OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS, NEW DELHI

CIRCULAR

In compliance of the directions of the Ld. Principal District & Sessions Judge, New Delhi District, PHC, New Delhi, a letter No. 495-507/DHC/Gaz.IB/G-2/SC-Judgment/2026 dated 17-01-2026 alongwith a copy of Judgment dated 15-12-2025 passed by Hon'ble Supreme Court of India in Criminal Appeal No. 2973/2023 titled as "Manojbhai Jethabhai Parmar (Rohit) Vs State of Gujarat" has been uploaded on the official website i.e. newdelhi.dcourts.gov.in.

Therefore, it is requested to kindly peruse the abovesaid judgment from the official website for kind information & necessary compliance of the said judgment.

(Deepali Sharma)
Officer-in Charge, General Branch
District Judge, Commericial Court -03
New Delhi District, PHC, New Delhi.

No. 371-376 /Genl./NDD/PHC/2026 Dated, Delhi the 5/2/26

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Officer-in Charge, General Branch
District Judge, Commericial Court -03
New Delhi District, PHC, New Delhi.

2025 INSC 1433

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2973 of 2023

MANOJBHAI JETHABHAI PARMAR (ROHIT) ....APPELLANT(S)

VERSUS

STATE OF GUJARAT ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. A grave and distressing case of brutal sexual assault upon a four-year old girl[1] stands before this Court, enveloped in layers of investigative apathy and procedural infirmities. The First Information Report, despite the informant's professed complete knowledge of the incident, is bereft of even the most rudimentary details, neither the name of the accused person (appellant herein) nor those of the purported

[1] Hereinafter, being referred to as 'child victim'.

witnesses of the last seen together circumstance find mention. What followed was an investigation hopelessly botched and a trial conducted with a pedantic rigidity that obscured, rather than unveiled, the truth. The highly unnatural conduct of the witnesses, marked by gross insensitivity/rank apathy, contradictions and apparent concoctions raises serious doubts about the reliability of the prosecution's case. Yet, in face of this disturbing matrix, the accused-appellant stands convicted and has remained behind bars for nearly thirteen long years.

3. This Court cannot remain oblivious to the sobering reality that such handling of criminal cases leaves scars not merely upon the individuals involved but upon the justice system itself. When investigations are carried out in a manner that betrays their foundational purpose, and trials become mechanical exercises divorced from the quest for truth, the resulting miscarriage of justice reverberates far beyond the confines of the courtroom. It erodes public faith, instils uncertainty in victims, and sends a chilling message to society at large that the pursuit of justice may falter not at the

altar of complexity but at the hands of indifference. The criminal law, which must stand as a bulwark protecting the vulnerable, risks becoming an instrument of unintended cruelty when procedural lapses and institutional negligence overshadow substantive justice. With this prelude, we now proceed to examine the factual matrix of the case.

4. The appellant-Manojbhai Jethabhai Parmar[2] was arraigned as an accused in connection with FIR bearing Crime No. I-68 of 2013 registered at Kalol Police Station for the offences punishable under Sections 363, 376(2)(i) and 201 of the Indian Penal Code, 1860[3] and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012[4]. He was subjected to trial before the learned Additional Sessions and Special Judge, Panchmahal, Godhra[5] in Special Case No. 08 of 2014 (POCSO). *Vide* judgment of conviction and order of sentence dated 3rd November, 2015, the accused-appellant was convicted and sentenced as below:

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[2] Hereinafter, referred to as the accused-appellant.
[3] For short, 'IPC'.
[4] For short, 'POCSO Act'.
[5] Hereinafter, referred to as 'trial Court'.

i. **For offence under Section 363 IPC-** Rigorous imprisonment for 3 years and fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 3 months.

ii. **For offence under Section 376(2)(i) & 201 IPC-** Life imprisonment and fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months.

iii. **For offence under Section 3/4 of POCSO Act-** Life Imprisonment and fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months.

5. The appeal[6] preferred by the accused-appellant for assailing the judgment of the trial Court stands rejected by the Division Bench of the High Court of Gujarat[7] *vide* judgment dated 5th April, 2016 which is subjected to challenge in this appeal by special leave.

[6] Criminal Appeal (Against Conviction) No. 448 of 2016.
[7] Hereinafter, being referred to as 'High Court'.

Brief facts:

6. On 13th June, 2013, the complainant, Nazir Mohammed (PW-1), had taken his dinner and was resting with his family members in the open courtyard of his house. At about 11 o'clock in the night, he saw three to four boys going from the front of his house with the child victim who did not have a stitch of cloth on her body. The complainant stopped them and made an inquiry as to where they were taking the child, on which one of the boys replied that they suspected the child to be from the Nayak community and that she might have gone missing and thus, they were taking her to the Nayak Faliya for making an inquiry.

7. The complainant (PW-1) thereupon brought the child victim under some light in order to identify her. He judged that the child was aged about four years and saw blood dribbling down her legs. He accompanied the boys to Nayak Faliya and made inquiries from two to three people, however, no information was forthcoming regarding her family.

8. The complainant (PW-1) tried to inspect the body of the child victim closely, on which, he found that she was bleeding continuously from her nether

regions. He suspected that some untoward incident had happened with the child victim. He, therefore, asked the boys as to where they had brought the child victim from, on which, they replied that the child victim was found nearby a house situated in front of pan stall of Jafrubhai situated at Oad Faliya.

9. The complainant (PW-1) thereupon informed his friend Karimbhai Mogal over the phone. Persons from vicinity gathered there, amongst whom one was Vivekbhai Suthar[8] (PW-2), a journalist. Vivekbhai tried to make an inquiry from the child victim who did not respond, on which, an ambulance was called, and she was taken to the hospital.

10. The complainant (PW-1) and Vivekbhai (PW-2) followed the ambulance to the Kalol Government Hospital where the child victim was admitted, and her treatment started. The treating Doctor, Ms. Shakuntala Parmar (PW-10) examined the victim and opined that the child victim had been sexually assaulted and due to that reason, she was bleeding from her private parts. After gathering the above information, Nazir Mohammed (PW-1) lodged a

[8] Hereinafter, being referred to as 'Vivekbhai'.

complaint at the Kalol Police Station which was registered as Crime Report No. 68 of 2013 against unknown persons for the offences punishable under Sections 376(1)(i) and 201 of the IPC.

11. For sake of ready reference, the complaint (Exh. 10) is reproduced hereinbelow in its entirety: -

> **"**I, hereby, state the facts of my complaint in person that I reside with my family at the aforementioned address and I earn my living by doing door-to-door plumbing and electrical work in Kalol town. I have been residing in a rented house in Kalol for the past twelve years. Presently, I reside on rent in the house of of Shahbuddin Maiyuddin Shaikh. I know most of the persons living in Kalol town.
>
> On 13/06/2013, yesterday, I was spending leisure time with my family at around 9 pm. When I was playing game in my mobile by lying on my cot outside my home at around 11 pm, I saw 3-4 boys coming from Ode Faliya and passing by my house. I stopped them and asked about the situation and the little girl they were carrying. One of them responded that the girl seemed to have lost; she did not have any clothes on her body; she seemed to belong to Nayak community and therefore they were taking her to Nayak Faliya for more details. I tried to identify the girl by bringing her to light. I found that she had no clothes on her body. She seemed to me of around four years. She was bleeding on her legs. I went with the boys to Nayak Faliya. We inquired around by waking 3-4 persons up. However, we did not have get any details. When the girl was being inspected with the torch, I noted

that she was bleeding from the private part. As she was still bleeding slowly at that time, I felt that something untoward had happened with the girl. When asked the boys where they found the girl, they responded that she was found at the house, located opposite to the Jafarbhai's Pan Stall at the offside of Ode Faliya. Subsequently, I informed my friend Karimbhai Mogal by making a call. People residing nearby gathered around in a while. Vivekbhai Suthar who resides at Kalol also arrived by that time. He observed the girl. We asked the girl about her name and whereabouts. She did not utter her name and stated 'from Chowkdi (crossroads)'. As the girl was bleeding, Vivekbhai made a call to 108 ambulance. After handing over the girl to the ambulance, Vivekbhai and I went to Government Hospital, Kalol on a motorcycle. The girl was immediately given medical treatment. Doctor told me that the girl was bleeding from the private part because somebody had raped her. I then moved out of the hospital. Other people also gathered around by that time. Therefore, Vivekbhai and I are here at the Kalol Police Station for lodging the complaint.

Therefore, I, hereby, lodge my complaint for investigation of an incident of rape which has taken place with a four-year old unknown girl **by an unknown person at an unknown place at any time before 11 pm, yesterday, on 13/06/2013.** My witnesses are the persons mentioned in my complaint and others as and when found in the police investigation.

My complaint is as per my dictation before the police and true. I have appended by signature

herein below after reading and understanding it thoroughly.**"**

(Emphasis supplied)

12. Investigation was conducted by Hareshbhai Pallacharya (PW-15) Inspector of Police, Kalol Police Station who recorded the statements of the witnesses concerned. Medical examination of the child victim was conducted. The four boys who had brought the child victim to Nayak Faliya were identified as Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6).

13. These four boys were examined under Section 161 of the Code of Criminal Procedure, 1973[9], on 14th June, 2013, and they claimed that they had seen the accused-appellant pushing the child victim out of his house.

14. The accused-appellant was arrested, and his house was inspected from where blood-stained clothes of the child victim were allegedly recovered. The bedding lying in the house as well as the floor of the house were also bearing blood stains. These articles were seized for forensic examination. Finding sufficient evidence against the accused-appellant,

[9] For short, 'CrPC'.

chargesheet was filed against him in the Special Court. The Special Judge framed charges against the accused-appellant for the offences punishable under Sections 363, 376(2)(i) and 201 of the IPC and Sections 3 and 4 of the POCSO Act, who abjured his guilt and claimed trial.

15. The prosecution examined 18 witnesses and exhibited 19 documents and presented certain material objects in order to prove its case.

16. The accused-appellant was confronted with the circumstances appearing against him in the prosecution evidence by way of questions put under Section 313 CrPC which he denied and claimed to be innocent. He also stated that he had been falsely implicated in the case.

17. The trial Court, after hearing the arguments advanced by the learned Public Prosecutor and the defence counsel, and upon appreciation of evidence on record, came to the following pertinent conclusions: -

i. That the testimony of witnesses Arifkhan (PW-3) and Shahejadkhan (PW-4) provided strong evidence pertaining to the circumstance of last seen together.

ii. The accused-appellant kidnapped the child victim from the guardianship of her parents; forcibly took her to his house where he subjected her to gruesome sexual assault causing numerous injuries to the private parts of the child victim.

iii. The allegation of forcible sexual assault was thoroughly corroborated by the evidence of Dr. Shakuntala Parmar (PW-10) who also took note of an injury on the private parts of the accused-appellant thereby, providing strong corroboration to his involvement in the crime.

iv. The Investigating Officer, Hareshbhai Pallacharya (PW-15), who conducted spot inspection of the house owned by the accused-appellant claimed to have recovered significant incriminating material *viz.* blood-stained bedsheets, mattress and curtains from the said house. Legging and t-shirt of the child victim and mobile, handkerchief, night pant, lining t-shirt and underwear of the accused-appellant were also seized from the house allegedly owned by him.

v. These articles including the personal belongings/apparels of the child victim were analyzed

at the Forensic Science Laboratory[10], and tested positive for "A" blood group which was same as that of the child victim.

vi. The circumstance of last seen together spoken to by Arifkhan (PW-3) and Shahejadkhan (PW-4) was corroborated in material particulars by the incriminating recoveries effected from the house of the accused-appellant. The FSL report established the presence of semen in the viscera collected from the private parts of the child victim.

18. The trial Court observed that there was no occasion for the witnesses to falsely implicate the accused-appellant in such a gruesome case. As per the trial Court, the prosecution proved the complete and unbroken chain of incriminating circumstances by leading unimpeachable evidence and proceeded to convict and sentence the accused-appellant as noted above[11].

19. The appeal preferred by the accused-appellant to the High Court for assailing the judgment of the trial Court stands dismissed *vide* final judgment and

[10] Hereinafter, referred to as 'FSL'.
[11] Para 4.

order dated 5th April, 2016 which is assailed in this appeal by Special Leave.

Discussion and Findings

20. We have heard and considered the submissions advanced by learned counsel appearing for the accused-appellant and the learned standing counsel Ms. Swati Ghildiyal representing the State of Gujarat and have also gone through the impugned judgments passed by the High Court and the trial Court. We have also carefully scrutinized the original trial Court record.

21. Admittedly there is no direct evidence in the present case, and the case of the prosecution rests entirely on circumstantial evidence, to be specific, in form of last seen together circumstance, incriminating recoveries and medical evidence.

22. The law with regard to conviction based on circumstantial evidence has been crystallized by this Court in the case of ***Sharad Birdhichand Sharda v. State of Maharashtra***[12], wherein it was held:

> "**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

[12] (1984) 4 SCC 116.

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p. 807]

> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

(Emphasis supplied)

23. Having noted the principles governing a case based purely on circumstantial evidence, we shall now analyse the evidence led by the prosecution in order to bring home the charges against the accused-appellant.

24. Firstly, we shall proceed to consider the evidence on last seen together circumstance.

25. The prosecution has sought to prove this circumstance stating that the informant/complainant, Nazir Mohammed (PW-1), saw four boys taking the child victim to Nayak Faliya at around 11:00 P.M., and that these four boys were later identified as Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6). These four boys were the ones who saw the accused-appellant pushing the child victim from his house.

26. It may be noted that Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) did not support the prosecution case during their deposition at the trial and were declared hostile. However, Arifkhan (PW-3)

and Shahejadkhan (PW-4) tried to pose as witnesses of last seen together circumstance during their deposition.

27. We find that the evidence of these witnesses is absolutely unconvincing and that they seem to have cooked up the last seen together theory so as to somehow implicate the accused-appellant in the case for oblique motives. Rather, we feel that the entire story is dubitable and there exist grave doubts regarding the identity of these witnesses and the credibility of their evidence.

28. We shall now analyze the evidence of the material witnesses and assign reasons for discarding their testimony. The relevant excerpts from the evidence of the complainant, Nazir Mohammed (PW-1) are extracted hereinbelow for ready reference: -

> "**Examination-in-chief**
>
> ……At that time at around 10:30-11:00 pm, I saw four boys carrying a little girl with them. I asked them about the situation and the place there were heading to. They responded that the girl was from Nayak community, lost, and was bleeding from the private part. I joined them and went to the the place where Nayaks reside. I woke them up and enquired about girl's family. They all stated that the girl did not belong to them. ……I asked the boys who were carrying the girl about the place where they found the girl. They stated that they saw Manoj Jethabhai

Parmar ousting the girl from his house. Names of these four boys were (I) Arifkhan and (2) Sartaj; I am unable to recall names of the remaining two. However, I said all names in the police station. Having seen the girl bleeding from the private part, I made a call to my journalist friend, Karimbhai Mogal. He could not come. Bilalbhai was present with me at this time. He called a journalist, Vivekbhai Suthar. He reached at our place in 10 minutes. He also looked at the girl. Looking at the condition of the girl, we felt like someone has established physical relation with her.

……I registered a police complaint then. I am being shown the complaint vide Mark 5/4; which has my signature on it and I recognize the same. It is given Exhibit 10. Police, after registering the complaint the same night, recorded my special statement. I told police the name of the accused from the talks with the four boys.

Cross-examination: for the accused

…..**I did not seek for help from neighbors when the boys were bringing the girl. My family consists of my wife and four daughters**. They also did not come outside at that time. **I did not call my wife for coming out for inspection of the girl who was in difficult situation.** My wife or daughter did not come out of home until Vivekbhai Suthar arrived. Further, none of my neighbors or anyone from Ashiyana Society came out; nor did I call anyone for help. Around 30-45 minutes lapsed from the boys brought the girl and the girl was taken to the hospital in a mobile van. During this time, I did not feel like informing my neighbors about this incident. It is not true that the fact that the accused Manoj Jethabhai was ousting the girl

from his house was told only to me by the four boys. **I did not mention anything in the complaint such as the four boys had told the fact in presence of other people.** It is not true that the four boys did not tell me the fact that they saw the accused Manoj Jethabhai ousting the victim from his house. It is true that I did not state about my doubt on Manoj Jethabhai when I made a call to the journalist. When I made a call to Vivekbhai Suthar and then Vivekbhai made a call to the police, the fact of having doubt regarding the incident on Manoj Jethabhai was not mentioned.

…..**It did not strike my mind to call my wife for examination. The girl was without any clothes when I saw her for the first time. I did not cover her up with shawl or bed sheet.** Nayak Faliya is about 300-350 feet away from my house. I did not happen to visit Nayak Faliya.

….After examination with the torch, bleeding from the private part was ascertained. I am aware of the fact that such type of cases are dealt by the police. I did not inform the police immediately after Bilalbhai examined with the torch. **It is not true that I did not know the four boys who brought the victim. I did not mention the names of these four boys**. My special statement was recorded at 10 am on the next day of registering the complaint. It was not recorded at night of registering the complaint. **The police did not ask me to identify the four boys. It is true that I never mentioned the names of four boys to the police.** It did not happen that the four boys left after handing over the victim to me at my house. Two out of four boys carried the victim to the Nayak Faliya. The clothes of the boys did not have blood marks. **I have not**

dictated the description of four boys in either complaint or special statement.

…..It is not true that while we reached the Nayak Faliya, the four boys who brought the victim showed their doubt but did not name the person. When I went to register the complaint, the accused was not present at the police station. Further, I did not meet the accused before. **The four boys did not tell me the name of the accused, Manoj. I did not mention the name of the accused in the complaint**. It is not true that I did not mention the name of the accused in my special statement.

……I went inside the police station. It is not true that persons waiting outside were Jafarubhai, Rafiqbhai, Sikandarbhai and Amanbhai. These four persons were not in the hospital too. I know all the four persons. The four boys who brought the victim are the sons of the said four persons.

……It is true that Manojbhai, father of the accused, had earlier filed a police complaint against six persons i.e. aforesaid four persons and two others.

It is not true that the four boys abducted the victim with intention to rape her. It is not true that in order to save the four boys, they were allowed to flee from the spot because they belonged to our Muslim community. It is not true that their names were not dictated while registering the complaint for saving them. It is not true that I registered the complaint on being asked by Jafurbhai for the same. The statements of these four boys were not recorded by the police in my presence. I stayed at the hospital for around 20 minutes. It is not true that in order to save these four boys, I filed a false complaint or am giving false deposition.

It is true that neither in the complaint nor in the police statement did I mention that when asked the four boys, they stated to have seen Manoj Jethabhai Parmar ousting the girl from his home......"

(Emphasis supplied)

29. In his testimony, the complainant, Nazir Mohammed (PW-1), stated that the four boys whom he had seen taking the child victim, told him that they had seen the accused-appellant pushing the child victim out of his house. On receiving this information, Nazir Mohammed (PW-1) made a call to the reporter Vivekbhai (PW-2) who, in turn, called the 108 Ambulance so that the child victim could be taken for treatment to the hospital. Thereafter, Nazir Mohammed (PW-1) lodged the complaint (Exhibit-10).

30. *Thus, going by the evidence of Nazir Mohammed (PW-1) (supra), well before the FIR (Exh. 10) was lodged by him, he had complete knowledge of all the relevant facts including the identity of the four boys who were seen taking the child victim to Nayak Faliya, and the most crucial fact that these boys had seen the accused-appellant pushing the child victim out from his house.*

31. *We may reiterate that the FIR of the case (Exh. 10) was lodged on the basis of the written complaint of Nazir Mohammed (PW-1).* ***In the complaint, neither the names nor description of the four boys who were seen by Nazir Mohammed (PW-1), taking the child victim in a denuded state finds a mention.*** *It is also significant to note that the witness Vivekbhai (PW-2), who along with Nazir Mohammed (PW-1) was instrumental in lodging the complaint, is a reporter. This fact heightens the expectation that all the relevant facts known to the complainant would have been set out in the complaint.*

32. *Had there been any iota of truth in these allegations, there was no chance that the complainant (PW-1) would have missed or omitted to mention the following vital/ crucial facts in the complaint: -*

(i) The identity of the four boys who were seen taking the child victim with them.

(ii) The fact that these boys had seen the accused-appellant pushing the child victim out of his house.

33. The omission of these material facts in the FIR brings the entire case of the prosecution under a grave cloud of doubt.

34. This Court in ***Amar Nath Jha v. Nand Kishore Singh***[13] dealt with a similar issue regarding non reporting of essential facts in the FIR, wherein it was observed as follows: -

> "**10. <u>The third circumstance which we need to concentrate on concerns non-reporting of essential facts which were known to the informant in the FIR.</u>** 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. **<u>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.</u>** 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. **<u>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</u>**.
>
> **11. <u>The High Court on appreciation of detailed evidence has for the right reasons concluded that the informant (PW 9) was aware of the</u>**

[13] (2018) 9 SCC 137

> **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-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)

35. 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***[14], the relevant observations from the said judgment are quoted hereinbelow: -

> **"8.** The abovementioned first information report was lodged at Police Station Ganj on March 23, 1970 at 9.15 p.m. The time of the incident is stated to be 5 p.m. The only person mentioned as an eye-witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the FIR only as persons who saw the wrapping of the chadar on the wound of

[14] AIR 1975 SC 1026.

Harbinder Singh. What is most significant is that it is nowhere mentioned in the FIR that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9'15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh.

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 daughers 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.

10. Even Joginder Singh, PW 8, was not an eyewitness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the FIR that Joginder Singh had met Uttam Singh before the FIR was made. Uttam Singh did not mention there that any dying

declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. **The omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR seems very significant in the circumstances of this case.** Indeed, according to the version in the FIR, Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside.

.....

17. As regards the second and third points, we are unable to give credence to the version of the three alleged eyewitnesses as they were not mentioned as eyewitnesses in the FIR made in the circumstances indicated above.

18. Lastly, the alleged dying declaration is also not mentioned in the FIR On the other hand, the FIR, mentions Joginder Singh who tried to prove the dying declaration only, as an eyewitness.

.....

21. Consequently, we allow this appeal and set aside the conviction and sentence of the appellant under Section 302/34, IPC If the appellant has already served the sentence awarded under Section 324 IPC, as it stated on his behalf, he will be released forthwith."

(Emphasis supplied)

36. Therefore, the attempt of prosecution in posing through the complainant Nazir Mohammed (PW-1) that Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal

Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) were the four boys whom he had seen with the child victim or that these boys had seen the accused-appellant pushing the child victim out of his house is a clear embellishment and significant omission, as these vital facts were not set out in the complaint. This crucial omission effects the credibility of the complaint itself.

37. Furthermore, the introduction of the witnesses namely Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) for proving the last seen together circumstance is a clear afterthought, as manifested by the fact that their names cropped up for the first time on 14th June, 2013 *i.e.* the day after the incident.

38. A lame reason was assigned by the trial Court to brush aside this serious flaw and effect of the grave omission on the prosecution's case observing that no fact had come on record to show that the Nazir Mohammed (PW-1), Arifkhan (PW-3) and Shahejadkhan (PW-4) bore any enmity against the accused-appellant due to which, they would make an attempt to falsely implicate the accused-appellant.

This, in our opinion, could not have been a logical ground to ignore this material omission.

39. The Journalist, Vivekbhai (PW-2), also tried to take a similar stance as the complainant Nazir Mohammed (PW-1) in his deposition. Relevant excerpts from the deposition of Vivekbhai (PW-2) are extracted hereinbelow for ready reference: -

> "The incident occurred on 13/06/2013. I was at Godhra in morning and returned Kalol at around 12:30 hrs after finishing my work by staying half and hour there. As being native of Kalol, I was present at my home that day. I was present at my home in evening after taking dinner. I received a call from Bilalbhai at around 11:30 pm. Bilalbhai is my consulting. Bilalbhai told me that a girl was bleeding from the lower part and something had happened. I went through a road to river which is opposite to the police station. Bilalbhai, 5-6 other friends, and a four-year girl without clothes were there. The girl was sitting with her legs wide and others were standing. I speculated the case of rape. At first, I made a call to Kalol PSI on his mobile. He was on leave. He said he would inform the police station. I made a call to 108 mobile van thereafter. It took the girl to the Government Hospital, Kalol for treatment. We did not know the name and whereabouts of the girl. We arranged for her primary treatment. In-charge P.S.I. Pallacharya and C.P.I. Vajpai arrived at the hospital. In view of limitation of treatment at Kalol Hospital, the girl was referred to the Godhra Hospital. **By this time, the parents of the girl arrived at the hospital**

due to police efforts. The doctor during the treatment at Kalol Hospital asserted about rape with the victim. When I was there during the treatment at Kalol Hospital, my friends who brought the girl went to the police station for lodging a complaint.

The four boys who brought the girl told me the fact at the Kalol Hospital that the accused, Manoj, had raped the girl. **The boys told me that the accused, Manoj, ousted the victim without any clothes from his house when they were sitting at the stall near Manoj's house.** The girl without clothes was walking on the way towards river. The police were searching for the family of the victim when she was being treated at the Kalol Hospital. Parents and younger brother of the victim were found during the exercise. They asserted about the victim being their daughter. Police recorded my statement in connection with the incident. I did not know the accused before the incident. I know the accused after the incident. He is present in the court today.

Cross-examination: for the Accused

….When I reached at the river-slope, around 50 people gathered there.

…..P.S.I. Pallacharya arrived at the hospital within 2 minute of our arrival. C.P.I. Vajpai arrived in 10 minute. At around 12 at night, P.S.I. Pallahcharya and C.P.I. Vajpai were present at the hospital. Parents of the victim arrived at the hospital at round 12:00-12:15 am.

…..**I was the only one present during the treatment. I did not go outside the room even after the arrival of girl's parents**. Bilalbhai and Najirbhai were talking to the police outside the

treatment room. I did not suggest police to inquire the four boys who brought the girl.

.....Najirbhai registered a complaint at the police station; not at the hospital.

It is not true that Najirbhai went to police station for registering the complaint when I was engaged in the treatment in the hospital. It is not true that the four boys who brought the victim talked to me in the hospital. **It is a true fact that the four boys told me at the Kalol Hospital that accused, Manoj, raped the girl**. It is true that I did not dictate this fact before the police during recording the statement. It is true that I did not dictate the fact before the police while recording the statement that the boys told us that when they were sitting at the stall near the house of accused, Manoj, the accused, Manoj, ousted the girl without clothes from his home and the girl without clothes was walking towards the way to river.

I came to know the names of the four boys on the next day of the incident. I did not tell the P.S.I. the fact that I had doubts on the said four boys. I came to know that the four boys were from Muslim community. It is not true that the grave act was done by the four boys and they were sent to their homes from the hospital with a view to save them.**"**

40. The witness (PW-2) testified that he had been called to the place of occurrence at about 11:30 P.M. where he saw one Bilalbhai and four to five boys with a minor girl aged about four years in a nude condition. The witness (PW-2) called the ambulance

for taking the child victim to the hospital. The witness (PW-2) tried to create an entirely new story that with the efforts of the police, the parents of the child victim came to the Kalol Hospital on the same night. This theory was not stated by any other witness including the police officers (PW-14 and PW-15) in their respective testimonies.

41. The witness (PW-2) categorically stated that the boys who had brought the child victim, stated to him at the hospital that they were sitting nearby the house of the accused-appellant and had seen him throwing the child victim out of the house in a nude condition.

42. This assertion of Vivekbhai (PW-2) makes his entire testimony nothing but a bundle of lies. It is the admitted case of the prosecution that these boys did not accompany Nazir Mohammed (PW-1) and the child victim to the hospital. Thus, when the four boys never came to the hospital, there could not have been any occasion for Vivekbhai to make any enquiries or receive information from them about the incident at the hospital.

43. Had there been any *iota* of truth in the version of Vivekbhai (PW-2), then there was no reason

whatsoever as to why the police officers from the Kalol Police Station who had reached the hospital, would not have made immediate inquiries from these boys and would have left a serious lacunae in the case by accepting a sketchy complaint having no details whatsoever of the alleged assailant and also about the identity of the material witnesses of the last seen together circumstance, who were allegedly present in the hospital.

44. A very important admission was made by Vivekbhai (PW-2) in his cross-examination that he came to know the names of the four boys on the day after the incident. We find the testimony and conduct of Nazir Mohammed (PW-1) and Vivekbhai (PW-2) to be highly suspicious. It seems highly probable that both connived together to protect and cover up for the four boys belonging to the community of Nazir Mohammed by putting the blame on the head of the accused-appellant. The claim of the witnesses that they took over the charge of the child victim from the four boys being the alleged witnesses of the last seen together circumstance and then took her to the hospital without making any effort whatsoever to provide her some clothes further fortifies our

conclusion that the conduct of these witnesses *viz.* Nazir Mohammed (PW-1) and Vivekbhai (PW-2) was highly unnatural all along. Their suspect actions would give rise to a strong inference that they were trying to protect the true assailants of the ghastly sexual assault. The fact that Nazir Mohammed's wife was in the house and in spite thereof, he did not call her out and made no effort whatsoever to provide a decent coverage to the victimised girl, adds further succour, to our conclusion, regarding the suspicious conduct of Nazir Mohammed (PW-1) and Vivekbhai (PW-2).

45. It is very surprising and rather shocking that neither Nazir Mohammed (PW-1) and Vivekbhai (PW-2) and so also the police officials present at the hospital were completely in the dark about the identities of the most crucial witnesses to the ghastly crime when the report of the incident was lodged.

46. Since two of the four witnesses of the last seen together circumstance, namely, Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) did not support the prosecution case and were declared to be hostile, we shall discuss the evidence of Arifkhan (PW-3) and

Shahejadkhan (PW-4), who, in their depositions, tried to assert the claim of being witnesses of last seen together circumstance.

47. The relevant excerpts from the evidence of Arifkhan (PW-3) and Shahejadkhan (PW-4) are reproduced hereinbelow: -

> **Deposition of Arifkhan (PW-3)**
>
> **"Examination-in-chief**
> About three months ago I was sitting at the Pan Parlour of my uncle Jaffarulla Khan, where my brother Aiyaz, Nephew Shehzaad and Sartaaj were also present. **At around 11-11:30 in the night, when we saw the girl departing from the accused Manoj's home, whose age was about four-five years, who was in a naked condition and came towards us crying**. She was bleeding at her private parts, seeming to be of Nayak community, we inquired further, but as she could not say anything, we four took her to the Nayak Vas. On our way to Nayak Faliya, we met Nazirbhai near Ashiyana Society. We informed Nazirbhai that the girl was found near Manojbhai's house and handed her over to him. Thereafter we four as well as Nazirbhai as well as the girl, were standing near Nayakvas Tekra, when Nazirbhai called Bilalbhai, who arrived, and on seeing the girl said that she doesn't seem to be of our locality, so he called Vivekbhai. Thereafter, on inquiring about her parents in the Nayakvas, it was found that she doesn't belong there. Vivekbhai was present at the spot, when after talking to Bilalbhai, he called Police Station. While Vivekbhai and Bilalbhai were talking, we were standing away with

the victim. When Bilalbhai and Vivekbhai came to the spot, the child was bleeding at her private parts, and thereafter Vivekbhai called Police Station, who told us to dial 108 and take her to the dispensary. On dialling, 108 mobile van arrived and the victim was taken to hospital. Thereafter, we reached home via Police Station. We came to know the fact that the girl is of a traveller, the next day. I saw when the accused threw out the victim from the home. Police took my statement with this regard.

Cross-Examination for the Accused

…..The owner Jaffarulla Khan is aged forty to fifty years. I saw the victim approaching the parlour while crying, from about fifty to sixty feet away. It is not true that we did not saw the girl before she came to the parlour. We did not inform Jaffarulla Khan about the fact that the girl was bleeding from her private parts. I did not wake people from my home, a person from Ode community came, whom I know, but name is not known to me. Apart from my uncle Jaffarulla Khan, a person named Suhanben also came.

……It is not true that we were taking the victim from the parlour to the Ashiyana Society by lifting, but as **I said, we walked her towards Ashiyana Society. During this time, we did not wrap any cloth to the girl, while the victim was still bleeding.**

….Few other people sitting outside their homes, whose names I cannot recall, asked what happened to the girl. Such thing did not happen that on handing over the victim to Nazirbhai, we went to our home. When we reached Ashiyana society, Nazirbhai asked us where are we taking her. Then as Nazirbhai approached us and saw the girl, she was bleeding at her private part. **It is not true that Nazirbhai told us to go home. Nazirbhai's wife was about to**

deliver, so he went to the Hospital and there was nobody at his home.

In my statement before the police, I stated that on meeting Nazir Mohammad Malek and Bilal Vaghela at the Ashiyana society, as they thought the girl to be of Nayak community, asked to hand over the girl in order to search for her parents in the Nayak Faliya. **On handing over the girl, we went to our homes. It is not true that we did not go to Nayak Tekra from Nazir's home. We four did not go to Kalol Hospital.** It is not true that on handing over the girl to Nazirbhai, near his house, we went to our homes.

On seeing the girl at the Pan parlour, I didn't go to Manojbhai's home, nor did we call the accused Manojbhai outside. It is not true that the I cannot say with surity whether the house from which the girl came out, belongs to Manojbhai. It is not true that I did not see the accused Manojbhai throwing the girl from home and I am giving false deposition.

I know the accused's father Jethabhai, who had lodged a police complaint against my uncle Jaffarulla Khan in the year 2006, which included my father's name in the accused, who was not arrested. I am unaware of the proceedings of that case. It is not true that after the complaint against my father was registered in 2006, we have displeasure with the accused as well as his family. There was no dispute between the accused and his brother, and our family on March 2006. It is not true that I am giving false deposition because father of the accused had lodged police complaint against my father and my uncle. It is not true that me as well as my friends, committed rape against the victim girl and threw her near Nazirbhai's house.

It is true that till we reached Nayak Faliya, Nazirbhai was knowing where the girl came from, because I had conveyed that fact to him, which he also conveyed to Bilalbhai when he came. Similiarly when Vivekbhai arrived, he was conveyed the fact by Bilalbhai and Nazirbhai where the girl was found. It did not happen that I told the fact to Nazirbhai, Bilalbhai and Vivekbhai. When we were heading towards our home from the Police Station, the victim was being thrown away from the house by Manojbhai, such fact we did not convey to the Police.

.....We reached our home at about 12-12:15 p.m. Police inquired us the next morning.

.....It is not true that Nazirbhai has given false complaint to save us as he knows me, and I am giving false deposition for the sake of same. It is not true that I did not see the victim thrown out of the house by the accused, and it did not happen that the girl approached us while crying, and it did not happen that we headed towards Ashiyana Society.**"**

xxxxxxx

Deposition of Shahejadkhan Khan (PW-4)

"Examination-in-chief

The incident took place about 5 months ago, when there was a Chhakda, in **which I, Arif, Sartaj and Aiyaz were sitting, at about 10 in the night. At this time the accused sent a girl outside the home, who approached us while crying and she seemed to be of Nayak Faliya, so we took her to the Nayak Faliya and asked everybody whose girl is this, but was denied by all**. Hence, we came back to the Ashiyana Society, where Arifbhai and Bilalbhai came, and 108 Ambulance was called as she was bleeding through her private parts, and

taken to the Hospital for treatment**. Bilalbhai took the girl to the Hospital, while we four proceeded to our homes.** The next day, we got to know that the accused Manojbhai raped the girl. The fact that the accused Manojbhai threw the girl out of home was witnessed by me, and the same was given in the complaint by Nazirbhai. I identify the accused who is present before the court.

Cross-Examination for the Accused

…..**When we saw the girl for first time, she was crying at about 5-6 feet away from the Chhakda, so our attention was drawn to her cry.**

…..Few people of the Faliya gathered, whose name I do not know. My home is 3-4 feet away from the parlour, where I live with my parents and brother. I did not call my parents or brother on seeing the crying girl coming towards us.

It is not true that we four boys carried the girl with us to the Nayak Faliya, which is about a km away from our house. After crossing the Ashiyana Society, we traversed through the pukka road. On our way from the place of incident to the Nayak Faliya, we did not meet anybody. We woke people of Nayak Faliya and asked about the girl. As they refused, we went towards Ashiyana Society with the girl, when Nazirbhai met us. All this time, the girl was walking with us and was bleeding. **Nazirbhai met us and told us to leave the girl there, and we went towards our homes, leaving the girl there**. I have no knowledge of what did Nazirbhai do thereafter, and when did Police and ambulance reach. Nazirbhai is present in the court today, who met me today. **With me are my other friends, whose parents were not called. We feared whether our parents would doubt us on**

seeing the girl bleeding. Such did not happen that Police took recorded our statement on the day of incident**. It is true that I did not tell anybody whom I met that I have seen Manojbhai throwing the girl out of the home.** We did not see when, how and with whom the girl came there. In my statement before the police, recorded at 12 in the afternoon, I did not inform about 7-8 people reaching during the incident, nor that I can identify their houses.

….**The fact that I saw the accused Manoj keeping the girl outside home, was not told to anybody before it was firstly stated in my statement before the police. Neither did I asked Nazirbhai about what happened the next day, nor did he call me before 12 in the noon. While handing over the girl to Nazirbhai, we did not give our name and address to him. Nazirbhai do not identify me by name, but identifies on seeing.**

…..It is not true that she was raped by someone from amongst us. It is not true that we lodged a false complaint through Nazirbhai, in order to avoid any case against us. It is not true that I am giving false deposition. It is true that Police did not conduct any medical examination of us, nor did they seize our clothes. It is not true that I am giving false deposition on Nazirbhai's insistence, and identifying the accused wrongly.**"**

(Emphasis supplied)

48. The highlighted part from the evidence of these witnesses give rise to the following irrefutable inferences: -

i. The four witnesses after seeing the accused-appellant pushing out the child victim from his house, casually took the girl in their charge; made no effort to provide clothes to the child victim; and started walking with the child victim in a denuded state towards Nayakvas without even having the faintest of idea about her identity or place of residence.

ii. These witnesses claimed to be having an idea that the child victim belonged to Nayak community and, therefore, they were taking her to Nayak Faliya. This could not have been possible unless they were privy to the incident. As there was no clue regarding the identity of the child victim by the time her parents were located, it is very strange that these four witnesses had knowledge regarding the community to which the child victim belonged.

iii. Nazir Mohammed (PW-1) did not command a position of significance in the society or community. Inspite thereof, the boys

casually handed over the girl to Nazir Mohammed (PW-1) near the Ashiana society, after telling him that she had been found near the accused Manojbhai's house.

iv. The boys, who were four in number and the owner of the Pan Parlour, namely, Jafarulla Khan, who was also closely known to them, would, in the natural course of events, be expected to confront Manojbhai *i.e.* the accused-appellant, had they actually seen the child victim coming out from his house in a naked condition as claimed. This would be expected from any human being with the bare minimum sense of decency, empathy and awareness.

v. Arifkhan (PW-3) stated that Nazir Mohammed's wife was about to deliver, and she was admitted at the hospital and nobody was at home. This fact is contradicted by the evidence of Nazir Mohammed (PW-1) who did not make any such averment in his deposition and rather stated that he did not call his wife

out for inspecting the child victim who was in a very bad shape and was bleeding from her nether regions. If, at all, these persons had any empathy and were not the offenders themselves, looking at the compromised condition of the girl, natural human conduct demanded that they should, at the outset, made an attempt to provide clothes to cover the body of the child victim and to involve some lady to ease her misery.

vi. Arifkhan (PW-3) admitted that Jethabhai, the father of the accused-appellant had lodged a complaint against Jaffarulla Khan in the year 2006 and his father was also arraigned as an accused in the said case. Thus, there was a clear state of animosity between Arifkhan (PW-3) and the accused-appellant owing to the said criminal case.

vii. Arifkhan (PW-3) stated that the incident took place around 11:00-11:30 at night. On the other hand, Shahejadkhan (PW-4)

stated that the incident took place at 10 o'clock in the night.

viii. Shahejadkhan (PW-4) stated that they became aware of the child victim for the first time, when he heard her crying at a distance of about 5-6 feet away from the Chhakda, and thus, their attention was drawn to her. Admittedly, the house of the accused-appellant was 40 to 50 feet away from pan parlour. Thus, the witnesses sensed the presence of the child victim for the first instance, when she was at a distance to 5-6 feet away from the place where they were sitting. Hence, there was hardly any possibility that in the dead of the night, they could have seen the child victim being pushed out from the house by the accused-appellant.

ix. A very candid admission was made by Shahejadkhan (PW-4) in his cross-examination wherein he stated that he and his other friends, did not call their parents because they feared that their parents would doubt them on seeing the child

victim bleeding. The witness further admitted that he did not tell anybody who he met that he had seen the accused-appellant pushing the child victim out of the home. This fact was stated by him, for the first time, to the police when his statement was recorded. He did not ask Nazir Mohammad (PW-1) as to what had transpired after handing over of the child victim to him. He also admitted that while handing over the child victim to Nazir Mohammad (PW-1), they did not share their names and address to him.

49. These facts make it clear that by the time the FIR was lodged, there was no material whatsoever to establish the identity of the four witnesses of last seen together theory or that they had actually seen the child victim being pushed out by the accused-appellant from his house. As per Shahejadkhan (PW-4) they did not tell anybody that they had seen the accused-appellant pushing the child victim out of his home. There is a significant discrepancy regarding

the time of the incident in the versions of PW-3 and PW-4 as mentioned *supra*.

50. Since the identity of the witnesses of last seen together circumstance was not known to anyone, it becomes a matter of grave doubt as to how they were pinpointed and called to the police station on the day next to the incident for recording their statements under Section 161 CrPC.

51. In juxtaposition with these embellishments, the crucial fact borne out from the statement of Nazir Mohammed (PW-1) that the four boys did not tell him the name of Manojbhai (accused-appellant) and that he did not mention in the complaint, or his statement *(sic)* under Section 161 CrPC that these witnesses had seen Manojbhai (accused-appellant) pushing the child victim from his house, makes it clear that the entire story implicating the accused-appellant for the crime was cooked up after consultations and deliberations on the day next to the incident. The effect of this grave embellishment on the prosecution case was not considered in the correct perspective either by the trial Court or the High Court.

52. The rank indifference shown by these four witnesses *i.e.* Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) in taking any steps whatsoever either to report the matter to the police or to make the efforts for taking the child victim to the hospital and instead trying to take her to Nayak Faliya reaffirms our doubt that they might have been the perpetrators of the offence and by way of self-preservation, threw the blame on to the accused-appellant stating that they had seen the accused-appellant pushing the child victim from his house and that they were trying to take her to Nayak Faliya. Thus, we reiterate that the evidence of Arifkhan (PW-3) and Shahejadkhan (PW-4) is totally unworthy of credence.

53. At this stage, it would be fruitful to refer to the testimony of the two Investigating Officers *i.e.* Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15).

54. The relevant excerpts from the evidence of Pankajkumar Darji (PW-14) are reproduced hereinbelow for ready reference: -

"**Examination-in-chief**

……**The name of Mr. Manojbhai Jethabhai as accused was revealed during the investigation. Therefore, the investigation was conducted**. When the accused person was found, he was arrested in this offence after making physical examination. The accused did not co-operate in timelimit regarding clothes worn at the time of incident, he was produced before the court and remands were obtained. The accused person has willingly stated about the clothes worn at the time of incident during remand and same were seized. The statement of witness Bilal Ahmed Waghela was dictated. The collected sample of the victim and the accused during medical investigation were sent in F.S.L. to analyse and Medical Certificate was received. The process of preparing map of the incident place was done due to serious nature of offence. The sufficient evidence were found to frame chargesheet against the arrested accused person therefore the chargesheet was prepared and sent to the Hon'ble Court. The accused persons are same who present before the court.

Cross examination: for the accused

I came to know the fact while receiving the complaint that three to four boys took the victim to the complainant. Thereafter, I saw the said four boys during investigation. I did not conduct any medical check up of these boys. I have neither collected sample of boys' sperm and blood. No panchnama of dog tracking was drawn.

…..I did not feel that the victim was found from four boys and conduct their medical check up.**"**

(Emphasis supplied)

55. The witness (PW-14) stated that the name of the accused-appellant cropped up during investigation and thus, he was arrested and various other steps of investigation were carried out. In cross examination, the witness admitted that he met the four witnesses of last seen referred to in the complaint during investigation. However, he did not explain as to how the identity of these witnesses was established.

56. Now, we come to the evidence of the other Investigating Officer, Hareshbhai Pallacharya (PW-15). The relevant excerpts of his deposition are reproduced hereinbelow for ready reference: -

> **Cross examination: for the accused**
>
> **"**.....I was at home at that time. I left in Government vehicle to reach Kalol. Entry is not made in Station Diary when I left to go Kalol. First of all, I went to Kalol Police Station and thereafter went to the hospital, where the victim was taken. I reached Kalol Police Station at around 11-00 to 11-30 hours. I do not remember as to who told me from Police Station that the victim is in the hospital.
>
> .....**I do not remember as to whether Najirbhai was present there or not. I did not record statement of the person who brought this girl to the hospital**.
>
> .....I reached hospital at about 12-30 to 1-00 hours. When I reached hospital, I saw Najirbhai.
>
> .....**Najirbhai was sitting there and as I reached there, complaint was given to me. Other**

persons were also sitting with Najirbhai. It is true that Najirbhai dictated in his complaint that four boys were bringing the victim and these persons handed over the victim to Najirbhai. I did not ask Najirbhai as to who these four boys were. Names of these four boys were revealed during my course of investigation.

……**I did not seize any document showing that house to be of the accused.** When I went there, nobody was present in the house. It is not true that the house, which I visited, was not the house of the accused. It is not true that Muddamal, which I had shown, was seized from the house of the accused. It is not true that I also recorded statements of the persons present around. I took complaint at police station. It has not happened that complainant had given complaint in the hospital. It is not true that I have not written the statement as dictated by Mohasinkhan. I did not record statement of Bilal Ahmed. I do not remember exactly as to whether Bilal Ahmed was present at the time when Najirbhai came to lodge complaint. Statement of Vivekbhai was recorded on 14/06/2013. Vivekbhai was also present at Police Station. I handed over charge to Darji sir at around 10-30 hours in the morning. Panchnama of crime scene was completed at that time. It is not true that I have not drawn any panchnama in presence of panchas. It is not true that statements of witnesses were written as dictated by them. It is not true that the victim and four boys were handed over to Najirbhai and despite the fact that they were present there, their statements were not recorded. Semen, blood or nails of these four boys were not collected to send to FSL.**"**

(Emphasis supplied)

57. In his cross-examination, the witness (PW-15) stated that he reached Kalol Police Station at about 11.00 p.m. to 11.30 p.m., proceeded to the hospital, and found that other police officials of Kalol Police Station and Vejalpur Police Station were present there from before. **He admitted that he did not record the statements of the persons who brought the child victim to the hospital, nor did he record the statement of Vivekbhai (PW-2). He further stated that Nazir Mohammed (PW-1) was present at the hospital and handed over the complaint to him, in which there was a reference to four boys; however, he candidly admitted that he did not ask Nazir Mohammed (PW-1) for the names of those four boys and that their identity was allegedly revealed during the investigation. He also admitted that when the *panchnama* of the house where the incident took place was drawn, he did not collect any documentary evidence regarding ownership of the house.**

58. The trial Court has observed that the accused-appellant was apprehended from inside the house, however, as is evident from the testimony of the two

Investigating Officers *i.e.* Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15), neither of them uttered a single word regarding presence of the accused-appellant in the house when the search was undertaken. Neither of the Investigating Officers bothered to prove the arrest memo of the accused-appellant. Memorandum statement of the accused-appellant under Section 27 of the Indian Evidence Act, 1872, leading to the recovery of his blood-stained clothes was not proved by proper evidence.

59. The material facts as elicited during the evidence of the two investigating officers Pankajkumar Darji (PW-14) and Hareshbhai Pallacharya (PW-15) make it abundantly clear that the entire prosecution story has been woven on a fabric of lies by introducing the four boys as self-acclaimed witnesses to the last seen together circumstance.

60. Hareshbhai Pallacharya (PW-15) admitted in his cross-examination that he did not record the statements of the persons who brought the child victim to the hospital. Although the complaint referred to four boys who had accompanied the child

victim and handed her over to the complainant (PW-1), no effort was made by the Investigating Officers to ascertain their identities at the earliest opportunity. A vague explanation was furnished that the names of these four boys cropped up during investigation. However, the record contains no statement or any other credible material that could convince the Court that the identity of these four boys was ever established by any cogent evidence.

61. We further find the conduct of the police officers who conducted the investigation of the case to be highly pedantic and gravely negligent.

62. After Nazir Mohammed (PW-1) had filed the complaint and the child victim had been medically examined, the facts presented a case of grave sexual assault on the minor child victim aged four years. In such a situation, any vigilant police officer would be immediately expected to proceed to the crime scene; try to locate the witnesses of the last seen together circumstance by establishing their identity and make efforts to apprehend the accused. However, after perusing depositions of both the Investigating Officers (PW-14 and PW-15), it is evident that neither

of them showed any intent or interest to conduct these vital steps of investigation at the earliest opportunity.

63. The investigation was casually proceeded with. The so-called witnesses of last seen together circumstance, namely, Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6) somehow popped up and presented themselves before the Investigating Officer on the next day of the incident. The police officers casually proceeded to the house of the accused-appellant on 14th June, 2013. The incriminating material *viz.* blood stain clothes, bedsheet, curtain, etc. were lying scattered in the house as if to serve the incriminating evidence to the Investigating Officer on a platter.

64. On a perusal of material on record, it is evident that the site map plan of the place of incident (Exh. 42) was prepared by the Circle Officer, Bharatkumar Mahajan (PW-12), with the *panch* witnesses being Krunalkumar (PW-7) and Pintukumar. If the prosecution intended to fortify its allegation that the accused-appellant was seen pushing the child victim

out of the house by the witness of last seen together theory, it was imperative that at least one of these four witnesses, namely, Arifkhan (PW-3), Shahejadkhan (PW-4), Bilal Ahemad (PW-5) and Mohsin Gafurkhan (PW-6), be associated as a *panch* witness to the preparation of the site map plan. However, no such step was taken by the Investigating Officers. This omission, coupled with the rank failure of the Investigating Officers in collecting any evidence whatsoever to link the possession or ownership of the house in question to the accused-appellant, further dilutes the credibility of the prosecution case.

65. In the present case, it is manifest that the Investigating Officer had ample opportunity to secure and preserve crucial forensic material, particularly by securing samples necessary for conducting DNA profiling of the child victim and the accused-appellant. Such scientific examination, now an integral component of modern criminal investigation, would have provided objective corroboration and materially assisted in ascertaining the truth. However, no effort was made to obtain or preserve such forensic material. This omission, whether

arising from negligence or otherwise, assumes significance in light of the seriousness of the allegations. The failure to pursue an available and reliable scientific avenue not only weakens the prosecution's case but also raises a legitimate apprehension that the investigation may not have been carried out with the requisite fairness and diligence. In the circumstances, the possibility that such inaction was intended, or at least operated, to shield the actual perpetrators of the offence cannot be ruled out. Such lapses *ex facie* undermine the credibility of the prosecution's case and strike at the foundational requirement that every investigation must be fair, diligent, and oriented solely towards the discovery of truth.

66. The admitted sequence of facts narrated above clearly indicates something very fishy and unnerving in the manner in which, the entire prosecution story has been unfolded. In face of such grave allegations, the rank apathy of the Investigating Officers in not conducting expeditious and diligent investigation, should have been sufficient to put the Courts below on guard and become cognizant of the fact that something was really amiss in the case presented for

trial. However, sadly, neither the trial Court nor the High Court, adverted to these glaring shortcomings in the case and mechanically accepted the case of prosecution even though the conduct of the material witnesses (of last seen together circumstance) was sufficient to raise a strong suspicion that they might have been the actual perpetrators of the crime.

67. It is imperative to state that during the trial, the child victim was herself examined as (PW-18) however, she could not give any evidence whatsoever to connect the accused-appellant with the crime. She could not even identify the accused-appellant as the assailant. She further stated that she was tutored by her mother. Hence, this significant point was also missed by the trial Court before convicting the accused-appellant.

68. Adverting to the aspect of incriminating recoveries, we find that the recoveries allegedly effected from the house of the accused-appellant included a blood-stained bedsheet, mattress, curtain, leggy, handkerchief, light green colour t-shirt and night pant. The seizure of this forensic material was carried out by Hareshbhai Pallacharya

(PW-15), who stated that he recorded the statements of the concerned witnesses and prepared the *panchnama* of the place of occurrence in the presence of the independent *panchas* and the FSL Officer. However, in his deposition, the witness remained conspicuously silent regarding the recovery of any legging of the child victim, which was later projected as a crucial piece of evidence. These articles, upon being subjected to chemical examination, gave positive test for blood group "A", alleged to be that of the child victim. Yet neither of the two investigating officers (PW-14 and PW-15) gave any evidence regarding the safe keeping of these incriminating materials from the time of seizure until they reached the forensic laboratory. In their entire evidence, both police officers failed to state anything regarding the sealing of the seized articles, their deposit in the police station *malkhana* or the manner of their transmission to the FSL. This vital link evidence, necessary to establish the sanctity of the *muddamal* articles was therefore never provided. Consequently, neither the recoveries nor the forensic reports can be read in evidence.

69. The trial Court relied on the testimony of *panch* witnesses i.e., Krunalkumar (PW-7) and Altaf Husenbhai (PW-8) to accept the recoveries. It is to be noted that Krunalkumar (PW-7) in his testimony stated that the recoveries of bloodstained mattress, bedsheet and leggings of child victim were made from the house of the accused-appellant on 14th June, 2013. However, in his cross-examination the witness made the following admissions: -

> "**When I went to the place of offense at night, police was already present there.** When I departed for my home, police was still present. About 50 people assembled at the place of offense. **No article was seized at the night. Police went to the house which was the place of offense, but we did not go inside. We do not know what did police do inside the house, which was the place of offense.**" (Emphasis supplied)

70. Hence, what comes out from the evidence of the witness (PW-7) is that when he went to the place of offence at night, the police were already present; that about 50 people had assembled; that no article was seized in his presence, and that the police entered the house without the *panchas*. This seriously undermines the credibility of the alleged recoveries.

71. Altaf Husenbhai (PW-8), in contrast, stated that he acted as a *panch* **on 17th June, 2013, that the accused-appellant was found sleeping inside the house in an intoxicated condition**, and the clothes of the child victim and blood-stained articles were recovered on that day along with the accused's t-shirt and night pant. When the evidence of Krunalkumar (PW-7) and Altaf Husenbhai (PW-8) is read in juxtaposition to that of Hareshbhai Pallacharya (PW-15), stark contradictions emerge. The witness (PW-15) never specifically mentioned about the recovery of the child's clothing from the house of the accused-appellant. The trial Court overlooked the fact that Krunalkumar (PW-7) admitted in his cross-examination that no recovery was effected in his presence on 14th June, 2013 and that the police entered the house on their own, raising serious suspicion whether the alleged recoveries were genuine or were planted ones.

72. In stark contradiction, Altaf Husenbhai (PW-8) stated that the accused-appellant was arrested on 17th June, 2013, and the recoveries were also affected

on the same day. Thus, the entire sequence of arrest and recoveries is absolutely unacceptable.

73. It must further be noted that the only persons who could have identified the child victim's clothes were her parents *i.e.* Veenaben Pagi (PW-16) and Ranchhodbhai Pagi (PW-17). However, they were never made to do so either during investigation or at the trial.

74. The prosecution also failed to establish that the house at Oad Faliya belonged to or was in the possession of the accused-appellant. Hareshbhai Pallacharya (PW-15) admitted in his evidence that he did not collect any evidence proving ownership. Pankajkumar Darji (PW-14) also admitted the same and even the Circle Officer, Bharatkumar Mahajan (PW-12) conceded that he did not verify who occupied the premises. No revenue records, bills, or statements of neighbours were produced to establish ownership or possession on the house. Without proof of exclusive possession, recovery from the premises cannot be treated as incriminating.

75. The contradictions between the depositions of *panch* witnesses Krunalkumar (PW-7) and Altaf

Husenbhai (PW-8), and Investigating Officer (PW-15); the absence of proof regarding the ownership of the house; the lack of a proper chain of custody of seized items; and the medical evidence negating the presence of semen on the child victim, casts grave doubt on the genuineness of the recoveries. The attempt of the prosecution to rely on the FSL report despite these grave infirmities is unacceptable. Since the seizures itself were tainted and the ownership of the house remains unproven, the FSL results hold no evidentiary value. The trial Court and High Court overlooked these critical flaws and the possibility of planting evidence, thereby committing serious error in recording the conviction.

76. Thus, we are convinced that the entire story of the prosecution wherein it has been claimed that the accused-appellant was seen throwing out the child victim in a denuded condition after committing forcible sexual assault upon her is not established by any credible or reliable evidence. Rather, we find the conduct of the complainant, Nazir Mohammed (PW-1), Journalist Vivekbhai (PW-2), witnesses of last seen together circumstance, Arifkhan (PW-3) and

Shahejadkhan (PW-4) and also of the concerned Investigating Officers (PW-14 and PW-15) to be highly unnatural, suspicious, full of improbabilities, and self-contradictions.

77. Therefore, it is firmly established that the prosecution case is clearly missing the key component of an unbroken chain of incriminating circumstances to convict the accused-appellant on the basis of last seen together circumstance.

78. Having made a thorough analysis of the evidence on record, and for the reasons stated above, we find that the impugned judgment do not stand to scrutiny. As a result, the judgment of conviction and order of sentence dated 3rd November, 2015, rendered by the trial Court and the impugned judgment dated 5th April, 2016, rendered by the High Court are hereby set aside. The appellant stands acquitted of the charges. He is in custody and shall be released forthwith, if not wanted in any other case.

79. The appeal thus succeeds and is allowed.

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

81. Before parting with the present case, we would like to highlight that the judgments of the trial Court as well as the High Court in the instant case have indeed appended charts of witnesses and documents in their respective judgments. However, we are of the considered view that a more structured and uniform practice must be adopted to enhance the legibility of criminal judgments. Accordingly, to ensure a systematic presentation of evidence that enables efficient appreciation of the record, we issue the following directions to all trial Courts across the country. These directions aim to institutionalize a standardized format for cataloguing witnesses, documentary evidence, and material objects. This will serve to facilitate better comprehension and immediate reference for all stakeholders, including the Appellate Courts. Hence, we are passing the following directions, which shall be adhered to by all trial Courts across the country.

82. <u>Preparation of Tabulated Charts in all the judgments:</u>

82.1 All trial Courts dealing with criminal matters shall, at the conclusion of the judgment, incorporate tabulated charts summarizing: -

a. Witnesses examined,
b. Documents exhibited, and
c. Material objects *(muddamal)* produced and exhibited.

82.2. These charts shall form an appendix or concluding segment of the judgment and shall be prepared in a clear, structured and easily comprehensible format.

83. <u>Standardized Chart of Witnesses</u>

83.1. Each criminal judgment shall contain a witness chart with at least the following columns:

a. Serial Number
b. Name of the Witness
c. Brief Description/Role of the Witness, such as: Informant, Eye-witness, Medical Jurist/Doctor, Investigating Officer (I.O.), *Panch* Witness, etc.

83.2. The description should be succinct but sufficient to indicate the evidentiary character of the witness. This structured presentation will allow quick reference to the nature of testimony, assist in locating the witness in the record, and minimize ambiguity.

83.3. Specimen Chart for Witnesses Examined

Prosecution Witness No.	Name of Witness	Description
1	Mr. X	Eye-witness
2	Mr. Y	Witness of last seen circumstance
3	Ms. Z	Medical Jurist
4	Mr. A	Investigating Officer
5	Mr. B	Complainant/First Informant

84. Standardized Chart of Exhibited Documents

84.1 A separate chart shall be prepared for all documents exhibited during trial. This chart shall include:

a. Exhibit Number;
b. Description of document;
c. The Witness who proved or attested the document.

84.2 Illustratively, the description may include: FIR, complaint, *panchnamas*, medical certificates, FSL reports, seizure memos, site plans, dying declarations, etc.

84.3. The requirement of specifying the witness who proved the document ensures traceability of proof

and assist the Court in appreciating compliance with the Indian Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.

84.4. Specimen Chart for Exhibited Documents

Exhibit No.	Description of the Exhibit	Proved by/Attested by
1	Inquest Panchnama/Memo	PW-1
2	Recovery Panchnama/Memo	PW-2
3	Arrest Memo	PW-3
4	Post-mortem Report	PW-4
5	FSL Report	PW-5

85. Standardized Chart of Material Objects/*Muddamals*

85.1 Whenever material objects are produced and marked as exhibits, the trial Court shall prepare a third chart with:

a. Material Object (M.O.) Number;

b. Description of the Object;

c. Witness who proved the Object's Relevance (e.g., weapon, clothing, tool, article seized under *panchnama,* etc.)

85.2. This enables clarity regarding the physical evidence relied upon.

85.3.Specimen Chart for Material Objects/*Muddamals*

Material Object No.	**Description of the Exhibit**	**Proved by/Attested by**
1	Weapon of Offence	PW-1
2	Clothing of accused/victim	PW-2
3	Mobile Phone/Electronic Object	PW-3
4	Vehicle	PW-4
5	Purse/earrings/identity card	PW-5

86. Special Provisions for Cases Involving Voluminous Evidence

86.1. In complex cases, such as conspiracies, economic offences or trials involving voluminous oral or documentary evidence, the list of witnesses and exhibits may be substantially long. Where the number of witnesses or documents is unusually

large, the trial Court may prepare charts only for the material, relevant, and relied-upon witnesses and documents, clearly indicating that the chart is confined to such items. This ensures that the charts remain functional reference tools rather than unwieldy compilations.

87. Application to Defence Witnesses and Evidence

87.1. The aforesaid directions shall apply, *mutatis mutandis*, to all witnesses examined and all evidence adduced by the defence.

88. Adoption of Specimen Format and Permissible Deviations

88.1. The specimen charts provided herein shall ordinarily serve as the standard format to be followed by trial Courts across the country.

89. Observations Regarding Applicability to Civil Proceedings

89.1. While these directions are primarily intended to streamline criminal trials, we leave it open to the High Courts to consider, wherever appropriate, the adoption of similar tabulated formats in civil matters as well, particularly in cases involving voluminous

documentary or oral evidence, so as to promote clarity, uniformity, and ease of reference.

90. The High Court may consider incorporating the above directions in their respective rules governing the procedure of trial Courts.

91. Registry shall forthwith transmit a copy of this judgment to the Registrar General of all the High Courts to ensure due compliance with the directions issued by this Court in paragraph Nos. 81-90 (*supra*).

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
DECEMBER 15, 2025.