' Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

(emphasis supplied)

79. The law laid down in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] requires meeting the standard of "rarest of rare" for award of the death penalty which requires the courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150], this requires looking beyond the crime at the criminal as well: (Santosh Kumar case [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150], SCC p. 530, para 66)

"66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason

in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] sets the bar very high by introduction of the rarest of rare doctrine.”

(67) A three Judges Bench of Hon’ble Supreme Court, in the case of **Jai Prakash Vs. State of Uttarakhand ; (2025) INSC 861**, has commuted the death sentence to life imprisonment without remission extending to the natural life of the appellant therein instead of the punishment of the death penalty after calling reports of the Probation Officer, Jail Administration and Psychological evaluation of the appellant therein. The relevant paragraph-14 to 22 are extracted hereinbelow :-

*“14. We now proceed to examine the sentence that has been handed down to the appellant, i.e., death penalty. The case at hand is one, based on admittedly circumstantial evidence. This Court in **Mohd. Farooq Abdul Gafur v. State of Maharashtra**, expounded:*

“164. Capital sentencing is not a normal penalty discharging the social function of punishment. In this particular punishment, there is a heavy burden on the Court to meet the procedural justice requirements, both emerging from the black letter law as also conventions. In terms of rule of prudence and from the point of view of principle, a Court may choose to give primacy to life imprisonment over death penalty in cases which are solely based on circumstantial evidence or where the High Court has given a life imprisonment or acquittal.

165. At this juncture, it will be pertinent to assess the nature of the rarest of rare expression. In the light of serious objections to disparity in sentencing by this Court flowing out of varied interpretations to the rarest of rare expression, it is clear that the test has to be more than what a particular Judge locates as rarest of rare in his personal consideration. There has to be an objective value to the term “rarest of rare”, otherwise it will fall foul of Article 14. In such a scenario, a

robust approach to arrive at the rarest of rare situations will give primacy to what can be called the consensus approach to the test. In our tiered court system, an attempt towards deciphering a common view as to what can be called to be the rarest of rare, vertically across the trial court, the High Court and Apex Court and horizontally across a 7 (2010) 14 SCC 641 Criminal Appeal Nos.331-332/2022 Page 13 of 17 Bench at any particular level, will introduce some objectivity to the precedent on death penalty which is crumbling down under the weight of disparate interpretations. This is only a rule of prudence and as such there is no statutory provision to this effect.”

(Emphasis supplied)

15. Keeping the above exposition of law in mind, we are also conscious of the brutality of the crime in question. A helpless child was at first, mercilessly raped after being lured into the appellant's hut on the pretext of buying sweets with the offered money. Thereafter, to hide the evidence of his crime, the child was strangled by hand, in a defenseless condition. That being said, this Court in **Gudda v. State of M.P.**, while commuting the sentence of the appellant therein from death penalty to life imprisonment, where the victims of the crime were a pregnant lady and a five-year old child, had reiterated that the brutality of a crime cannot be the only criterion for determining whether a case falls under the “rarest of the rare” category. The Courts below have only commented on the brutality of the crime in question, to hand down the death penalty to the appellant. No other circumstance came to be discussed by the Courts in reaching the conclusion that the case forms part of the “rarest of the rare” category. Such an approach in our view cannot be sustained.

16. In **Gudda** (supra), it was further observed:

“32. In a civilised society — a tooth for a tooth and an eye for an eye ought not to be the criterion to clothe a case with “the rarest of the rare” jacket and the courts must not be propelled by such notions in a haste resorting to capital punishment. Our criminal jurisprudence cautions the courts of law to act with utmost responsibility by analysing the finest strands of the matter and it is in that perspective that a reasonable proportion has to be maintained between the brutality of the crime and the punishment. It falls squarely upon the court to award the sentence having due regard to the nature of offence such that neither is the punishment disproportionately severe nor is it manifestly inadequate, as either case would not subserve the cause of justice to the society. In jurisprudential terms, an individual's right of not to be subjected to cruel, arbitrary or excessive punishment cannot be outweighed by the utilitarian value of that punishment.”

17. More recently, in **Manoj v. State of M.P.**, this Court had recognized the disparity in the application of the “rarest of rare” test for imposition of the death penalty and re-emphasized the two-step process to determine whether a case belongs to the rarest of rare category:

“224. This aspect was dealt with extensively in Santosh Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, para 112 : (2009) 2 SCC (Cri) 1150] where the Court articulated the test to be a two-step process to determine whether a case deserves the death sentence — firstly, that the case belongs to the “rarest of rare” category, and secondly, that the option of life imprisonment would simply not 9 (2023) 2 SCC 353 Criminal Appeal Nos.331-332/2022 Page 15 of 17 suffice. For the first step, the aggravating and mitigating circumstances would have to be identified and considered equally. For the second test, the court had to consider whether the alternative of life imprisonment was unquestionably foreclosed as the sentencing aim of reformation was unachievable, for which the State must provide material.”

(Emphasis supplied)

18. The Courts below have failed to make any detailed reference to the aggravating and mitigating circumstances surrounding the appellant. Moreover, the High Court, which was the Reference Court for confirmation of death sentence, though expounded on the requirement of law to consider aggravating and mitigating circumstances, failed to consider any of these circumstances – only dealing with the brutality of the incident.

*19. In similar circumstances in **Sundar @ Sundarrajan v. State by Inspector of Police**, this Court commuted the death sentence awarded to the appellant therein, for murder of a seven-year-old child while observing:*

“81. No such inquiry has been conducted for enabling a consideration of the factors mentioned above in case of the petitioner. Neither the trial court, nor the appellate courts have looked into any factors to conclusively state that the petitioner cannot be reformed or rehabilitated. In the present case, the Courts have reiterated the gruesome nature of crime to award the death penalty.

83. The duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.”

20. Coming to the mitigating circumstances relating to the appellant, this Court vide 2 nd March 2022, had called for the reports of the probation officer, jail administration and psychological evaluation of the appellant. It is borne from the report of the District Probation Officer, Ayodhya, dated 12th April 2022, that the condition of the family of the appellant is “very pathetic” and they earned their livelihood by doing labor work.

21. The psychological report of the appellant was prepared on 19th April 2022. It is stated therein that the appellant

could not attend school due to the socio-economic condition of the family and had started working at the age of twelve. He has good relations with other inmates. He does not suffer from any psychiatric disturbance.

22. In light of the above discussion, taking into account the above mitigating circumstances and the threshold of “rarest of rare” category, we deem it appropriate to award life imprisonment without remission extending to the natural life of the appellant instead of the punishment of the death penalty. “

(68) A three judges Bench of the Hon’ble Supreme Court, in the case of **Veerendra Vs. State of Madhya Pradesh (Supra)**, has observed that where the conviction is based on circumstantial evidence, rarely, death penalty would be awarded, if the conclusion on the connection of the accused with the offence(s) is fixed based on circumstantial evidence. It is true that even in such cases existence of exceptional circumstances/special circumstances would make death penalty awardable. The Hon’ble Supreme Court has further highlighted the requirement of application of ‘crime test’, ‘criminal test’ and ‘rarest of rare test’ and the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) has been narrated in paragraph-104, which are extracted hereinbelow “-

“104. On the aforesaid subject this Court has already enunciated the principles. A careful survey of such decisions was made by this very three-Judge Bench in the decision in Pappu Vs. The State of Uttar Pradesh (Criminal Appeal Nos.1097-1098/2018, pronounced on 9.2.2022. Paragraph 49 of the decision in Shankar Kishanrao Khade Vs. State of Maharashtra reported in (2013) 5 SCC 546, highlighting the requirement of application of ‘crime test’, ‘criminal test’ and ‘rarest of rate test’ was referred therein. In the said paragraph, with reference to the previous decisions, the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) were narrated as hereunder :

“49. In Bachan Singh and Machhi Singh cases, this Court laid down various principles for awarding sentence: (Rajendra Pralhadrao case, SCC pp. 47-48, para 33)

“Aggravating circumstances — (Crime test)

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, 90 murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances — (Criminal test)

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.”

(69) A Three Judges Bench of the Hon’ble Supreme Court in the case of **Shatrughna Baban Meshram Vs. State of Maharashtra; (2021) 1 SCC 596** has also taken similar view in an identical case.

(70) In view of above, in a case based on circumstantial evidence, in which, offence is under Section 376 I.P.C. with Section 302 I.P.C., though the death penalty can be awarded in the ‘rarest of rare’, but normally imprisonment for life without any remission may be awarded, unless death sentence is inevitable. Dealing with the ‘aggravating’ and ‘mitigating’ circumstances, Court may choose to give primacy to life imprisonment over death penalty after making an inquiry for enabling the consideration of the facts mentioned in the aforesaid cases.

- (71) Adverting to the facts of the present case, which is based on circumstantial evidence in regard to the offences under Sections 376 and 302 I.P.C. and the convict/appellant was aged about 27 years at the time of incident having a child of 3-4 years and though the learned trial Court has considered the circumstances in detail but without any report of Probation Officer, Jail Administration and Psychologist of evaluation and there is no criminal history of the convict/appellant and there is no evidence that offence was committed with pre-meditated mind, this Court is of the view that the death penalty is liable to be commuted to life imprisonment till the natural life of convict/appellant without remission.
- (72) In view of above, Criminal Appeal No. 1626 of 2021 filed by the convict/appellant is **partly allowed**. The conviction of the convict/appellant for the offences punishable under Section 302 I.P.C., 364 and 376 (Ka)(Kha) I.P.C. and Section 6 of POCSO Act, 2012 is upheld and the sentence awarded to him under Section 364 I.P.C. is confirmed. However, the death sentence awarded to the convict/appellant for the offences under Section 302 I.P.C. and under Section 376(ka)(kha) I.P.C. read with Section 6 POCSO Act, 2012 are commuted to that of life imprisonment for his natural life without remission.

(73) Other terms of the sentence awarded to the convict/appellant including fine awarded with default stipulation also stands confirmed.

(74) Consequently, reference in Capital Case No. 4 of 2021 made by the learned trial Court is not confirmed.

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

(Rajeev Singh , J.)

(Rajnish Kumar, J.)

Order Date : 18th November, 2025

Ajit/-