2026 INSC 675

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026

(Arising out of SLP Criminal No. 4772 of 2024)

AAA **...APPELLANT(S)**

VERSUS

LINDA SEMA & ORS. **...RESPONDENT(S)**

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. This appeal is by a minor victim's mother impugning an order of the High Court[1] dated 08.03.2022 in Criminal Revision Petition No.6 of 2021, whereby the discharge order passed by the Trial Court[2] dated 19.02.2021 has been affirmed.

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Date: 2026.02.07.09 16:49:35 IST
Reason:

[1] Gauhati High Court, Itanagar Bench
[2] Court of Session Bomdila, West Kameng District, State of Arunachal Pradesh

Background Facts

3. A first information report[3] was lodged by the appellant on 17.04.2020, *inter alia*, alleging that on 07.04.2020, her daughter[4], aged 8 years, complained of pain in her private part. Upon enquiry, the victim told the appellant that in the month of November 2019, while the victim was in SRS school (a pseudonym), her senior, a Juvenile boy, had sexually assaulted her in the classroom; the incident was reported by her to her elder sister, a student of the same school, who, in turn, informed the Head Girl; thereafter, the Head Girl scolded the boy and reported the matter to the school authority. It was alleged that the school authority did not take action and did not even inform the informant, rather the boarders of that school were told not to disclose about the incident to anyone. It was also alleged that when the informant came to know about the incident, to ascertain the truth, she took the victim to the District Hospital where the Doctor, after check-up, confirmed that informant's daughter is a victim of rape. On the aforesaid

[3] FIR No.01 of 2020 at Women Police Station, Seppa, East Kameng District, State of Arunachal Pradesh
[4] Hereinafter referred to as Ms. XXX or the victim

allegations, the informant (i.e., the appellant herein) prayed for action against the offender(s) including the school authorities/ staff.

4. The matter was investigated. During investigation, statements of the victim; her sister; the Head Girl of the School; and few witnesses were recorded. Thereafter, the police report, dated 29.05.2020, was submitted under Section 173(2) of the Code of Criminal Procedure, 1973[5] enlisting eight witnesses, namely, (i) the informant; (ii) the victim; (iii) (iii) Elder sister of the victim[6]; (iv) Y S, the Head Girl of the School[7]; (v) RT, Chairperson of the management of the School; (vi) Medical Officer; (vii) another Medical Officer; and (viii) Smt. S. Nabam, the Investigating Officer. Relevant portion of the police report, containing the narration of the facts and the nature of evidence collected during investigation is extracted below[8]:

> "16. Brief facts of the case:
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> The brief fact of the case is that a written FIR was received on 17/04/20 at 1900 hrs from Smt. AAA (27 yrs) w/o shri. CCC of Type III police colony, Seppa to

[5] CrPC
[6] Referred to as Ms. BBB
[7] Hereinafter referred to as HG
[8] Pseudonyms of the School, Victim etc., as far as possible is being used.

the effect that her daughter Ms. XXX (8 yrs) studying in class I at SRS School was allegedly raped by one KB, a student of Class VIII of SRS School, in their classroom in the month of November 2019. The said incident was narrated to the complainant by the victim's elder sister Ms. BBB who studies in the same school. The school students had reported about the incident to the school authority however, despite knowing the incident, they did not inform the same to the family members of the victim. Instead they had warned all the students from revealing the matter to anyone. On receipt of the FIR a case vide SPA/WPS/Case No.01/20 u/s 376 (AB) 201/107/506 IPC r/w Sec 6 of POCSO Act was registered and was taken up by L/S.I.S. Nabam for investigation.

During the course of investigation, the complainant was examined and her statement was recorded u/s 161 of CrPC. The victim was examined at her residence and her statement was recorded in the presence of her mother. The victim was forwarded to the court of CJM Seppa for her statement to be recorded u/s 164 of CrPC, a copy of which is enclosed herewith. In her statement, she stated that sometime in the month of November 2019 the juvenile in conflict with law (JCWL), a student of class 8, took her to a classroom of her School in the evening hours and made her to sit on his lap and then kissed her on her lips. Thereafter, she was made to hold and caress his private part. Then he removed her innerwear and started having sexual intercourse. Since the act was hurting her she began crying, it was then that the JCWL had stopped his act and had asked her not to disclose anything to anybody. Thereafter she wore her undergarment, went back to hostel and informed about this to her elder sister Ms. BBB, her friend CT and her senior Miss Y S (HG). Miss Y S then took her to JCWL and questioned him as to why he committed such act with her, then JCWL got furious and tried assaulting Miss Y S. Thereafter Miss YS informed the matter to the Head Mistress Smt. Linda Sema. Smt. Sema took her to Miss L S's room and removed her undergarment for verification. There she found some sticky substance in her undergarment and her private part sustained bruise injury and was reddish in colour. Thereafter, she was sent back to her dormitory with an instruction not to disclose anything to anybody by the Head Mistress. The child welfare

committee was informed regarding the matter. The place of occurrence (for short, PO) was visited and examined, which is a classroom at SRS School. Rough sketch map of the PO was prepared and photograph taken. However, no physical evidence could be collected from the crime scene as the alleged offence had occurred five (5) months ago. I verified the CCTV installed in the school and found that the camera of the CCTV did not cover the PO as such it yielded no clue to the case. The available witnesses to the case were examined and their statements were recorded. One of the named witnesses Miss CT was examined in-front of her parents who also confirmed the occurrence of the incident however her parents have denied making her a witness to the case. The victim was subjected to medical treatment at District Hospital Seppa by her mother prior to the registration of the case i.e., on 07/04/20. A requisition was submitted and the medical report has been obtained. In the report the medical officer has opined that at present the victim shows no sign and symptoms of being sexually assaulted, however there is swelling around the labia. Watery vaginal discharge is present. Redness present and rash is present around the labia of the victim. As stated by the victim and the witnesses, the victim had gone through the same medical condition as this at the time of the occurrence of offence but was not subjected to medical treatment in the hospital by the school officials.

During further investigation effort was made to apprehend the JCWL from his residence located at Type III Colony Seppa, but he fled away from the spot and despite a thorough search in and around Seppa town he could not be located anywhere. A total of four (4) officials of SRS School were arrested, namely, Shri. ABL (School Principal), Miss L S (School Teacher), Miss J A (Girls Hostel warden), Miss P D (school teacher). They were taken into police custody and were thoroughly interrogated. All of them admitted that the victim had complained of the occurrence of offence on 22nd November 2019 but since there was no eye-witness to the act, they did not think it was appropriate to inform the matter to anybody. As stated by them a team of four female faculties were directed by the school principal to keep the victim and the juvenile in conflict with law (JCWL) under observation to verify whether the said crime had occurred. According to their investigation the victim

behaved absolutely fine with the JCWL as such they concluded that nothing had happened and so they did not think it was necessary to inform the matter to her parents/Police and also did not think it was necessary to subject the victim for medical treatment. After the expiry of police remand they were remanded into judicial custody and were later released on bail by the Special Court Bomdila. The alleged co-accused Smt. Linda Sema wife of the Principal could not be arrested as she was referred to Margarita, Assam for medical treatment prior to the registration of case and owing to the state-wide lockdown due to COVID-19 it is difficult to travel to Assam to cause the arrest.

The prime witness to the case Miss Y S (HG) was examined and her statement was recorded by the Hon'ble Court of CJM Seppa u/s 164 of CrPC. The statement she gave corroborates the statement of the victim. During her examination she also deposed that in the month of April 2020 the mother of the victim enquired her about the exact date of the incident, as such she had to call one of her teachers to ask for the exact date. The very next day, her teachers, namely, Shri. R J K, Shri C B, Smt. Linda Sema and Miss P D, had come to meet her. They took her to Government Higher Secondary School, and there she was instructed by Smt. Linda Sema not to disclose the name of the culprit. Subsequently, Shri. C B and Shri. R J K were arrested and were examined thoroughly and their statements were recorded u/s 161 of CrPC. After thorough interrogation they admitted that they did not inform about the incident of 22nd November 2019 to anybody as they were instructed to do so by the school Principal Shri. A B L and his wife Smt. Linda Sema. On April 8th 2020, they took Y S to Government Higher Secondary School to enquire as to what she has told to the mother of the victim about the said incident. Thereafter the age proof documents of both the victim and the alleged accused were obtained from the school after serving notice u/s 91 CrPC. The school principal furnished the TC and Admission form of the JCWL which was duly seized and examined. The birth certificate of the victim was furnished and seized. According to the documents furnished, the victim was seven years old and JCWL was sixteen (16) yrs and two (2) months old at the time of commission of crime. To further verify JCWL's age, a copy of his birth certificate was seized from the Principal of his previous school. This certificate also

confirmed the age of the JCWL as 16 years and 2 months old at the time of commission of crime. Despite various efforts made to apprehend the juvenile in conflict with law he was evading apprehension all these time. His parents gave false assurance to cooperate and to surrender him before the police. Instead they had switched off their phones and had left their home. Raids were conducted from time to time in almost all the houses of the relatives of JCWL, but his whereabouts was not known. The relative of JCWL had applied for anticipatory bail in the Guwahati High Court, Itanagar Bench thrice. Up to date case diary and status report was submitted to the said court and for three consecutive time the bail was rejected. A team was sent to N G model village, Papumpare district and raid was conducted in the house of one of the suspected relatives of the juvenile, but he was not found there. CDR of his number and the IMEI of his handset was also requisitioned but still the juvenile could not be found. Reliable sources were engaged in the villages Namchar, Wada Bangang and Chayangtajo area to look for the absconding juvenile in conflict with law, but his whereabouts was still not known. The BW Society Seppa was taken into confidence who later assured to cooperate and to make the juvenile surrender before the Police. On 17/05/20 the JCWL (17 yrs) was handed over to police by his father Shri. SB and the members of BW Society Seppa, thereafter he was apprehended at WPS Seppa and was thoroughly interrogated in the presence of his family member. During the interrogation, he admitted that one evening in the month of November 2019 he tried to have sexual intercourse with the victim in one of the classroom at SRS School Seppa. But stopped his act when the victim started crying. After the act he ejaculated semen which spilt on the undergarment of the victim. He also admitted that right after the incident Miss YS came to him to enquire about the incident and both of them ended up arguing with each other. So he was called by the female teachers inside Miss L S's room where he was asked about the incident to which he denied flatly. The parents of JCWL informed that a new birth certificate was obtained from the District Statistics office and as per that certificate JCWL was aged about 14 years. As such to further verify the age of JCWL the surrendered original copy of birth certificate was seized from the District Statistics office which confirms that the JCWL is seventeen (17) years

old and not fourteen (14) years (seized original birth certificate is enclosed herewith).

After thorough investigation of the case it has come to light that one evening on 22nd November 2019 the juvenile in conflict with law (JCWL) had taken the victim to one of the classrooms at SRS School and tried having sexual intercourse with her. When the victim complained of pain and started crying he stopped his act and ejaculated semen on the undergarment of the victim. The victim had complained about the incident to her elder Sister Miss BBB who in-turn complained the same to their hostel monitor Miss Y S. Miss Y S took this matter before the wife of the Principal i.e., Smt. Linda Sema. The victim was then taken to the room of Miss L S for verification and this was done in the presence of Miss P D, Miss LS and Miss YS. During this verification (as stated by the victim and the prime witness to the case) the private part of the victim had turned reddish and was swollen and the victim complained of pain too. However, the same has been denied by the female faculties, namely, Smt. Linda Sema, Miss P D and Miss L S. When the matter was brought to the knowledge of the school principal Shri. ABL, a meeting was held amongst the teachers which was attended by Smt. Linda Sema, Miss JA (girls hostel warden), Miss LS, Miss PD, Shri CB (vice-principal) and Shri. RJK and instead of reporting the said matter before the competent authority they all conspired not to disclose anything to anybody. They even instructed the students not to talk about the incident further. The victim was not subjected to medical treatment by the school officials even after she had complained of pain in her private part which led to the destruction of all the biological evidence. Owing to delay in reporting of the case, no physical evidence could be gathered from the PO and also no biological evidence is seen in the medical report furnished by the Medical officer. Had the mother of the victim didn't overhear the conversation of the victim and her elder sister BBB, the said incident would have never come up to anyone's knowledge. I could not find any reason as to why a minor girl of 7 years would lie about the occurrence of such incident. Further, the juvenile in conflict with law was evading his apprehension as he was very well aware of the consequences of what he did. The MLC of the juvenile in conflict with law is not submitted by the medical

officer. Dr. Arun Kumar Nabam of District Hospital Seppa despite sending reminder as such he may be summoned to appear in person along with the MLC.

In the light of the above facts and circumstances a prima-facie case is found well established against the alleged accused, namely Shri. A B L, Smt. Linda Sema, Shri C B, Shri R J K, Miss P D, Miss J A, Miss L S u/s 176/201/120(B) IPC R/W Sec. 21 (2) of POCSO Act for omitting to furnish information regarding the commission of an offence, for causing disappearance of evidence of offence, for conspiring not to disclose the incident to anyone and for failing to report the commission of a cognizable offence. Whereas a prima-facie case is found well established against the juvenile in conflict with law u/s 376 AB R/W Sec. 6 of POCSO Act. A supplementary Charge-sheet will be submitted as soon as the co-accused Smt. Linda Sema is arrested and examined. Therefore I am submitting the case into charge sheet against the aforesaid accused and Juvenile in conflict with law under sections noted above vide SPA/WPS/CS No.01/20 dated 29/05/20. A date for the trial may be fixed at the earliest and the witnesses mentioned under column no.13 may please be summoned to prove the case. The MLC of the juvenile in conflict with law is not submitted by the medical officer Dr. Arun Kumar Nabam of District Hospital Seppa despite sending reminder as such he may be summoned to appear in person along with the MLC."

5. The aforesaid extract of the police report, makes it clear that besides the main offender, who was a juvenile in conflict with law (JCWL) *qua* offences punishable under Section 376 AB of the Indian Penal Code, 1860[9] read with Section 6 of the Prevention of Children from Sexual Offences Act, 2012[10], the other

[9] IPC
[10] POCSO Act

accused persons were indicted for offences punishable under Sections 176/ 201/ 120B read with Section 21 (2) of POCSO Act for omission to furnish information regarding commission of the offence, causing disappearance of evidence of the offence, conspiring not to disclose the incident to anyone and for failing to report the commission of a cognizable offence.

6. All those accused who were indicted in the final report for offences under Sections 176/201/120B and Section 21(2) of the POCSO Act applied for discharge before the Trial Court.

7. The Trial Court discharged the aforesaid accused *vide* order dated 19.02.2021. Relevant portion of the order dated 19.02.2021 is extracted below:

> "The initial information was received from the victim by elder sister of the victim who passed the information to the monitor Miss Y S who reported the matter to Smt Linda Sema. The accused Linda Sema took the victim to Miss L S's room and removed the under garments of the victim for verification. As per the prosecution, "accused Miss Linda Sema and Miss L S found some sticky substances on her under garment and private part sustained bruise injury and was reddish in color. Thereafter, the matter was discussed by the school authority, participated by all the accused, and a decision was taken not to reveal to any person, and the victim and the student were directed to remain silent on the issue." This part of statement is the basic or initial point drawing incriminating statement against all the accused.

On the other hand, it is also noted in the prosecution story that all the accused admitted about the complaint of the victim regarding misbehaviour of the delinquent juvenile on 22.11.2019 but there was no eye witnesses to the act. They did not think it appropriate to inform the matter to parent and police. As stated by accused, a team of four female faculties were directed by the principal to keep the victim and the juvenile under observation to ascertain whether the incident occurred or not. According to their investigation team, the victim was found absolutely fine with the juvenile; as such, they concluded that nothing had happened. Hence, they did not think it necessary to inform the matter to parents and police.

The vital point as to the incriminating statement against the accused is that the accused Linda Sema, Miss L S found sticky substance on private part of the victim and, along with other accused, concealed the incident. As per the statement of YS, Miss P D was also present at the time of checking the victim's private part. But as per the statement of P D recorded u/s: 161 CrPC she did not participate in the process of checking of private part of victim. The statement of YS recorded U/s 161 CrPC does not reveal that she had participated and checked the private part of victim. Her statement is that Miss Linda took the victim to Miss LS's room and checked the private part of victim. The statement of victim does not reveal the presence of P D & Y S at the time of checking her private part for verification in the room of L S by the accused L S and Linda Sema.

On the other hand, the statement of the accused Linda Sema & L S revealed that they checked the private part of victim and found no mark in the private part of victim and they also inquired from the delinquent juvenile to which the delinquent juvenile denied. Later on, the matter was reported to the Principal and accordingly a meeting was called for. During the meeting, a decision was taken to constitute a team to make observation of behaviour of the victim with delinquent juvenile. As per the report of the team, the victim was found absolutely fine with the delinquent juvenile without any sign of fear or hesitation. As per the records, the incident was not directly reported by the victim to Y S & accused but it was heard from victim's elder sister by Miss Y S and then to Linda Sema and L S. Therefore, it was not reported to the parents and police.

Considering the above facts & circumstances, I find that the claim of prosecution to have found about the redness of the private part and finding of sticky substance on under garments of the victim are not narrated by the PWs as the PW P D & Y S did not participate in checking of private part of the victim. Hence, the vital incriminating evidence at the very initial stage of the case is silent against the accused. Accordingly, I am of the opinion that there is no prima facie case incriminating the accused to substantiate at the time of trial. In absence of any witness who witnessed the sticky substance or redness of the private part of victim, I cannot hold the opinion that all the accused had conspired to conceal the incident and also cause disappearance of the evidences with intention of screening the offender from legal punishment. As such, all the accused were not duty bound to report the incident to police and parents. On the other hand, they had constituted a committee to observe the behaviour of victim with the delinquent juvenile. As per the team, the victim was found absolutely fine with delinquent juvenile and played without fear and hesitation. So they concluded that nothing had happened with the victim.

As regards to the submission of ld. Special PP that the court is duty bound to presume that the commission of offence had happened, I am of the humble opinion that the law of presumption is to be based on the evidences on records after completion of trial and the provision is applied after completion of the trial and not at the stage of consideration of charges. However, at present, this case is at the stage of consideration of charges as to whether there is prima facie case against the accused or not and to see the scope of trial to convict the accused under charged section. Therefore, if the case does not show any scope of trial to prove against the accused, the provision of discharge of the accused at the time of consideration of charges would be defeated. Hence, the right of the accused to get discharge at the time of CC cannot be flatly denied. It is also observed that the statement of Miss Y S U/s 161 & 164 CrPC is contradictory.

In view of the above, I do not find any prima facie case or scope of trial to prove the involvement of all the accused namely, Miss L S, Linda Sema, Miss P D, Shri A B L, Miss J A, Shri C B, Shri R J K in the case and accordingly, all the accused are/ stand discharged. In

> the result, all the accused are set at liberty with a direction to execute a bond U/s: 437 (A) of CrPC."[11]

8. Aggrieved by the order of the Trial Court, the appellant preferred revision before the High Court.

Revision before the High Court

9. Before the High Court, on behalf of the appellant, it was argued that a *prima facie* case is made out against the discharged accused who were teachers and staff members of the School where the victim and the main accused were studying. Besides, the victim, her elder sister and her mother had supported the allegations made in the FIR. Their statements are consistent and find support from the statement of the victim recorded under Section 164 CrPC, therefore there was no justification for the Trial Court to discharge the aforesaid accused.

10. Whereas, on behalf of the discharged accused, it was argued that in so far as the Principal and Teachers of the School are concerned, they had no personal knowledge of the incident and though the matter might

[11] The aforesaid extract is copied from Annexure P-11 which carries apparent mistakes, therefore, wherever mistake was apparent, corrections have been made while ensuring that the true meaning of the text is not disturbed.

have been reported to them, they did not find any evidence to infer that an offence of the nature reported has been committed; besides, they could not notice anything abnormal in the behaviour of the victim and the alleged offender. As such, they had no reason to believe that any offence was committed. As far as the remaining accused are concerned, there is no specific allegation against them. Even if it is assumed that they had examined the victim, in absence of visible signs of sexual assault, knowledge that an offence has been committed cannot be imputed to them. Besides, there is no positive act of causing disappearance of evidence of commission of offence alleged to have been committed by them. Thus, the necessary ingredients of offences punishable under Sections 176/201/120B of the IPC read with Section 21 (2) of the POCSO Act are not made out against them.

11. The High Court dismissed the revision reasoning thus:

> "14. Sub-Section (1) to Section 19 of the POCSO Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has

knowledge that such an offence has been committed, he shall provide such information to, (a) the Special Juvenile Police Unit; or (b) the local police. It is a fact that here in this case no information has been provided either to special juvenile police unit or the local police. But, criminal culpability of non-reporting is totally dependent on "knowledge" that the alleged offence took place. In the case in hand, though the respondent Nos.1 and 4, in presence of respondent No.3, Ms. P D, has checked the private part of the victim yet they have found nothing and the medical report also reveals no sign and symptom of being sexually assaulted and her hymen was intact though rash, swelling of labia was present. They have also called the juvenile offender and questioned him about the offence and then he flatly denied the same. They have also reported the matter to the school authority and school authority constituted a team of teachers to keep vigil upon the victim and the juvenile offender and they also found nothing. The place where the alleged occurrence took place is not covered under the CCTV also and as such, nothing was found by the I.O. while checking the CCTV footage and as such, the "knowledge" or "reason to believe' which are the ingredients of the offence under Section 19 of the POCSO Act cannot be said to be made out here in this case.

15. The learned counsel for the respondent Nos.2,3,5,6 &7 has rightly pointed this out during argument and the ratio laid down in the case of A.S. Krishnan and Ors. (supra), referred by her also fully supported her submission. In the aforesaid case, Hon'ble Supreme Court held as under:

> "9. Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause

to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:

> "26 – "*Reason to believe*": A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

10. In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case."

16. Since, the 'knowledge' or 'reason to believe' cannot be attributed to the respondent Nos.1,3 & 4, criminal liability under Section 19, in the considered opinion of this Court, cannot be attributed to them.

17. Also having gone through the record, I find absence of ingredients of the offence under Sections 176/120(B)/201 IPC as the 'intention' and 'knowledge' which are the basic requirement of the Section 176/201 IPC have not been found out from the materials collected by the I.O. during investigation.

18. It is a fact that the complainant-mother of the victim and the victim and her elder sister and witness Y S has corroborated each other in respect of the alleged offence. But, the same may be sufficient for putting the juvenile offender into trial, but not sufficient for the rest of the respondents to put them into trial and as such, it cannot be said that the impugned order of the learned Court below suffers from any illegality or impropriety, requiring interference of this Court. It is a settled proposition of law that when two views are possible and the learned Court below has taken one of the views, the Revisional Court cannot substitute its own view with that of the Trial Court."

(Emphasis supplied)

12. Aggrieved by the order of the High Court, the victim's mother is in appeal before us.

13. We have heard Shri Jitendra Mohan Sharma, learned senior counsel for the appellant; Shri Satya Kam Sharma for respondent No.1; and Ms. Jagriti S. Jadeja for respondent Nos.3, 5, 6 and 7. None appeared for respondent Nos. 2, 4 and 8 despite service of notice being complete on them.

Submissions on behalf of Appellant

14. On behalf of Appellant, it was submitted:

(i) The police report makes it clear that the teachers and the school administration had knowledge of the incident, therefore they were under a legal obligation to report the matter as per the provisions of the POCSO Act.

(ii) School Authorities are not only under an obligation to prevent sexual assault or exploitation of a minor under their supervision, but also to report to the concerned authority any

such act in respect of a subordinate under their control.

(iii) When a School Authority receives complaint of molestation or abuse of a child under their supervision, it has no option but to report the matter to the concerned authority. It cannot, on its own analysis, discard the complaint as incorrect or false.

(iv) The expression "knowledge that such an offence has been committed" as used in Section 19 of the POCSO Act does not mean direct knowledge. Knowledge can be based on information received from the victim.

(v) There were enough incriminating materials in the police report to frame charges against the respondents as all of them in one way or the other suppressed the information and were apparently in conspiracy with each

other to conceal and suppress the incident. The Trial Court as well as the High Court erred in accepting their plea for discharge, particularly when prompt and proper reporting of offences under the POCSO Act is of utmost importance, otherwise the very purpose of the Act would be frustrated.

Submissions on behalf of Respondent No.1

15. On behalf of Respondent No.1 (Linda Sema) it was submitted:

(i) Respondent No.1 is just an accountant in the school and has no command or authority over the school.

(ii) No incident occurred in the presence of Respondent No.1.

(iii) Admittedly, the victim first reported to her elder sister. Elder sister reported to Head Girl. Thereafter, it is alleged,

Head Girl reported to Respondent no.1. When such report was made, is not disclosed. Though, according to the allegations, victim's private part was examined under supervision of Respondent No. 1, it is not disclosed as to when it was examined. Medical reports do not support prosecution's case. In such circumstances, if to the knowledge of the respondents no reportable incident occurred, there was no occasion to lodge a report.

Submissions on behalf of Respondent No.3

16. On behalf of respondent No. 3 (P D) it is submitted that she was employed as a primary teacher in the School; the only allegation against her is of being present in the room where the main culprit (i.e., the juvenile in conflict with law) was called to confront him with the complaint against him. As, admittedly, the juvenile refuted the allegations, how could respondent No.3 be held responsible when she had no authority to

lodge the report. The allegation that she was present in the room when the victim was examined to ascertain whether there is any truth in her allegation, is of no consequence once the medical expert could not find signs of any previous sexual assault. If a medical expert cannot find traces of sexual assault, how could respondent No.3, a person having no medical expertise, notice signs of sexual molestation. Further, she was not the person in-charge of the school, therefore, she was not under any legal obligation to report, particularly when to her knowledge no incident occurred. Hence, her discharge warrants no interference.

Submissions on behalf of Respondent No.5

17. On behalf of Respondent no.5 (JA), it is submitted that she was employed as Girls' Hostel warden at SRS School. Allegation against her is of being part of the team which was monitoring the behaviour of the victim to ascertain whether any untoward incident occurred or not. Monitoring the conduct of the alleged victim and the offender by itself does not make out commission of any offence by the answering respondent,

particularly when there is no allegation that the victim complained to the answering respondent. Hence, discharge of the answering respondent calls for no interference.

Submissions on behalf of Respondent No.6

18. On behalf of Respondent No.6 (CB), it is submitted that he was employed as Vice Principal at SRS School. The only allegation against him is that he was present in the meeting in which a Committee comprising of lady teachers was appointed to observe the two students, namely, the victim and the offender, to ascertain whether any untoward incident had happened or not. It is contended that since to the knowledge of the answering respondent no incident occurred, and no complaint was made to the answering respondent, no offence could be said to be committed by the answering respondent. Hence, the order discharging the answering respondent calls for no interference.

Submissions on behalf of Respondent No.7

19. On behalf of Respondent No.7 (RJK), it is submitted that she was employed as teacher at SRS

School where the alleged offence took place. The only allegation against her is that she was present in the meeting in which a Committee of lady teachers was appointed to observe the two students to ascertain whether any untoward incident had occurred or not. It is contended that since to the knowledge of the answering respondent no untoward incident occurred, and no complaint was made to the answering respondent, no offence could be said to be committed by the answering respondent. Hence, the order discharging the answering respondent calls for no interference.

Discussion/ Analysis

20. As the present appeal arises out of an order of discharge, before we proceed to test the correctness of the discharge order in the context of rival submissions, we must remind ourselves of the settled legal position that in a case instituted on a police report, at the stage of considering a prayer for discharge made by an accused, the Court must only consider the materials collected during investigation and which form part of the police report. A plea of defence raised by the accused on

some material not part of the police report is not liable to be considered. At this stage, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. The final test of guilt is not to be applied at this stage[12]. Further, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true[13]. On the scope of the proceedings at the stage of framing of charge under Sections 227 and 228 of the Code of Criminal Procedure, 1973 (CrPC), in ***State of Tamil Nadu v. N. Suresh Rajan and Ors.***[14], this Court observed:

> "29. ... True it is that at the time of consideration of the application for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at this stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all ingredients constituting the alleged offense. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for

[12] Amit Kapoor v. Ramesh Chander and Anr., (2012) 9 SCC 460
[13] State of Gujarat v. Dilipsingh Kishorsinh Rao, (2023) 17 SCC 688
[14] (2014) 11 SCC 709; See also: Tarun Jit Tejpal v. State of Goa & Anr., (2020) 17 SCC 556.

> convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."
>
> (Emphasis supplied)

21. The test, therefore, is whether the materials forming part of the police report if taken at their face value have sufficient probative value to create a grave suspicion that the accused to be charged has committed that offence. For the purpose of satisfying itself whether the material put forth in the police report creates grave suspicion about commission of the offence by the accused, the Court has the power to sift and weigh the evidence[15]. However, at this stage, the Court is not required to be satisfied that the material is sufficient to record conviction.

[15] Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368, paragraph 21 (i)

22. In that light, we propose to consider the final police report to find out whether it contains material sufficient to create grave suspicion against the accused-respondents of committing the offence(s) alleged to have been committed by them in the police report.

Final Police Report

23. The police report indicts JCWL for offences punishable under Section 376 AB IPC read with Section 6 of the POCSO Act and the respondents, namely, ABL (Principal of the School), Smt. Linda Sema (Respondent No.1 i.e., wife of the Principal/ alleged Head Mistress of the School), Shri CB (Vice Principal cum teacher in the School), Shri RJK (teacher in the School), Miss PD (teacher in the School), Miss JA (teacher in the School cum Girls' School Warden) and Miss L S (teacher in the

School), under Sections 176[16], 201[17], 120-B[18] of IPC and Section 21(2)[19] of the POCSO Act.

24. The relevant materials placed with the police report are:

(i) Birth certificate of the victim showing her date of birth as 7.8.2014.

(ii) Medical report dated 27.4.2020 of District Hospital, Seppa, Arunachal

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[16] **Section 176 IPC.— Omission to give notice or information to public servant by person legally bound to give it.**-- Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to ₹500, or with both: or, if the notice or information required to be given respects the commission of an offense, or is required for the purpose of preventing the commission of an offense, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to ₹1000, or with both;
Or, if the notice or information required to be given is required by an order passed under sub-section (1) of Section 565 of the Code of Criminal Procedure, 1898 (5 of 1898) with imprisonment of either description for a term which may extend to six months, or with fine which may extend to ₹1000, or with both.

[17] **Section 201 IPC.—Causing disappearance of evidence of offence, or giving false information to screen offender.--** Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offense to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;
if a capital offense. -- shall, if the offense which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;
if punishable with imprisonment for life. -- and if the offense is punishable with imprisonment for life, or with imprisonment which may extend to 10 years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
if punishable with less than 10 years' imprisonment. -- and if the offense is punishable with imprisonment for any term not extending to 10 years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

[18] **Section 120-B IPC. – Punishment of criminal conspiracy.—(1)** Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offense punishable as aforesaid shall be punishable with imprisonment of either description for a term not exceeding six months, or with fine or with both.

[19] **Section 21 of POCSO Act. – Punishment for failure to report or record a case. –** (1) Any person, who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offense under sub-section (2) of Section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.
(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.
(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Pradesh. The relevant portion of the report is as under:

> "Examination proper: (1). Clothes: She changed her clothes and took bath too as incident occurred on 22 November 2019. (2). External examination: No sign of struggle found, no abrasion, no contusion or any cut mark present at the time of examination.
>
> Local examination: No pubic hair. Watery vaginal discharge present around the labia. Swelling around labia, redness present, rash present, intact hymen, vaginal permits entry of tip of ear bid. No foreign material or hair recovered from vulva. No sign of struggle, abrasion, bruise or any cut injury present at the time of examination. Victim is not pregnant.
>
> Vaginal swab was not taken.
>
> All the system is within normal limit.
>
> Conclusion: From the above finding Miss XXX (pseudonym) 8 years shows no sign and symptoms of being sexually assaulted at present. All the required test has been attached."
>
> (Emphasis supplied)

(iii) Statement of victim u/s 164 CrPC: In her statement, the victim confirmed that JCWL, a student of class VIII, had sexually assaulted her in the month of November 2019. She stated that her

undergarment was wet after the incident and she had rushed to the hostel to inform her sister. She also told her friend C T and her senior (i.e., the Head Girl). The Head Girl took her to JCWL to confront him. JCWL got furious and tried to assault the Head Girl. Then the Head Girl informed Yangda Madam *(to be understood as Linda Sema -Respondent No.1)*, Head Mistress of the School. To verify, Linda got the victim to remove her inner garment(s) in Miss LS's room. She had noticed sticky substance on the inner garment, and also noticed bruise as well as redness on her private part. Thereafter, the victim was told by the Head Mistress not to disclose it to anyone. Since that day the victim had been having trouble in urination. Her elder sister had applied powder to

keep it dry, but it did not work. In the month of March 2020, when the victim was discussing about her problem with her sister, victim's mother overheard, then victim disclosed everything to her mother.

(iv) Statement of Y S (the Head Girl) u/s 164CrPC: In the month of November 2019, she was informed by the victim that JCWL had sexually assaulted her. Therefore, she confronted JCWL, who became aggressive and tried to assault her. She clarified that she did not ask JCWL whether he had sexually assaulted the victim. She had only asked whether he did anything wrong to the victim. Thereafter, she informed Linda Sema, upon which, the victim was taken to L S's and N's room where, along with her, N, Linda Sema, LS and P D were present. There

JCWL was called and asked whether he did anything wrong. However, he flatly denied. After JCWL left the room, Linda Sema and others present in the room checked the victim's private part. It was noticed that it had turned reddish and was slightly swollen and the victim was complaining of pain. A little later, when the Principal ABL came back from market, they had a meeting. After that she was told by PD that it was decided that the matter should not be disclosed to anybody till it is resolved. In the month of April, 2020, victim's mother contacted her over the phone to verify about the exact date of the incident. Since she was not aware, she contacted Miss MB, a teacher. Later, the same evening, Mr. RJK called her over the phone and asked

her if he and other school authorities could meet her. Next morning, RJK, Linda Sema, PD, MB and CB came to her residence. Initially, they were denied entry. However, later, she went with them in a car to hostel of a Govt. School, where Linda Sema instructed her to say that if anybody asks her, she must say that the incident certainly happened but it was not clear as to who is the culprit, to which she responded by saying that she has already disclosed about the incident.

(v) Statement of victim's mother (i.e., AAA, the informant): She reiterated the allegations made in the FIR.

(vi) Statement of victim's elder sister: She stated that one evening in the month of November 2019, the victim, her younger sister, complained to her about the incident. Consequently, she

informed the Head Girl, YS. YS had confronted JCWL, who started arguing. Thereafter, YS informed Linda Sema. Linda, accompanied by PD, took the victim to LS's room for verification. After a while, all teachers were called by the Principal and they had a meeting. Later, Y S came and told that all teachers have instructed all boarders not to disclose about the incident to anyone. It was learnt that the teachers verified from the CCTV but nothing was found. Since then she kept quiet. But, during vacation, the victim complained of rash to her, when their mother overheard, and asked about the incident, so she had to tell her.

25. What is clear from the police report is that,- (a) the victim was a minor, a child within the meaning of section 2(d) of the POCSO Act; (b) the victim had

complained about JCWL[20], a student of Class VIII, sexually assaulting her; (c) the said complaint was first made to her elder sister, thereafter she and her elder sister contacted the Head Girl (Y S); (d) the Head Girl thereafter informed Smt. Linda Sema (Respondent No.1), who is alleged to be the Headmistress of the School; (e) Smt. Linda Sema thereafter took the victim to L S's room where N, Linda Sema, LS and P D were present; (f) Linda Sema and others, who were present in that room, physically checked the private part of the victim and noticed that private part had turned reddish and was slightly swollen; (g) later, when the Principal arrived, the accused persons had a meeting and it was decided that the matter should not be disclosed to anybody till it is resolved; (h) in the month of April 2020, the victim's mother came to know about the incident and sought to verify the details of it from Y S; (i) the School management including teachers had instructed Y S that if anybody asks her about the incident, she must say

[20] Juvenile in Conflict with Law

that the incident may have occurred, but it is not clear as to who the culprit is.

Relevant Provisions of the POCSO Act

26. Section 19 of the POCSO Act[21], *inter alia*, provides that any person, who has 'knowledge' that an offence under this Act has been committed, he shall provide such information to (a) the Special Juvenile Police Unit; or (b) the local police. Sub-section (6) of Section 19 provides that the Special Juvenile Police Unit or the local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter

[21] **Section 19. Reporting of offences**.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—
(a) the Special Juvenile Police Unit; or
(b) the local police.
(2) Every report given under sub-section (1) shall be—
(a) ascribed an entry number and recorded in writing;
(b) be read over to the informant;
(c) shall be entered in a book to be kept by the Police Unit.
(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.
(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.
(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.
(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.
(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)

to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in that regard. Sub-section (7) of Section 19 gives protection to the person who gives the information in good faith by providing that no person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

27. Section 21[22] of the POCSO Act provides for punishment in case of failure to report or record the case. Sub-section (1) of Section 21 provides that any person, who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20, or who fails to record such offence under sub-section (2) of Section 19, shall be punished with imprisonment of either description which may extend to six months or with fine or with both. Sub-section (2) of Section 21 provides that if any person, being in-charge of any company or an institution, who fails to report the

[22] See: Footnote 19

commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine. Sub-section (3) of Section 21 clarifies that the provisions of sub-section (1) shall not apply to a child under this Act.

Construction of phrase 'Knowledge that such an offence has been committed' used in Section 19(1) of POCSO Act

28. The word 'knowledge' used in Section 19 is not defined in the POCSO Act. Section 2 (2) of the POCSO Act states: "*The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts*". However, knowledge is not defined in either of the two Codes or the Acts mentioned in Section 2(2).

29. A conjoint reading of Section 19 and Section 21 of the POCSO Act, *inter alia*, indicates that if any person has knowledge that an offence has been committed under the Act, it is the mandate of law to provide such information to the Special Juvenile Police Unit or the local police. If such person, other than a child, fails to report, he is liable to punishment under Section 21.

30. Therefore, the crucial question is, as to when can it be said that a person has knowledge that an offence under the POCSO Act has been committed.

31. In ***A.S. Krishnan and Ors. v. State of Kerala***[23], this Court with reference to Sections 471[24] and 26[25] of IPC had an occasion to expound the expressions "*knowledge*" and "*reason to believe*". It was observed that "*knowledge*" is an awareness on the part of the person concerned indicating his state of mind. "*Reason to believe*" is another facet of the state of mind. "*Reason to believe*" is not the same thing as "*suspicion*" or "*doubt*"

[23] (2004) 11 SCC 576

[24] Section **471. Using as genuine a forged document or electronic record.—**Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

[25] Section 26; **"Reason to believe".—** A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise

and mere seeing also cannot be equated with believing. "*Reason to believe*" is a higher level of state of mind than suspicion or doubt and "*knowledge*" is on a higher plane than "*reason to believe*". It was also observed that a person can be supposed to know where there is a direct appeal to his senses, and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. It was observed:

> "10. In substance, what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such as creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e., 'knowledge' and 'reason to believe' have to be deduced from various circumstances in the case."

32. In ***SR. Tessy Jose and Others v. State of Kerala***[26], this court, had the occasion to deal with the word "*knowledge*" as used in Section 19 of the POCSO Act. In that case, according to the allegations, A-1 had raped the victim in 2016 when she was a minor. As a result, she became pregnant. As per the victim's mother,

[26] (2018) 18 SCC 292

when the victim started complaining about pain in her stomach, she brought her to the hospital where the appellants before this Court were working. The victim being found at an advanced stage of pregnancy was taken to the labour room, where she delivered a child. The role of appellants who were before this Court was that one of them had conducted the delivery, as a Gynaecologist, and the other had attended to the child of the victim after the delivery, as a Paediatrician. The third accused was in the administrative block of the hospital. The prosecution case against the said appellants was that they had knowledge about the rape of the victim, yet they did not report the matter. In that context, this Court considered the provisions of Section 19 of the POCSO Act and held that there is no evidence to implicate the appellants. It was also observed that to frame charge, evidence should be such which should at least create grave suspicion regarding commission of the offence by the accused. Consequently, this Court allowed the appeal and quashed the proceedings of the case. While deciding the aforesaid case, this Court

observed that the provisions of Section 19(1) of the POCSO Act uses the expression '*knowledge*', "which means that some information received by such a person gives him/her knowledge about the commission of the crime". The court observed that there is no obligation on such a person to investigate and gather knowledge. The court thereafter relied on the decision of this Court in ***A.S. Krishnan (supra)*** expounding the expression 'knowledge' as to mean an awareness on the part of the person concerned, indicating his state of mind. It was observed that a person can be supposed to know only where there is a direct appeal to his senses. The Court went on to observe:

> "13. The knowledge requirement foisted on the appellants cannot be that they ought to have deduced from circumstances that an offense has been committed."

33. In ***State of Maharashtra and another v. Dr. Maroti***[27] minor tribal girls who were students of an educational institution, residing in girls' hostel, were sexually assaulted by unknown persons. They were taken to hospital and attended by a medical practitioner,

[27] (2023) 4 SCC 298

who was informed about the sexual assault on them. Sexual assault on them was also clear from their medical examination conducted by the said medical practitioner, yet no report, as per the mandate of Section 19(1), was made by the medical practitioner. During investigation, the said medical practitioner was found *prima facie* guilty of an offence punishable under Section 21 of the POCSO Act. However, the High Court quashed the proceedings *qua* the said medical practitioner. Aggrieved therewith, the State came before this Court. This Court allowed the appeal and set aside the High Court's order holding that whether one has 'knowledge' or not is a question of fact. In that context, this Court observed that conclusion in that regard must not ordinarily be drawn by perusing statements collected during investigation. Importantly, this Court had noticed that the victim(s) had disclosed to the medical practitioner of them being subjected to sexual assault, and the medical examination had disclosed ruptured hymen.

34. In ***Just Rights for Children Alliance and another v. S. Harish and others***[28]**,** this Court, after surveying the legislative history and the statutory scheme of the POCSO Act, observed that to achieve the avowed purpose of the Act, a legal obligation to report an offence under the POCSO Act has been put on any person who has knowledge that an offence under the Act has been committed. This obligation also extends to individuals who have reason to believe that an offence under the Act is likely to be committed. Besides, in addition to imposing this legal duty under Section 19, the legislature being in *seisin* of the paramount importance in collectively addressing the problems of child abuse and exploitation, deemed it expedient to make the failure to discharge this obligation punishable under Section 21 of the Act. It was observed that such provisions have been inserted with a view to ensure that children of tender age are not abused and their childhood and youth is protected against exploitation.

[28] 2024 SCC Online SC 2611

The Court also underscored the importance of prompt and proper reporting of offences under the POCSO Act.

35. Notably, the expression '*knowledge*' is not defined in either the POCSO Act or any of the Codes/ Acts specified in Section 2(2) thereof. Even the General Clauses Act, 1897 does not define it. Therefore, a contextual meaning of the word 'knowledge', which serves the avowed purpose of the Act, would have to be ascertained.

36. Before we consider the avowed purpose of the Act and discuss as to what meaning to the phrase "*has knowledge that such an offence has been committed*" must be ascribed to achieve the object of the Act, it would be useful to notice how the expression 'knowledge' has been expounded in legal dictionaries.

37. In ***Black's Law Dictionary***[29]**,** knowledge is defined as an awareness or understanding of a fact or circumstance.

38. In ***P. Ramanatha Aiyar's Advanced Law Lexicon***[30]**,** different meanings of the word 'knowledge' as

[29] Seventh Edition, published by West Group, page 876
[30] Fourth Edition, published by LexisNexis Butterworths Wadhwa, pages 2665 -2666

found in various judicial pronouncements have been compiled. Relevant amongst them are extracted below:

(a) The certain perception of truth; belief which amounts to or results in moral certainty indubitable apprehension; information, intelligence, implying truth, proof and conviction; the act or state of knowing; clear perception of fact; that which is or may be known; acquaintance with things ascertainable; specific information; settled belief; reasonable conviction; anything which may be the subject of human instruction.

(b) Knowledge signifies a state of mental realization with bare state of conscious awareness of certain facts in which human mind remains supine or inactive.

(c) Knowledge is an awareness on the part of the person concerned indicating his state of mind. Reason to believe is another facet of the state of mind. Knowledge will be slightly on a higher plane than 'reason to believe'.

(d) The word knowledge is sometimes used also in the sense of information. It describes the state of mind. Knowledge is not satisfaction. Information not believed to be false is knowledge.

(e) Knowledge is nothing more than men's firm belief and is distinguished from 'belief' in that the latter includes things which do not make a very deep impression on the memory. The difference is ordinarily merely in degree.

(f) The meaning of the words 'belief' and 'knowledge', as defined by lexicographers, will show that there is a distinct and well-defined difference between them. 'Believe' is defined by Webster to mean to exercise trust or confidence; and by the Century dictionary, to exercise belief in; to be persuaded upon evidence, arguments, and deductions, or by other circumstances other than personal knowledge. 'Knowledge' according to Webster, is the act or state of knowing; clear perception of fact; that which is or may be known. According to the Century Dictionary it means acquaintance with things ascertained or ascertainable; specific information.

(Emphasis supplied)

39. Those extracts from ***Advanced Law Lexicon (supra)*** make it clear that the word 'knowledge' has been variously expounded in judicial pronouncements. Importantly, 'knowledge' has also been understood as an information not believed to be false. In such circumstances, and in absence of any specific definition of the word 'knowledge' in the POCSO Act or in any of the Codes/ Acts specified in Section 2(2) thereof, and also the General Clauses Act, 1897, the meaning that would best serve the purpose of the Act must be adopted.

40. The Statement of Objects and Reasons for enacting the POCSO Act are stated as under:

> "**STATEMENT OF OBJECTS AND REASONS**-
>
> Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Further, Article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation, and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.
>
> 2. The United Nations Convention on the Rights of Children, ratified by India on 11th December 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prosecution or other unlawful sexual

practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse; India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self-contained comprehensive legislation *inter alia* to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well-being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

(Emphasis supplied)

41. It is clear from above that the legislative intent was to enact a self-contained comprehensive legislation, *inter-alia*, to provide for protection of children from the offences of sexual assault, sexual harassment and pornography, with due regard for safeguarding the interest and well-being of the child at every stage of the

judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Court for speedy trial of such offences. To ensure that the provisions of the POCSO Act have overriding effect, to the extent of inconsistency with the provisions of any other law, Section 42A was inserted in the Act with effect from 03.02.2013. Further, to ensure that there is public awareness about the Act, Section 43 of the Act provides that the Central Government and every State Government, shall take all measures to ensure that –

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic

training on the matters relating to the implementation of the provisions of the Act.

42. Besides, Section 44 of the Act provides for monitoring the implementation of the provisions of the Act. According to Section 44, the National Commission for Protection of Child Rights constituted under Section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under Section 17, in addition to the functions assigned to them under that Act, were required to monitor the implementation of the provisions of the Act in such manner as may be prescribed.

43. Section 45 of the Act empowers the Central Government to make rules for carrying out the purposes of this Act. Sub-rule (2) of Section 45, *inter alia*, provides that without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters enumerated therein including "care and protection and emergency medical treatment of the child under sub-section (5) of Section 19" *(see clause (b) of sub-section (2) of Section 45)*.

44. In exercise of the power conferred by sub-section (1), read with clauses (a) to (d) of sub-section (2) of Section 45 of the POCSO Act, the Central Government notified ***"The Protection of Children from Sexual Offences Rules, 2012***[31]". Rule 4 thereof details the procedure to be followed by the Special Juvenile Police Unit (for short, SJPU) or the local police on receipt of information under sub-section (1) of Section 19 of the POCSO Act. Sub-rules (2), (3) and (4) of Rule 4 of 2012 Rules are relevant. The same are extracted below:

> "**Rule 4. Care and Protection**.—(1) …
>
> (2) Where an SGPU or the local police, as the case may be, receives information in accordance with the provisions contained in the sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable.—
>
> (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;
>
> (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;
>
> (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
>
> (d) ensure that the samples collected for the purpose of the forensic tests are sent to the forensic laboratory at the earliest;

[31] 2012 Rules

(e) inform the child and his parents or guardian or other person in whom the child has trust and confidence of the availability of support services including counseling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and his parents or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(3) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereinafter referred to as CWC) within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(4) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2000, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of his family or shared household placed in the children's home or a shelter home."

(Emphasis supplied)

45. A conjoint reading of the provisions of Section 19 of the POCSO Act and the 2012 Rules makes it clear that the information contemplated under sub-section (1) of Section 19 may be in respect of an offence committed, or attempted, or likely to be committed. Such information may be provided by any person (including the child) who has

apprehension that an offence under the Act is likely to be committed or has knowledge that such an offence has been committed. If the child could make a report, could it be said that the person under whose care and protection the child is placed would not lodge report, despite receiving complaint from that child, only because the offence has not been committed in his or her presence or to his understanding? In our view, if such an interpretation is accorded to the phrase *'has knowledge that such an offence has been committed'* the provisions of sub-sections (5) and (6) of Section 19 and of Rule 4 of the 2012 Rules would be rendered non-functional because the person in whose custody and care the child is placed, and to whom report is made, would waste time in seeking the truth when it is not his or her task to investigate. To save time and to ensure prompt reporting with a view to secure the child, the person who reports under sub-section (1) of Section 19 is protected under sub-section (7) of Section 19 from any liability, whether civil or criminal, for giving the information in good faith. Thus, in our view, if we construe the expression "*knowledge*", as used in sub-section (1), as something

which a person knows on the basis of his own senses, and exclude knowledge based on receipt of credible information, the purpose of the POCSO Act would stand defeated. This we say so because the purpose of the Act is not only to punish the offender but also to protect a child from sexual offences. Besides, it is a matter of common understanding that sexual offences are rarely committed in public gaze. These offences usually occur in the confines of secrecy. Therefore, for the purposes of this Act, when a child victim reports to a person that he or she has been subjected to an offence, or is likely to be subjected to an offence, punishable under the Act, it could safely be concluded that the person to whom such information is provided by the child victim has knowledge that such an offence has been committed or is likely to be committed.

46. There may be instances where a child may report without understanding the nature of the act to which the child has been subjected to. In such cases, and also where the information provided by the child is either not clear or confusing, a brief questioning of the child may be justified to derive a lucid picture of the nature of the information

which the child wishes to convey. However, such questioning should not be with a view to rubbish the complaint made by the child, rather it must be to understand the true and correct nature of the complaint.

47. In light of the discussion above, in our considered view, to serve the avowed purpose of the POCSO Act, the phrase "*has knowledge that such an offence has been committed*", as used in sub-section (1) of Section 19, would have to be construed as to include awareness based on the receipt of credible information with regard to commission of an offence punishable under the Act. And where such information is received directly from the victim, who is capable of communicating/ reporting/ informing, it will be deemed credible.

Whether accused respondents had knowledge and were under legal obligation to report

48. Based on the aforesaid exposition of law, we shall consider whether the accused-respondents herein, based on the information received from the victim, had knowledge that such an offence has been committed and, therefore,

were under an obligation to make a report in terms of Section 19(1) of the Act.

49. In the statement of the victim recorded under Section 164 CrPC, she stated that she was subjected to sexual assault in the month of November 2019 and her undergarments had got wet after the incident. According to her, she first informed her sister and her friend (C T), not a witness listed in the police report, and the Head Girl. The Head Girl took her to JCWL and confronted him with the information. JCWL got infuriated and attempted to assault the Head Girl. Thereafter, the Head Girl informed Linda Sema, the Headmistress of the School. Miss. Linda Sema did a verification exercise in LS's room. According to the victim, when that exercise was carried out, some sticky substance was found on her undergarments, and her private part was bruised and was reddish in colour. But Linda Sema told the victim not to make disclosure about it to anyone. Thus, from the statement of the victim, it is clear that she informed as many as four persons about the incident, namely, her own elder sister; her friend (C T); her

senior i.e. the Head Girl; and Miss. Linda Sema i.e. the Headmistress.

50. The statement of the Head Girl recorded under Section 164 CrPC corroborates the statement of the victim that she was informed about the incident by the victim and that she confronted JCWL who became aggressive and, thereafter, she informed Linda Sema. The statement of the Head Girl discloses that Linda Sema took the victim to LS's room where, in all, there were four persons, namely, N; Linda Sema; LS; and PD. There, JCWL was called and asked whether he did anything wrong. In response, JCWL flatly denied, and left the room. Linda Sema and others present in the room physically checked the victim's private part. Upon inspection, it was noticed that there was some swelling and redness and the victim was complaining of pain. A little later, the Principal ABL came back from market and called a meeting. The Head Girl was informed by PD that it was decided not to disclose the incident to anyone till the matter is resolved. Remainder of her statement is against the other accused persons regarding their efforts to downplay the incident.

51. The statement of the victim's elder sister is in line with the statement of the Head Girl. She also makes a statement that she received information that the school management tried to confirm the incident from the CCTV footage but nothing was found.

52. What is clear from above is that the information about sexual assault was provided by the victim directly to four persons, namely, her own elder sister, who is a minor; her own friend (CT), who is also a minor; the Head Girl (YS) of the institution, who is also a minor; and Miss. Linda Sema (Respondent No.1), who is alleged to be the Headmistress of the School. The material collected in the police report does not indicate that the victim imparted information of the incident to any other teacher or office bearer of the institution. Though it appears from the material collected during the course of investigation that other teachers and office bearers of the institution were aware that such an incident was reported by the victim to Miss. Linda Sema.

53. The above analysis would indicate that as per the materials collected during investigation, Miss. Linda Sema was informed by the victim, of having been subjected to

sexual assault by JCWL. However, Miss. Linda Sema, in her own wisdom, instead of reporting the matter as per the provisions of Section 19(1), or getting it reported, undertook an exercise to verify the correctness of the allegations. In that exercise, to her own understanding, she did not find any sign of sexual assault. Therefore, based on her own understanding of the situation, she took a decision not to report the matter.

54. The case taken by the accused during investigation is that there were no signs of sexual assault and therefore, instead of immediately reporting the matter, they thought it appropriate to watch the conduct of the victim and JCWL and since those two behaved normally, it was concluded that nothing had happened of the nature complained of.

55. The defence case further is that if the prosecution story about sexual assault is correct, then the medical report would have indicated some signs of sexual assault. However, the medical report discloses no sign of past sexual assault, and therefore, the decision taken not to report the matter is a bona fide decision. Hence, on this ground alone, they are not liable to be prosecuted, particularly when there

was no commission of any offence to their knowledge. Defence case also is that knowledge of a fact would only arise if there is any reason to believe in its existence. As the verification exercise did not reveal any sign of sexual assault, there was no reason to believe that such an offence has been committed. Thus, the act of not reporting the incident must not beget punishment as contemplated under Section 21 of the POCSO Act.

56. As we have held that the phrase "*has knowledge that such an offence has been committed*" is not limited to direct knowledge of the commission of the offence, but would include awareness of its commission based on direct information received from the victim, in our view, the person who received information about its commission from the victim could be said to have knowledge that such an offence has been committed. The defence that an effort was made to ascertain the truth and in absence of signs of sexual assault, report was not made is not acceptable, at this stage, to stifle a prosecution under Section 21 of the POCSO Act. More so, when the Act does not contemplate any such exercise. Besides, in our view, an investigation to

ascertain whether such an incident has actually occurred or not must take place after reporting of the incident and not before, as such an exercise would defeat the very purpose for which the POCSO Act has been enacted. Otherwise also, if investigative exercise is carried out by a person before reporting the incident, the signs of such an offence may disappear, resulting in the accused going scot-free. Prompt reporting of the incident is a *sine qua non* for effective implementation of the Act. This position is clear from the provisions of sub-section (6) of Section 19 and Section 27 of the POCSO Act.

57. Section 27 reads thus:

> "**27. Medical examination of a child**.—(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).
>
> (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
>
> (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
>
> (4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in

the presence of a woman nominated by the head of the medical institution."

58. What is significant in Section 27 is that a medical examination of the child in respect of whom any offence has been committed under this Act is required notwithstanding that the first information report or complaint is not registered for the offences under the POCSO Act. This would imply that the information regarding commission of an offence punishable under the Act has to be provided at the earliest so that necessary steps could be taken for medical examination, and for protective measures, if required.

59. In our view, the High Court and the Trial Court fell in error in holding that as there were no noticeable signs of sexual assault, there was no reason to believe that such an offence has been committed; therefore, the accused were not under a legal obligation to report.

60. However, not all teachers or office bearers of the institution need to be prosecuted for the offence punishable under Section 21 of the Act. Only those who received information directly from the victim, of her being subjected to sexual assault, could be prosecuted for failure to report. Others, who are not the ones before whom offence was

committed or to whom complaint was made, are not liable to be prosecuted merely because of their alleged presence in the room where verification was carried out. This we say so, because in absence of a direct complaint to them, and there being no signs of sexual assault according to their understanding as also the medical report, they cannot be considered liable for not reporting.

61. As noticed above, the victim had imparted information about the incident to as many as four persons, namely, her elder sister; her friend (C T); the Head Girl (YS); and Miss Linda Sema. Admittedly, the victim's sister; the victim's friend and the Head Girl were minors and therefore, a child within the meaning of section 2(b) of the POCSO Act. Sub-section (3) of Section 21 provides that provisions of sub-section (1) of Section 21 shall not apply to a child under the Act. In such circumstances, the victim's sister; victim's friend; and the Head Girl of the institution are not liable to be prosecuted for an offence punishable under Section 21 read with Section 19(1) of the POCSO Act.

62. In so far as Linda Sema (Respondent No.1) is concerned, the allegations are that she was given

information about the incident but, instead of reporting the incident, she conducted her own verification exercise and suppressed the information. Although, it is stated on behalf of Respondent No.1 that she is not the Headmistress of the institution, but the prosecution case is that she was the Headmistress of the institution. Even otherwise, she falls in the category of 'any person' who has knowledge that such an offence has been committed. In such circumstances, we are of the view that *qua* Linda Sema the police report had sufficient material to create grave suspicion against her for the purposes of framing charge of an offence punishable under Section 21 of the POCSO Act / Section 176 of IPC, and therefore, she was not entitled to be discharged.

Whether other teachers and office bearers liable

63. In so far as other teachers and office bearers of the institution are concerned, it is not the prosecution case that they were given information about the sexual assault by the victim. No doubt, the prosecution case is that they tried to suppress the information from spreading. But this allegation would be sustainable only when it is demonstrated that they had credible information about the incident. In absence of

credible information, it is natural that anyone who is part of the institution would advise not to act in a manner that tarnishes the image of the institution, particularly when the Head Mistress who received the information directly took a decision not to report based on her own understanding of the situation. Therefore, this allegation, in our view, is not sustainable *qua* those other teachers and office bearers who had no direct credible information from the victim about the incident and, admittedly, the incident had not occurred to their knowledge.

64. Besides, there is no worthwhile material on record to indicate a conspiracy to suppress the information. The material only indicates that after considering all materials including CCTV footage, a decision was taken not to report. Such a decision may be incorrect, but, *prima facie*, it was on the own understanding of the situation; therefore, those who had no direct knowledge of the incident and had not received information about it directly from the victim, cannot be considered part of the criminal conspiracy. At this stage, we may also notice that making false accusation against a child is also an offence punishable under sub-section (3) of Section

22 of the POCSO Act. Notably, JCWL is a child. Therefore, in absence of direct information from the victim, if they had erred in favour of caution, it would be travesty of justice to prosecute them for criminal conspiracy to suppress information of the commission of an offence under the POCSO Act. Besides, we do not find cogent material in the police report regarding accused persons causing evidence of the offence to disappear. Because, firstly, to their understanding and knowledge as required under Section 201 of IPC no offence was committed, and, secondly, it is not the prosecution case that they destroyed the clothes, etc to cause disappearance of the evidence. Consequently, we do not find a good reason to interfere with the order of the High Court and the Trial Court to the extent it discharges the accused persons of that accusation.

65. For all the reasons above, this appeal is partly allowed. The judgment of the High Court and the Trial Court to the extent it discharges Miss. Linda Sema (Respondent No.1) from prosecution, under Section 21 read with Section 19 (1) of the POCSO Act and Section 176 of IPC, is set aside. The

Trial Court shall now proceed against the Respondent No.1 in accordance with the law for the above offences.

66. We make it clear that any observation made by us shall not be taken as an opinion expressed on the merits of the allegations. The Trial Court shall deal with the merits of the allegations strictly in accordance with law.

67. Pending applications, if any, shall stand disposed of.

.....J.
(MANOJ MISRA)

.....J.
(K.V. VISWANATHAN)

New Delhi;
July 9, 2026