[2026] 10 S.C.R. 368 : 2026 INSC 1102

Charming Rupon
v.
State of Meghalaya

(Criminal Appeal No(s). 4845 of 2026)

09 October 2026

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the prosecution failed to establish the guilt of the accused-appellant beyond reasonable doubt for the offence punishable u/s.6 of the Protection of Children from Sexual Offences Act, 2012; whether the judgment of conviction and order of sentence passed by the trial court and the impugned judgment passed by the High Court affirming the same, ought to be set aside and the appellant be given benefit of doubt.

Headnotes†

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) – s.6 – Conviction under, when not justified – Appellant was accused of the offence punishable u/s.6 for allegedly subjecting the specially abled minor victim to sexual assault – Convicted and sentenced by trial Court – Appeal thereaginst rejected by High Court – Interference with:

Held: Prosecution failed to establish the guilt of the appellant beyond reasonable doubt – Evidence brought on record falls woefully short of the standard required for sustaining the conviction of the accused appellant – Cumulative effect of unnatural conduct of victim's mother (PW-1) coupled with the significant delay in lodging the FIR; failure of the victim (PW-4) and her cousin (PW-2) to identify the appellant before the Court; contradictory versions regarding the relationship of the accused-appellant with the victim's family; non-examination of the school teacher (Ms. 'P'-a material witness) and; the defence evidence indicating that the appellant had gone to another village in connection with a property transaction, creates serious doubt on the genuineness and credibility of the prosecution allegations – It is wholly unsafe to sustain the conviction of the appellant – Courts below clearly fell in error in relying upon the wavering testimony of the informant (PW-1), her niece (PW-2) and the victim-child witness

* Author

(PW-4) to convict the appellant and in affirming his conviction in appeal – Findings recorded by the Courts below are unsustainable in law, set aside – Judgment of conviction and order of sentence passed by the trial court and impugned judgment of the High Court, set aside – Appellant acquitted by giving him the benefit of doubt. [Paras 61-64]

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) – Testimony of the victim, when cannot be relied upon:

Held: The victim was a mentally challenged girl and as such, a certain degree of latitude would have to be given while appreciating her evidence – However, even after giving due deference to her weak mental disposition, there was a complete failure of the victim to identify the accused-appellant before the Court – Admittedly, the prosecution could not present any scientific corroboration for the incident as the FIR itself was lodged after 10 days of the incident – Therefore, it would be unsafe to rely upon the testimony of the victim to sustain the conviction of the accused – On a thorough analysis of the evidence, the conduct of PW-1 is found to be very unnatural – She had been told by her own niece (PW-2) that her daughter i.e., the victim herein who was mentally impaired, had been subjected to rape – However, the mother, *i.e.*, PW-1 did not give much credence to this complaint of PW-2 – The concern of a mother on receiving such complaint would be expected to be heightened as the child was suffering from mental deficiency – This disability factor of the child would definitely have made the mother more wary and a serious complaint of sexual assault on the child would not have been brushed aside so casually only because the child did not confirm that she had been subjected to any such assault – If at all there had been any iota of truth in the theory that PW-2 had informed PW-1 about the incident, then, she being the mother of the child, would be expected to at least check her physical condition and to be specific, the genital area – Hence, on a perusal of the evidence of the informant (PW-1), grave discrepancies are apparent regarding the source of information of the alleged occurrence received by the informant; the hesitation shown by the informant in taking any action despite the fact that her own niece had informed her about the incident; the refusal of the victim to divulge about the sexual assault despite persistent questioning and the omission to mention this fact in the FIR – These are material aspects carrying significance affecting the credibility of the prosecution case. [Paras 32, 33, 48]

FIR – Not an encyclopaedia however, where a circumstance subsequently relied upon constitutes a material incriminating fact forming the very foundation of the prosecution case, its omission from the earliest version assumes considerable significance:

Held: A material improvement made during the course of trial, particularly on a circumstance sought to connect the accused with the alleged occurrence, necessarily calls for closer judicial scrutiny – If such omission remains unexplained, the subsequent version may lose much of its evidentiary fervour – Prosecution placed strong reliance upon the circumstance that PW-1 had allegedly seen the accused-appellant in the garden adjoining her house immediately before leaving for Sutanga – Significantly, this material allegation finds no mention whatsoever in the FIR (Exh. 2), despite the fact that the FIR was lodged after a delay of 10 days – Equally significant is the omission to mention in the FIR that PW-2 had allegedly informed PW-1 about the incident on the very next day of the alleged occurrence – Had these facts actually transpired in the manner sought to be projected during trial, there was no reason why they would not have found place in the FIR – These omissions assume considerable significance and the subsequent improvements made by the first informant (PW-1) during the course of evidence render her testimony highly doubtful and unsafe to rely upon. [Paras 51, 54]

Evidence Act, 1872 – s.106 – Plea that the accused-appellant was last seen by the informant (PW-1) in the garden adjoining her house and, therefore, the burden shifted upon him u/s.106:

Held: Said contention is absolutely farfetched and unconvincing – The theory of last seen seems to be a material improvement from the version as set out in the highly belated FIR (Exh. 2), wherein no such allegation is levelled – Even according to the version of PW-1 in her sworn testimony, she merely saw the accused plucking mulberry leaves in the garden before she left for Sutanga – She nowhere stated that the victim was present with the accused or that both of them were seen together at any point of time – Thus, the testimony of PW-1 does not establish the circumstance of the accused and the victim having been last seen together and hence there is no question of shifting the burden of proof on the accused by virtue of s.106 – Further, if the informant (PW-1) had in fact seen the accused-appellant in

the vicinity of her house on the relevant day and, on the very next morning, her niece (PW-2) had informed her about the incident, it is difficult to comprehend why she would hesitate in approaching the police immediately – The conduct of the informant in not taking any prompt action and not even physically checking her own daughter for signs of sexual assault despite allegedly receiving such information from her own niece, is a circumstance which creates a serious doubt on the truthfulness of the prosecution story. [Paras 49, 50]

Evidence – Withholding of a material witness – Effect:

Held: Prosecution withheld a material witness, namely, Ms. 'P', the school teacher, whose disclosure admittedly prompted PW-1 to lodge the FIR – No explanation was offered by the prosecution for her non-examination as a witness – The omission to examine such an important witness assumes considerable significance in the facts of the present case – What exactly was the disclosure made by the child to her teacher would definitely be a material fact and the withholding thereof effects the veracity of the prosecution case – Though the prosecution is not obliged to examine each and every witness cited during investigation, it is unquestionably under a duty to examine those witnesses whose evidence goes to the root of the matter and is essential to elicit the truth – Where a material witness, capable of throwing light on the genesis of the occurrence is withheld without any plausible explanation, the Court would be justified in drawing adverse inference against the prosecution, particularly when such witness occupies a pivotal position in the chain of events – Ms. 'P', the school teacher, was undeniably a material witness – In the specific facts of the present case, this omission assumes considerable significance and an adverse inference is drawn against the prosecution. [Paras 56, 57, 59]

Evidence – Testimony of Medical Jurists, when cannot be relied upon:

Held: Testimony of the Medical Jurist (PW-3) remained untested by cross-examination, as no effective opportunity to cross examine the witness was given to the accused whose defence counsel was absent on that day – Though, the partial deposition of PW-3 indicates that the victim had sustained injuries on her genital region suggestive of sexual assault but the fact remains

that the testimony of the witness remained untested in cross-examination, not on account of any waiver by the accused, but because the defence counsel was unavailable on the date when the witness entered the witness-box – Another medical officer examined by the prosecution was PW-8 – During the course of recording the evidence of the said witness, the trial court did not even offer the opportunity of cross-examination to the defence counsel – Hence, the testimony of both medical jurists cannot be read in evidence as the defence was not given an effective opportunity of cross-examining both the witnesses (PW-3 & PW-8). [Paras 41, 42]

Case Law Cited

Amar Nath Jha v. Nand Kishore Singh **(2018) 9 SCC 137;** *Ram Kumar Pandey v. State of M.P.* **[1975] 3 SCR 519 : AIR 1975 SC 1026;** *Takhaji Hiraji v. Thakore Kubersing Chamansing* **(2001) 6 SCC 145 – relied on.**

List of Acts

Protection of Children from Sexual Offences Act, 2012; Evidence Act, 1872.

List of Keywords

Section 6 of the Protection of Children from Sexual Offences Act, 2012; Prosecution failed to establish guilt of accused beyond reasonable doubt; Guilt of accused not established beyond reasonable doubt; Unnatural conduct of victim's mother; Delay in lodging FIR; Highly belated FIR; FIR lodged after delay of 10 days; Failure to identify accused before Court; Accused not identified before Court; Contradictory versions regarding relationship of the accused with victim's family; Material witness withheld; Non-examination of material witness; Testimony of Medical Jurist remained untested; Sexual assault on child victim; Victim mentally challenged girl; Accused acquitted; Benefit of doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4845 of 2026

From the Judgment and Order dated 29.03.2022 of the High Court of Meghalya at Shilong in CRLA No. 3 of 2022

Charming Rupon v. State of Meghalaya

Appearances for Parties

Advs. for the Appellant(s):
Gaurav Agrawal, Sr. Adv., Ashutosh Ghade, Ms. Saloni Meshram, Ms. Sneha Balapure.

Advs. for the Respondent(s):
Amit Kumar, Advocate General, Z.H. Isaac Haiding, T.K. Nayak, Daniel Stone Lyngdoh, Ms. Marbiang Khongwir, Avijit Mani Tripathi.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Heard.

2. Leave granted.

3. This appeal against conviction arises from a very disturbing set of allegations wherein a specially abled minor child is alleged to have been subjected to sexual assault by her uncle i.e., the appellant herein. However, in a criminal case, the prosecution is required to prove the charges by leading evidence which is free from doubt and establishes the guilt of the accused beyond reasonable doubt. It is with these solemn jurisprudential principles in the back of mind, we shall proceed to decide the present appeal.

4. The appellant-Charming Rupon[1] was arraigned as an accused in connection with FIR No. 261(6)15/2015 registered at Police Station Khliehriat, East Jaintia Hills District, for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012[2]. He was tried before the learned Special Judge (POCSO), East Jaintia Hills District, Khliehriat[3] in Special POCSO Case No. 38 of 2020. *Vide* judgment of conviction and order of sentence dated 7th December, 2021, the accused-appellant was convicted for the aforesaid offence and sentenced to undergo rigorous imprisonment for 10 years along with fine of Rs.1 Lakh and in default of payment of fine, to undergo simple imprisonment for 5 months.

1 Hereinafter, referred to as "accused-appellant".

2 Hereinafter, referred to as "POCSO Act".

3 Hereinafter, referred to as "trial Court".

5. The criminal appeal[4] preferred by the accused-appellant for assailing the judgment of the trial Court stands rejected by the Division Bench of the High Court of Meghalaya at Shillong[5] *vide* judgment dated 29th March, 2022 which is subjected to challenge in this appeal by special leave.

Brief Facts

6. Succinctly stated, the prosecution case is that the victim (PW-4), a minor girl suffering from intellectual disability was subjected to forcible sexual assault by the accused-appellant on 28th May, 2015 at her residence. On the date of incident, the victim's mother (PW-1) had left the house in the afternoon for attending to some personal work, leaving the victim alone at home. While leaving her house, PW-1 allegedly noticed the accused-appellant in the garden adjoining the house, where he was plucking mulberry leaves. According to the prosecution, during the period when the victim was alone, the appellant entered the house and subjected the victim to sexual assault.

7. After the accused-appellant had left, the victim went to the house of her cousin, Ms. J (PW-2), where she stayed over-night. PW-2 noticed that the victim appeared disturbed and, upon making enquiries, she disclosed that the accused-appellant had subjected her to sexual assault. On the following day, PW-2 informed the victim's mother (PW-1) about the disclosure made by the victim. However, according to prosecution case, the victim's mother (PW-1) did not give much thought to the allegation as the victim did not affirm the accusation when questioned.

8. The matter remained unreported for several days. Subsequently, on 7th June, 2015, while attending school, the victim divulged about the incident to her teacher Ms. Princely, who in turn, informed the victim's parents regarding the complaint made by the child. Thereafter, victim's mother (PW-1) once again questioned the child, whereupon she narrated the occurrence.

9. Pursuant thereto, FIR (Exh. 2) of the incident of sexual assault upon the child came to be lodged by her mother (PW-1) at Police Station Khliehriat on 8th June, 2015.

---

4 Criminal Appeal No. 03 of 2022.

5 Hereinafter, referred to as "High Court"

10. Since the contents of the FIR would be relevant for appreciating the matter at hand, the same are reproduced hereinbelow for ready reference: -

> "With reference to the subject cited above, I Smt. Pxxxxxx Sxxxxxx from Bangla Nongkhlieh Village, I came to lodged this FIR against Shri. Charli Rupon from Shnongrim Village the reason is that he rape my daughter whose name is xxxxxx her age is 11 years old. The incident occur on the 28-5-2015 at the time 5 PM. This is a request to your good office that may you pleased take necessary action."

11. On the very same day, the victim (PW-4) was subjected to medical examination at the hands of Dr. W. Nongtdu (PW-8) who took note of injuries on the genital region of the victim and opined that the possibility of sexual assault could not be ruled out. However, since the FIR itself was lodged after a delay of nearly 10 days from the date of incident, no scientific evidence, including any serological report could be procured during investigation.

12. Investigation of the case was conducted by Sub Inspector, K. Lyngdoh (PW-7). During the course of investigation, the Investigating Officer visited the place of occurrence, recorded the statements of the material witnesses under Section 161 of the CrPC and also got the statements of the victim (PW-4) as well as Ms. J (PW-2) recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973[6]. The investigating officer further collected the disability certificate issued by Dr. Angelia Paswet (PW-5) affirming that the victim was suffering from 40% intellectual disability.

13. Upon conclusion of the investigation, a charge sheet under Section 173(2) of the CrPC came to be filed against the accused-appellant for the offence punishable under Section 6 of the POCSO Act.

14. The trial Court framed charges against the accused-appellant for the aforesaid offence. The accused-appellant pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined 9 witnesses and exhibited certain documents. Upon being questioned

6 For short, "CrPC".

under Section 313 CrPC and when confronted with the allegations appearing in the prosecution case, the accused-appellant denied the same and claimed to be innocent. In defence, he examined 4 witnesses (including himself) and exhibited one document (D-Exh. 1) to prove the plea of *alibi*.

15. Upon conclusion of the trial, the learned trial Court *vide* judgment dated 7th December, 2021 convicted the accused-appellant for the offences punishable under Section 6 of the POCSO Act and sentenced him as noted above.[7]

16. Being aggrieved, the accused-appellant preferred an appeal to the High Court, which stands dismissed by the Division Bench *vide* judgment dated 29th March, 2022. The said judgment is subject matter of challenge in this appeal with special leave.

Submissions on behalf of the accused-appellant

17. Shri Gaurav Agrawal, learned senior counsel representing the accused-appellant strenuously contended that the learned trial Court as well as the High Court, committed grave error while appreciating the facts and evidence and in convicting the accused-appellant for the alleged offence.

18. Shri Agrawal submitted that the prosecution has failed to satisfactorily explain the delay of nearly ten days in lodging the FIR. He contended that although Ms. J (PW-2), the cousin of the victim had admittedly informed the victim's mother (PW-1) about the incident on the very next day, neither was this fact mentioned in the FIR nor did PW-1 take any recourse to police action or medical assistance which would be the natural reaction if at all the allegations bore any element of truth. Learned senior counsel further contended that the matter was reported to police only after the victim allegedly disclosed the incident to her school teacher, Ms. Princely, who was a crucial witness to unfurl the truth of the prosecution case. Despite her pivotal role, the prosecution failed to examine the said teacher during trial without offering any explanation for the omission to do so. It was, therefore, urged that the unexplained delay in lodging the FIR, coupled with the withholding of a material witness, seriously undermines the credibility of the prosecution case.

7 Para 4.

19. Shri Agrawal next submitted that the prosecution has failed to establish the identity of the accused-appellant beyond reasonable doubt. He urged that although the accused-appellant was known to the victim and her family members prior to the alleged occurrence, both the victim (PW-4) and her cousin, Ms. J (PW-2), failed to identify the accused-appellant during their sworn testimony, despite being specifically called upon to do so. It was contended that both these witnesses admitted that the name of the offender had been disclosed to them by the victim's mother (PW-1), who herself was admittedly not an eyewitness to the alleged occurrence. It was also pointed out that the victim candidly admitted in her cross-examination that her statement in examination-in-chief was given as instructed by the learned Public Prosecutor. Thus, it is a clear case of tutoring.

20. Learned senior counsel further submitted that no Test Identification Parade was ever conducted, nor was PW-1 called upon to identify the accused-appellant before the Court.

21. Learned senior counsel further urged that the prosecution evidence is inconsistent even as regards to the accused-appellant's relationship with the victim's family. While the victim (PW-4) described the offender as her paternal uncle (eldest brother of her father), PW-1 stated that the accused-appellant was the husband of her brother's sister-in-law. According to the learned senior counsel, this material contradiction regarding the relationship of the accused-appellant with the victim's family remains unexplained and, when viewed together with the total failure of the star prosecution witnesses to identify the accused-appellant during their deposition before the Court, renders the prosecution case wholly unreliable. The identity of the offender is shrouded in a cloud of doubt and hence the conviction based on such flimsy evidence cannot be sustained.

22. Lastly, Shri Agrawal contended that apart from the unreliable oral testimony, there is no independent or corroborative evidence connecting the accused-appellant with the alleged offence. Owing to the delayed lodging of the FIR, no forensic or scientific evidence could be collected. The medical evidence merely indicates that the victim was examined after about ten days of the alleged incident and does not in any manner connect the offender with the crime. It was further urged that the defence plea of *alibi* was duly proved by documentary and oral evidence which was ignored and doubted

by the Courts below without proper appreciation and reasoning. According to the learned senior counsel, the cumulative effect of these lacunae raises a strong doubt regarding the truthfulness of the prosecution case and the accused-appellant's involvement, entitling him to the benefit of doubt.

Submissions on behalf of the Respondent- State of Meghalaya

23. *E-converso*, learned Advocate General, Shri Amit Kumar, appearing for the respondent-State of Meghalaya vehemently and fervently opposed the submissions advanced by learned senior counsel appearing for the accused-appellant. He contended that the conviction of the accused-appellant was recorded after proper appreciation of evidence on record and does not warrant interference by this Court.

24. Learned Advocate General submitted that the Courts below rightly placed reliance upon the statements of the victim (PW-4) and Ms. J (PW-2) recorded under Section 164 of the CrPC. He urged that both these statements were recorded by a Judicial Magistrate at the earliest available opportunity, when the incident was still fresh in the minds of the witnesses. According to the learned Advocate General, these statements lend substantial corroboration to the prosecution case and cannot be discarded merely because of trivial inconsistencies in the deposition made by the witnesses before the trial Court. He submitted that such minor discrepancies are bound to occur in the testimony of a truthful witness.

25. Learned Advocate General further submitted that the victim was a specially-abled child suffering from 40% intellectual disability. The inability to identify the accused-appellant while deposing before the trial Court in the year 2017, nearly two years after the alleged occurrence, is neither unnatural nor should it be considered sufficient to discredit the entire prosecution case. According to him, the combined effect of the victim's mental condition and the passage of time adequately explains her inability to identify the accused-appellant during trial. It was, therefore, contended that such minor deficiency cannot efface the consistent and credible description furnished by the victim at every earlier stage, wherein she had named the accused-appellant as the perpetrator of the crime.

26. Learned Advocate General lastly urged that the testimony of victim's mother (PW-1) clearly establishes that, immediately before the

occurrence of the crime, the accused-appellant was seen in the garden adjoining her house, plucking mulberry leaves, while the victim had been left alone inside the house. Hence a strong presumption arises regarding the accused-appellant having exclusive knowledge about the solitary presence of the child and he would be under the burden to explain the incriminating circumstances by virtue of Section 106 of the Indian Evidence Act, 1872.[8] Since the accused-appellant failed to rebut the said presumption, the conviction of the accused-appellant recorded by the trial Court and affirmed by the High Court does not warrant any interference by this Court.

Discussion

27. We have heard and considered the submissions advanced by learned senior counsel appearing for the parties and have gone through the material placed on record.

28. Since the conviction of the accused-appellant is primarily based on evidence of the child witness (PW-4), who was suffering from mental disability, it would be necessary for this Court to undertake a minute re-appreciation of the evidence available on record so as to find out whether the case of the prosecution inspires confidence and is convincing enough so as to confirm the conviction of the accused-appellant.

29. We shall, now proceed to analyse the evidence of the material prosecution witnesses which forms the basis of the conviction of the accused-appellant as recorded by the trial Court and affirmed by the High Court.

Evidence of PW-1 (Victim's Mother/Informant)

30. Smt. P (PW-1), the mother of the victim, deposed that victim girl was her daughter aged 11 years and was studying in Class 1 at the time of the incident, she had to drop out of the school on account of her mental illness. The child was under treatment and on regular medication since she was 6 years of age. The witness alleged that the accused Charming Rupon subjected the child to sexual assault on 28th May, 2015 at her home between 4:30 to 5:00 pm. On that

8 For short, "Evidence Act".

day, she was not at her house as she had gone out to drop her brother's child to Sutanga and her daughter (victim) was alone in the house. While leaving she had seen the accused plucking mulberry leaves from their garden. According to the witness, the accused was related to her as the wife of her brother and the wife of the accused were sisters. Upon returning home, she did not find her daughter present and came to know that the child had gone to stay in the house of her niece Smt. J (PW-2). On the following morning, PW-2 told her about the incident, however, she did not outright believe it because her daughter (victim) did not confirm this allegation. On 6th June, 2015, she met the school teacher Smt. Princely, who informed that the victim was reluctant to do anything in school and on deeper counselling it came to light that she had been sexually assaulted by the accused. On coming to know of these facts, she reported the matter to the police on 8th June, 2015. Thereafter, medical examination of the victim was conducted, and her statement was recorded under Section 161 CrPC.

31. In cross-examination, the informant (PW-1) admitted that the FIR (Exh. 2) was written by the hostel owner Smt. Phi Nongtdu, where her daughters were staying. The FIR was read over to her before she signed it. The brother of the accused namely Harris Rupon was in a relationship with her sister, but they were not living together for reasons of which the witness was unaware. When she reached home on 28th May, 2015, her son was not there. She admitted that she did not get worried when she did not find her daughter in the house. Most pertinently, the witness stated that she reached her home from the weekly market at about 3:45 pm and at that time there was no one at the house. According to her, the accused came around at about 4:00 PM but he did not enter the house on that day. She further admitted that even after the teacher had told her about the incident, her daughter did not disclose anything, and it was only after persistent questioning that she narrated the occurrence. The witness also admitted that when she specifically enquired from the victim as to who had remained at the house after she had left for Sutanga, the victim did not reply.

32. On a thorough analysis of the evidence, we find that the conduct of PW-1 was very unnatural. She had been told by her own niece (PW-2) that her daughter *i.e.*, the victim herein who was mentally impaired, had been subjected to rape. However, the mother, *i.e.,*

PW-1 did not give much credence to this complaint of PW-2. The concern of a mother on receiving such complaint would be expected to be heightened as the child was suffering from mental deficiency. This disability factor of the child would definitely have made the mother more wary and a serious complaint of sexual assault on the child would not have been brushed aside so casually only because the child did not confirm that she had been subjected to any such assault. If at all there had been any *iota* of truth in the theory that PW-2 had informed PW-1 about the incident, then, she being the mother of the child, would be expected to at least check her physical condition and to be specific, the genital area.

33. Hence, on a perusal of the evidence of the informant (PW-1), grave discrepancies are apparent regarding the source of information of the alleged occurrence received by the informant; the hesitation shown by the informant in taking any action despite the fact that her own niece had informed her about the incident; the refusal of the victim to divulge about the sexual assault despite persistent questioning and the omission to mention this fact in the FIR. These are material aspects carrying significance affecting the credibility of the prosecution case.

Evidence of PW-2 (Niece of Informant/Victim's Cousin)

34. Ms. J (PW-2) is the niece of the informant (PW-1). In her examination-in-chief, the witness (PW-2) stated that on 28th May, 2015, when she went to the house of PW-1, she saw the victim (PW-4) and the accused eating *kwai* (betel nut) and sometime later, the accused left. Thereafter, the victim informed her that the accused had sexually assaulted her. The witness deposed that she took the victim to her own house as the victim was alone and there she cleaned and washed her. The victim stayed with her overnight. On the next day, she took the victim back to her house and informed the victim's mother (PW-1) about the incident. If the witness had washed and cleaned the victim, the marks of sexual violence would not go unnoticed, and the mother (PW-1) would definitely be informed about this telling circumstances.

35. The facts elicited during cross examination of the witness completely destroy the credibility of her version. She gave the following answers upon being questioned by the defence counsel:-

> "**I do not know the accused person and cannot recollect his face now. The name of the Accused was told to me by PW1**. PW1 told me that it was U Char who had committed the crime, when I went and informed her of the matter in the morning. **If this person U Char come to my house, I will not be able to recognise him. I do not know how PW1 knows that it was U Char who committed the crime**. I never attended school."
>
> (Emphasis supplied)

36. When the aforesaid discrepancy was noticed, the witness was subjected to re-examination by the Public Prosecutor, wherein she stated as below:

> "**Re-examination:** On the day I went to the house of PW1 I saw the victim and one man eating kwai. **My statement in chief that I saw victim and Accused Char eating Kwai is not correct.**
>
> (**The witness was asked to look around the Court room and Court Dock to identify the Accused person but witness was not able) As I do not know the Accused person it was PW1 who told me the name.**"
>
> (Emphasis supplied)

However, it is most pertinent to note that the Public Prosecutor made no effort whatsoever to confront the witness with her statement recorded under Section 164 CrPC.

37. Apparently thus, the witness (PW-2) completely denied knowing the accused-appellant by name or even by face and she failed to recognise the accused who was present in the Court. The witness rather stated that it was PW-1 who had told the name of the accused to her and admitted that she herself did not know who had committed the crime.

38. Hence, on a careful appreciation of the testimony of PW-2, it is apparent that her evidence suffers from serious infirmities. Though she claimed to have seen the accused at the victim's house on the date of the alleged occurrence, the admission appearing in cross-examination that she neither knew the accused by face nor could identify him before the Court completely discredits the version stated

by her in examination-in-chief. She further clarified in re-examination that her earlier naming of the accused in examination-in-chief was incorrect and that the name of the alleged offender had been supplied to her by PW-1. These admissions strike at the very foundation of her testimony and completely diminish its evidentiary value.

Evidence of PW-3 (Medical Jurist)

39. Dr. E. Shullet (PW-3), the medical jurist deposed in her examination-in-chief that upon examining the victim, she noted injuries on her genital region and opined that there were signs suggestive of forceful vaginal penetration and possibility of sexual intercourse could not be ruled out.

40. It is important to note that when the turn to cross-examine the witness came, the defence counsel was not available and the accused was asked as to whether he wanted to cross-examine the witness, on which the accused replied that his counsel was out of station and that only he (defence counsel) would be in a position to effectively cross-examine the witness. The trial Court did not endeavour either to provide legal aid to the accused or to defer the cross examination so that the defence counsel could discharge that duty.

41. Manifestly thus, the testimony of the Medical Jurist (PW-3) remained untested by cross-examination, as no effective opportunity to cross examine the witness was given to the accused whose defence counsel was absent on that day. Though, the partial deposition of PW-3 undoubtedly indicates that the victim had sustained injuries on her genital region suggestive of sexual assault but the fact remains that the testimony of the witness remained untested in cross-examination, not on account of any waiver by the accused, but because the defence counsel was unavailable on the date when the witness entered the witness-box.

42. Another medical officer examined by the prosecution was Dr. W. Nongtdu (PW-8). We have seen the statement of the said witness available on the record and find that during the course of recording the evidence of the said witness, the trial Court did not even offer the opportunity of cross-examination to the defence counsel. Hence, it can safely be concluded that the testimony of both medical jurists cannot be read in evidence as the defence was not given an effective opportunity of cross-examining both the witnesses (PW-3 & PW-8).

Evidence of PW-4 (Victim)

43. The victim was examined as PW-4. She stated that the **accused was her uncle, being the eldest brother of her father**. On the day of incident, her mother had gone out, so she was alone in the house. She stated that when she went to feed the pigs, the accused came there, pushed her into her mother's bedroom and subjected her to forcible sexual assault till she started bleeding. Thereafter, the accused went away. Feeling unwell, she went to her cousin's house to whom she told about the incident. On the following day, her cousin informed her mother about the incident.

44. However, in her cross-examination, the witness made the following admissions which have a material bearing on the very credibility of the prosecution case: -

> "Before coming to the Court room today I had met the Special Prosecutor. **The Special Prosecutor had told me what to say before this Court today**. **At the time the accused came to our house, I and my mother were present in the house. My uncle the Accused come alone in his Alto Car.** When the Accused Raped me I was alone in the house at that time. **My uncle the accused came to our house only once. I have forgotten his face. My mother told me the name of the Accused.** On the day of the incident my father was not in the house. **I did not have any Kwai (Bettie nut) with my uncle the Accused on that day.** On that day I went alone to feed the pig. We have only one pig. **I cannot remember now the face of the person who came to my house and raped me as it happened quite sometime back. After the incident, I have never seen the person again, and I am not able to identify him now**."
>
> (Emphasis supplied)

45. Apparently, the witness referred to the accused-appellant in her examination-in-chief as being the eldest brother of her father. This version, however, is completely contradicted by the evidence of her mother (PW-1) who described the relationship of the accused-appellant with the family in an altogether different manner *(supra)*.

Thus, even on the aspect of the relationship of the accused with the victim's family, the prosecution case is not consistent.

46. It is important to note that the prosecution did not make any endeavour to get the accused-appellant identified by the witness (PW-4) in her examination-in chief. More importantly, in her cross-examination, the witness completely denied knowing the accused-appellant and failed to identify him stating that she could not remember the face of the person who came to her house and subjected her to rape as the incident had happened long time back. She also admitted that the name of the accused-appellant had been told to her by her mother. This admission coupled with the fact that the witness stated that she had met the public prosecutor who had advised her on what to say before the Court, creates a doubt in our mind that the witness may have been tutored to give the statement against the accused-appellant. It is also noteworthy that though the defence took the risk of putting a question pertaining to identity of the accused and succeeded in eliciting a negative answer from PW-4, neither the Public Prosecutor, nor the Presiding Officer bothered to re-examine the witness to overcome this anomaly. Furthermore, no effort was made to confront the witness with the statement under Section 164 CrPC.

47. Hence, on a careful appreciation of the testimony of the victim (PW-4), it is clear that her evidence suffers from material infirmities. The witness was not asked to identify the accused-appellant in Court during her examination-in-chief. The defence posed this question in cross examination, and the victim admitted that she had forgotten the face of the alleged offender and further stated that the name of the accused had been provided to her by her mother (PW-1). The admission that she had been instructed by the learned Special Public Prosecutor on what to state before entering the witness-box also assumes significance while appreciating the evidentiary value of her deposition. These aspects, coupled with the inconsistency regarding the relationship of the accused with the victim's family, cast a serious doubt on the reliability of the prosecution evidence insofar as the identity of the perpetrator is concerned.

48. We are conscious of the fact that the victim was a mentally challenged girl and as such, a certain degree of latitude would have to be given while appreciating her evidence. However, even after giving due deference to her weak mental disposition we find that there was a complete failure of the victim to identify the accused-appellant

before the Court. Admittedly, the prosecution could not present any scientific corroboration for the incident as the FIR itself was lodged after 10 days of the incident. In such a situation, it would be unsafe to rely upon the testimony of the victim so as to sustain the conviction of the accused.

49. The submission advanced by learned Advocate General that the accused-appellant was last seen by the informant (PW-1) in the garden adjoining her house and, therefore, the burden shifted upon him under Section 106 of the Evidence Act is absolutely farfetched and unconvincing. In this regard, we may note that the theory of last seen seems to be a material improvement from the version as set out in the highly belated FIR (Exh. 2), wherein no such allegation is levelled. Even according to the version of PW-1 in her sworn testimony, she merely saw the accused plucking mulberry leaves in the garden before she left for Sutanga. She nowhere stated that the victim was present with the accused or that both of them were seen together at any point of time. Thus, the testimony of PW-1 does not establish the circumstance of the accused and the victim having been last seen together and hence there is no question of shifting the burden of proof on the accused by virtue of Section 106 of the Evidence Act.

50. Further, if the informant (PW-1) had in fact seen the accused-appellant in the vicinity of her house on the relevant day and, on the very next morning, her niece (PW-2) had informed her about the incident, it is difficult to comprehend why she would hesitate in approaching the police immediately. The conduct of the informant in not taking any prompt action and not even physically checking her own daughter for signs of sexual assault despite allegedly receiving such information from her own niece, is a circumstance which creates a serious doubt on the truthfulness of the prosecution story.

51. It is trite that an FIR is not expected to be an encyclopaedia. However, where a circumstance subsequently relied upon constitutes a material incriminating fact forming the very foundation of the prosecution case, its omission from the earliest version assumes considerable significance. A material improvement made during the course of trial, particularly on a circumstance sought to connect the accused with the alleged occurrence, necessarily calls for closer judicial scrutiny. If such omission remains unexplained, the subsequent version may lose much of its evidentiary fervour.

52. In this regard, we may gainfully refer to the observations made by this Court in ***Amar Nath Jha v. Nand Kishore Singh***[9] wherein it was observed as follows: -

> "**10. The third circumstance which we need to concentrate on concerns non-reporting of essential facts which were known to the informant in the FIR.** The High Court while appreciating the entire materials on record has affirmatively concluded that PWs 1, 2, 3, 4, 8, 10 and 12 belong to the same family of the deceased and reside in the same house. It may be of some significance to note that PW 9 (the informant) of this case is the nephew of the deceased who lives in an adjacent house to that of the deceased**. In the FIR, PW 9 has failed to mention the name of PW 1, is a significant person as per the prosecution as he had allegedly identified the accused Nand Kishore Singh and Maheshwar Singh, who were the dacoits responsible for the aforesaid crime.** It has come out from the cross-examination of PW 9 that he was aware of the presence of PW 1 during the incident but he failed to mention his name in the FIR. **Such non-mentioning of presence of PW 1, who was a material witness in this case, creates further suspicion on the hypothesis portrayed by the prosecution.**
>
> **11.** The High Court on appreciation of detailed evidence has for the right reasons concluded that the informant (PW 9) was aware of the names of dacoits who had killed the deceased but failed to name them in the FIR. In this context we may note that the incident is alleged to have taken place in the intervening night of 21-4-1999 and 22-4-1999, whereas the FIR came to be registered at 3.15 a.m., after a lapse of 3 hours. Despite sufficient time for the informant to gather necessary information, which he did, the names of two accused-respondents have conspicuously been missing, which also formed an additional factor for the High Court to acquit the accused-

9 (2018) 9 SCC 137.

> respondents. **Although we accept that the FIR need not be an encyclopaedia of the crime, but absence of certain essential facts, which were conspicuously missing in the present FIR, point towards suspicion that the crime itself may be staged**."
>
> (Emphasis supplied)

53. Similarly, the effect of a vital omission in the first information report was considered by this Court in the case of ***Ram Kumar Pandey v. State of M.P.***[10], the relevant observations from the said judgment are quoted hereinbelow: -

> "**9.** No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. **If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case**"
>
> (Emphasis supplied)

54. Applying the aforesaid principle to the facts of the present case, we find that the prosecution has placed strong reliance upon the circumstance that PW-1 had allegedly seen the accused-appellant in the garden adjoining her house immediately before leaving for Sutanga. Significantly, this material allegation finds no mention whatsoever in the FIR (Exh. 2), despite the fact that the FIR came to be lodged after a delay of 10 days. Equally significant is the omission to mention in the FIR that PW-2 had allegedly informed PW-1 about the incident on the very next day of the alleged occurrence. Had these facts actually transpired in the manner sought to be projected

10 AIR 1975 SC 1026.

during trial, there was no reason why they would not have found place in the FIR. These omissions assume considerable significance and the subsequent improvements made by the first informant (PW-1) during the course of evidence render her testimony highly doubtful and unsafe to rely upon.

55. At the cost of repetition, we may also note that there is a material inconsistency regarding the very relationship of the accused-appellant with the victim's family. While the informant (PW-1) described the accused-appellant as the husband of her brother's sister-in-law, the victim (PW-4) referred to him as the eldest brother of her father. This contradiction assumes significance because both PW-2 and PW-4 failed to identify the accused-appellant before the trial Court and admitted that his name had been suggested to them by PW-1.

56. Equally significant is the fact that the prosecution withheld a material witness, namely, Ms. Princely, the teacher, whose disclosure admittedly prompted PW-1 to lodge the FIR. No explanation has been offered by the prosecution for her non-examination as a witness. The omission to examine such an important witness assumes considerable significance in the facts of the present case. What exactly was the disclosure made by the child to her teacher would definitely be a material fact and the withholding thereof effects the veracity of the prosecution case.

57. Though the prosecution is not obliged to examine each and every witness cited during investigation, it is unquestionably under a duty to examine those witnesses whose evidence goes to the root of the matter and is essential to elicit the truth. Where a material witness, capable of throwing light on the genesis of the occurrence is withheld without any plausible explanation, the Court would be justified in drawing adverse inference against the prosecution, particularly when such witness occupies a pivotal position in the chain of events.

58. In this regard, we may profitably refer to a judgment rendered by 3-Judge bench of this Court in ***Takhaji Hiraji v. Thakore Kubersing Chamansing***[11], wherein this Court held as follows: **-**

> **"19.** So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. **It is true that**

11 (2001) 6 SCC 145.

> **if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.** On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses……"
>
> (Emphasis supplied)

59. Applying the aforesaid principle to the facts of the present case, we find that Ms. Princely, the school teacher, was undeniably a material witness. The prosecution had itself come up with a case that it was upon the disclosure allegedly made by the victim to the said teacher which led the victim's mother (PW-1) lodging the FIR after a delay of 10 days. The disclosure made by the victim to the teacher was, therefore, a crucial circumstance, and the testimony of Ms. Princely would have certainly assisted the Court in appreciating the prosecution case more particularly on the aspects of the exact nature of disclosure made by the child to the teacher and the

reason for delay in lodging of the FIR. Despite her pivotal role, the prosecution failed to examine Ms. Princely during the trial and has offered no explanation whatsoever for withholding her testimony. In the specific facts of the present case, this omission assumes considerable significance and persuades us to draw adverse inference against the prosecution.

60. The accused-appellant has been very candid in his defence plea. Not only did he take the risk of asking the question pertaining to identification to the victim in cross-examination but in addition thereto, he specifically came out with a plea of *alibi* putting himself in the dock and examining three more witnesses in support of the said plea. On going through the statements of the defence witnesses supported by documentary evidence, we find that credible evidence was given by the defence to prove the plea of *alibi* put forth by the accused-appellant. The trial Court as well as the High Court, very lightly brushed aside this palpable defence evidence which in our opinion, was not at all justified.

61. Resultantly, the cumulative effect of unnatural conduct of victim's mother (PW-1) coupled with the significant delay in lodging the FIR; failure of the victim (PW-4) and her cousin (PW-2) to identify the accused-appellant before the Court; contradictory versions regarding the relationship of the accused-appellant with the victim's family; non-examination of the teacher Ms. Princely and; the defence evidence indicating that the accused-appellant had gone to another village in connection with a property transaction, creates serious doubt on the genuineness and credibility of the prosecution allegations. In our considered opinion, cumulatively taken, these circumstances are sufficient to persuade the Court that it would be wholly unsafe to sustain the conviction of the accused-appellant.

Conclusion

62. In view of the discussion made hereinabove, we are unable to concur with the view taken by the trial Court and affirmed by the High Court. The prosecution has failed to establish the guilt of the accused-appellant beyond reasonable doubt. The Courts below clearly fell in error in relying upon the wavering testimony of the informant (PW-1), her niece (PW-2) and the victim (PW-4) to convict the accused-appellant and in affirming his conviction in appeal. In

our considered opinion, the evidence brought on record falls woefully short of the standard required for sustaining the conviction of the accused appellant. The findings recorded by the Courts below, in the impugned judgments are unsustainable in law and the same deserve to be set aside. The appellant is entitled to be acquitted by giving him the benefit of doubt.

63. Accordingly, the judgment of conviction and order of sentence dated 7th December, 2021 passed by the trial Court and impugned judgment dated 29th March, 2022 passed by the High Court are hereby set aside.

64. The appellant is acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

65. The appeal is allowed accordingly.

66. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey