फार्म सं० 25.56(1)/Form No. 25.56(1)

आरोप पत्र/CHARGE SHEET

जिला/District South Distt. ——आरोप पत्र सं०/Charge Sheet No.—— तिथि/Date——199

थाना/Police Station Kalkaji ——प्रथम सूचना रिपोर्ट सं०/First information No. 300/97 ——दिनांक/Date 24-4-97 199

शिकायतकर्ता या सूचना देने वाले का नाम, पता एवं व्यवसाय Name, address and occupation of complainant or informant	अन्वीक्षा के लिए नहीं भेजे गए अपराधियों के नाम एवं पता, गिरफ्तार किया गया या नहीं किया गया, फरारों को भी शामिल करें (फरारों को लाल स्याही से दिखाएं) Name and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders (show absconders in red ink)	अन्वीक्षा पर भेजे गए अपराधियों के नाम एवं पते Name and addresses of accused Persons sent for Trial — अभिरक्षा में In custody	जमानत पर या मुचलके पर On bail or recognizance	सम्पति (हथियारों को सम्मिलित कर) कब, कहां किसके द्वारा पाए गए एवं क्या न्यायाधीश की सेवा में अग्रसारित किए गए Property (including weapons) found with particulars of where, when and by whom found and whether forwarded to Magistrate	साक्षियों के नाम एवं पते Name and addresses of witnesses	आरोप या सूचना—इसमें सम्बन्धित नाम एवं अपराध एवं परिस्थितियां संविस्तार से दें एवं नियमानुसार कौन सी धारा लगती है Charge or information—Name and offence and circumstances connected with it, in concise detail, and under what section of the Law charged
1	2	3	4	5	6	7
Sh. Nayan Singh S/o Late Kanchullya Singh R/o E-159 Navjivan Camp Govind Puri N. Delhi.	Chhotelal @ Chottu S/o Late Saktu R/o Mohalla Imambaksh Vill. & P.S. Ganj Dundwara Distt. Eta U.P. (P.O.)	203/2 [illegible] SC 170/01	[illegible] 3/[illegible]	मुताबिक फर्द हाजा मालखाना	मुताबिक लिस्ट संलग्न	1206 U/S 363/366/376 IPC

श्रीमान जी, संक्षेप हालात मुकदमा हाजा इस प्रकार से हैं कि दि० 24-4-97 को Sh. Nayan Singh S/o Late Kanchullya Singh [illegible] हाजिर थाना होकर ASI Jagpal Singh [illegible] बयान [illegible] कि मैं Nayan Singh S/o Late Kanchullya Singh R/o E-159 Navjivan Camp में रहता हूँ। मेरी लड़की जिसकी उम्र लगभग 15 साल की है जिसका नाम जमुना है दि० 19-4-97 को सुबह 7.30 बजे के करीब [illegible] गई लेकिन [illegible] के बाद [illegible] वापस [illegible] तलाश [illegible] की लेकिन कोई पता नहीं [illegible]

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[illegible]/Examiner........................

जानकारी के अनुसार यह मालूम पड़ा कि श्रीराम का साला [illegible] की नाम छोटे है तथा इसका [illegible] फर्जी रखी लड़की को [illegible] भगा कर शादी करा ले गए हैं। यह भी मालूम हुआ है कि छोटू पहले भी शादी-शुदा है तथा भगी लड़की नमूना जिसकी D.O.B. 15 जुलाई के [illegible] स्कूल की नौवीं कक्षा में पढ़ती है तथा साथ में [illegible] व गहने जिनकी कीमत 10,000/- रुपये है भी साथ ले गई है और [illegible] नं० 332 [illegible] है लेकिन यह स्वयं 45 साल का [illegible] है और इसकी [illegible] उम्र अभी छोटू को दे रखी है। साथ में इस लड़की से अन्य साथी भी रहते [illegible] इसी प्रकार है। [illegible] कोई नहीं आया है इन हालातों में छोटू का [illegible] से मालूम किए जा सकते हैं। अतः श्रीमानजी से प्रार्थना है कि छाया छोटू [illegible] मेरी लड़की नमूना की तलाश करने की कोशिश करें मैं आपका आभारी रहूँगा। [illegible] के लिए SHO Kalkaji। [illegible] मुकदमा [illegible] से [illegible] u/s 363 IPC का सरज़द होना पाया जाकर ASI Jagpal Singh साहब नम्बर 366 [illegible] Ct. Vijender No. 1788/SO थाना हाजा [illegible] मुकदमा दर्ज रजिस्टर कराया व असल तहरीर [illegible] ASI Jagpal Singh साहब [illegible] से लाई गई। दौरान तफ्तीश ASI साहब ने लड़की नमूना के [illegible] स्कूल का स्थानांतरण प्रमाण पत्र (T.C) की Photostat Copy प्राप्त की, लड़की [illegible] ने अदालत श्री संजय कुमार MM Patiala House N. Delhi में दि० 30-4-97 को पेश अदालत होने के सम्बन्ध में अदालत के आदेश प्राप्त हुए। जिस पर ASI Jagpal Singh साहब ने अदालत पहुँचकर लड़की नमूना d/o [illegible] का बयान u/s 164 Cr.P.C. अदालत के सामने कराया जिसकी Copy हासिल की तथा लड़की नमूना का [illegible] बयान u/s 164 Cr.P.C. अनुसार नमूना से सूरत जुर्म u/s 376 IPC का सरज़द होना पाया जाकर मुकदमा हाजा में धारा 376 IPC add की, लड़की नमूना का डाक्टरी मुलाहजा कराया। Duty Const. Suresh Chand AIIMS Hospital [illegible] मुलाहजा [illegible] slides सर्व मोहर CMO AIIMS [illegible] जिसमें कुमारी नमूना की का Visual Swab है व [illegible] Sample Seal [illegible] Doctor S. Aggarwal के हवाले है को [illegible] पर [illegible] कब्जे पुलिस में लिया, मुलजिम छोटे लाल @ छोटू [illegible] सुन्दर नगरी खोला नं० 2 का NBW हासिल किया, जिला [illegible] [illegible] की [illegible] हासिल करके गाँव ढूँढवाड़ा जिला एटा जाकर छोटेलाल @ छोटू को तलाश किया लेकिन छोटेलाल का कोई पता नहीं चल सका। इसके बाद ASI Jagpal Singh साहब ने अदालत से u/s 82/83 Cr.P.C. कार्यवाही करके [illegible] u/s 82/83 की कार्यवाही अमल में लाई लेकिन मुलजिम छोटेलाल @ छोटू [illegible] अपनी गिरफ्तारी से बचता रहा है और मुकदमा हाजा में गिरफ्तार नहीं हो सका है। केस मुकदमा हाजा में तफ्तीश [illegible] से [illegible] है मुलजिम छोटे लाल @ छोटू s/o [illegible] सुन्दर नगरी खोला नं० 2 के खिलाफ [illegible] चालान [illegible] है। [illegible] मुलजिम छोटेलाल @ छोटू [illegible] गाँव व थाना [illegible] ढूँढवाड़ा जिला एटा [illegible] सुन्दर नगरी से खोला नं० 2 में लिखा जाकर चालान u/s 363/366/376 IPC [illegible] मुलजिम छोटेलाल @ छोटू [illegible] हो चुका है जो मुकदमा हाजा में गिरफ्तार नहीं हो सका है। [illegible] छोटेलाल @ छोटू सुन्दर नगरी खोला नं० 2 का [illegible] छोटेलाल की अदम मौजूदगी में मुकदमा हाजा की [illegible] कार्यवाही [illegible]

SHO/Kalkaji
16-6-96

SC No. 136/14

FIR No. 300/97

Police Station: Kalkaji

State Vs. Chhote Lal @ Chhote.

28.10.2021

Present: Sh. Ashok Kumar, Ld. Additional PP for the State.

Accused on bail alongwith Ld. Counsel Sh. Pankaj Srivastava.

Statement of accused U/s 313 Cr.P.C. has been recorded. Accused does not wish to lead DE, hence, DE stands closed.

Final arguments heard.

Vide separate judgment of even date announced in the open court, accused Chhota Lal @ Chhote is acquitted of the offence charged for. Accused is directed to furnish bail bonds under section 437A Cr PC. Bail bonds furnished and accepted.

File be consigned to record room after due compliance.

(Gaurav Rao)
ASJ-01(POCSO), South-East
Saket Courts, New Delhi
28.10.2021

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परीक्षक/Examiner.....

IN THE COURT OF SHRI GAURAV RAO, ASJ-01 (POCSO), SOUTH-EAST DISTRICT, SAKET COURTS, NEW DELHI

CNR No. DLSE01-000608-2013
SC No. 2015/16 (Old No. 136/14)
FIR No. 300/97
Police Station: Kalkaji
U/s 363/366/376 IPC

State

Versus

Chhote Lal @ Chhote
S/o Late Sh. Saktu,
R/o Mohalla Dhanpal,
Village & PS Dudwada,
District Eta, UP.

Date of Institution	**: 24.07.2014**
Date of final argument	**: 28.10.2021**
Date of Decision	**: 28.10.2021**
Decision	**: Acquitted**

JUDGMENT

1. In brief the case of the prosecution is that on 19.04.1997 at about 07.30 am at Jhuggi No. 159, Navjeevan Camp, Govind Puri, New Delhi within the jurisdiction of PS Govind Puri accused kidnapped a minor girl Ms. J D/o Sh. N (The name of child victim, her family members and complete address are being withheld to protect their identity as per the mandate of law) aged about 14 years from the lawful guardianship of her

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parents with the intention that she will be compelled to marry him against her will and in order to seduce her to illicit intercourse and thereafter, he committed rape upon her without her consent and thus thereby he committed offences punishable under section 363/366/376 IPC.

2. Charge sheet was filed in the court and in compliance of Section 207 Cr.P.C. accused was supplied the documents. Thereafter vide order dated 18.02.2016 charge for offence under section 363/366/376 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to prove the charges against the accused, prosecution examined 13 witnesses in all. It will be worthwhile to mention that initially the charge sheet was filed on 24.12.2002 and at that time the accused was a proclaimed offender. Prosecution had at that time examined 3 witnesses u/s 299 Cr.P.C. and the file was consigned to record room vide proceedings dated 21.08.2004. Same was subsequently revived after the arrest of the accused.

Vide proceedings dated 14.02.2020 witness cited at Sl. No. 3 and 7 in the list of witnesses as well as witness cited at Sl. No. 7 in supplementary list were dropped as accused admitted certificate dated 01.05.1997 issued by Ld. MM regarding correctness of proceedings u/s 164 Cr.P.C, FIR, his potency test report and FSL report. Statement of accused u/s 313 Cr.P.C. was recorded vide proceedings dated 28.10.2021 wherein he

claimed himself to be innocent and having been falsely implicated. Accused did not lead any evidence in his defence.

Brief scrutiny of the evidence recorded in the matter is as under.

5. **PW-1 Ms. 'J' (victim)** deposed that on 19.04.1997 she was student of VIth class. She deposed that she left her house as per asking of one Chottu who was residing in her neighbourhood. She deposed that on that day he took her to his home in village. She deposed that prior to reaching his village he took her to 2/3 places but she cannot tell the name of the places. She deposed that perhaps they came to know that her father had made police complaint so they left her somewhere in a Kachahari and asked her to tell everyone that she left her home voluntarily as her parents were giving her beatings but she told the true facts to the police at that time. She deposed that she was also sent to Naari Niketan. She deposed that she does not remember the exact period but as far as she remembers she remained at his house in his village for 10/11 days. She deposed that he did not ask her to marry him but on a day he put vermilion in her parting of hairs. She deposed that he made sexual relations with her with her wishes. She voluntarily stated that at that time she was student of 6th class and was very young and as she had gone with him she was not having any free will. She deposed that in Delhi she was taken to the hospital for her medical examination. She deposed that she was also brought to the court where she made her statement before Judge. She correctly identified her signatures on her statement u/s 164 Cr.P.C recorded on 01.05.1997 by Ld. MM/ND i.e. Ex.PW1/A at point A. Thereafter, accused

was shown to her and she stated that as 18/19 years passed so she is not able to identify him as Chottu. She deposed that she studied upto 6th class in MCD school situated near to her house and thereafter took admission in government girls senior secondary school. She deposed that she does not know whether her date of birth in the school record is 10.05.1985 or not. She voluntarily stated that her father may know it. She admitted that she made statement to the police that Chottu was alluring her for about seven months stating that he loves her and wants to marry her. She deposed that she does not remember whether she had stated to the police that he told her that he will leave his wife for her but he told her so. She deposed that on the day when she left her home it may be possible that she had taken admission in 7th class after getting her result in 6th class. She deposed that she was going to her school when Chottu met her and took her with him. She deposed that he put vermilion in her partition in a temple built up in his house at village. Thereafter, Ld. APP requested that accused be shown to the witness face to face as due to passage of time he has changed physically and it may be possible that witness may identify him after seeing him face to face to which she stated that she does not want to see the accused face to face.

6. During her cross examination by Ld. counsel for accused she stated that her parents are residing in Navjeevan Camp for last 20/25 years. She stated that she was knowing Chottu since her childhood as he was residing in the house situated in front of their house. She stated that perhaps she had not told to her family members that chottu used to allure her to

marry with him. She stated that she had not made any complaint to any authority in this regard. She denied the suggestion that she had not told this fact to her family as he never allured her. She stated that on the day of incident Chottu met her near to her school. She stated that at that time 2/4 public persons were passing through there. She stated that the children were coming to the school. She stated that in the house where he put her, none from his family members were present and the persons who were present were relatives such as Tai, Mami etc. She stated that she does not remember how many rooms were in the house. She stated that she stayed there with the relatives of chottu. She denied the suggestion that she left her home voluntarily and she is deposing at the instance of her father. Thereafter, one application available in the judicial file was shown to her and she correctly identified her signatures at point A on the said application i.e. Ex.PW1/DA and stated that same pertains to her. She denied the suggestion that no force was applied by Chottu with her or that no physical relations were made with her during the entire stay. She denied the suggestion that she made the statement before the magistrate under the pressure of her father qua the physical relations. She denied the suggestion that she left her home alone and went to Haridwar. She denied the suggestion that she is deposing falsely.

7. During the recording of her testimony under section 299 Cr PC on 21.08.2004 she deposed that in the year 1997 accused (PO) used to reside in a house situated in their shop at Navjeewan Camp. She deposed that from one year he used to entice her that he was in love with her and he wanted to

marry her. She deposed that he used to say to her that he had left his wife in her love. She deposed that on 19.04.97 she had gone to attend her school. She deposed that at that time she was studying in 7th class. She deposed that in the way at about 07.00/07.30 am accused met her and asked her to go with him. She deposed that he took her to his village. She deposed that there his mother and brother met her and they appreciated the accused. She deposed that accused Chhote Lal kept her there for 9 days and during these period he committed rape upon her. She deposed that in village he forcibly married her in a temple situated inside his house. She deposed that thereafter, accused brought her to Delhi and kept her in a house, address of which she does not know. She deposed that he kept her in Delhi for about 2-3 days. She deposed that one day the landlord of the house brought her to the court and produced her in the court. She deposed that court had sent her to Naari Niketan. She deposed that on 01.05.97 she again produced in the court from Nari Niketan where her statement was recorded. She deposed that her statement under section 164 Cr PC was recorded. She deposed that she was medically examined. She correctly identified her signatures on her statement under section 164 Cr PC i.e. Ex.PW1/A at point A. She deposed that she can identify the accused, if shown to her. She deposed that at that time she was 14 years old.

8. **PW-2 Sh. NS (father of victim)** deposed that he has been residing at his aforesaid address since 1984. He deposed that Prosecutrix 'J' is his daughter. He deposed that on 19.04.1997 in the morning, his daughter

'J' left the house for her school but she did not return to home. He deposed that he searched her on his own but in vain. He deposed that later on, he reported the matter to police in writing. He deposed that his complaint is Ex. PW2/1 bearing his signature at point A. He deposed that his daughter had taken some jewelery and cash with her. He deposed that he suspected in his complaint that accused Chhotey Lal alongwith his one friend enticed his daughter. He correctly identified accused Chhotey Lal.

9. During his cross examination by Ld. Counsel for the accused he denied the suggestion that his daughter had come to his house on her own. He stated that he did not know accused Chhotey Lal prior to this incident. He denied the suggestion that his daughter had gone to Haridwar on her own and not with the accused. Thereafter, one application Ex. PW1/DA was shown to him and he admitted his signature at point A on the same. He stated that accused Chhotey was residing in the jhuggi of his brother in law (jija) in the area of Govind Puri. He denied the suggestion that he identified the accused at the behest of the IO of this case. He denied the suggestion that he is deposing falsely.

10. During the recording of his testimony under section 299 Cr PC on 21.08.2004 he deposed that Ms. JD is his daughter. He deposed that on 19.04.97 at about 07.30 am she had gone to attend her school but she did not return back. He deposed that he came to know that accused had kidnapped her and his friend Fanni Khan had also accompanied him. He deposed that

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his daughter had taken some jewelery items and cash with her. He deposed that on 24.04.97 he had gone to PS and lodged the report and his statement is Ex.2/1 which bears his signatures at point A. He deposed that at that time his daughter was studying in 7th class. He deposed that her date of birth is 10.05.85. He deposed that he handed over the photo copy of the school leaving certificate to the IO and the same is Mark A. He deposed that he can identify the accused, if shown to him.

11. **PW-3 ASI Bijender** deposed that on 24.04.1997 he was posted at P.P. Govind Puri under P.S. Kalkaji as constable. He deposed that on that day, ASI Jagpal handed over to him rukka for registration of the case. He deposed that he reached P.S. Kalkaji and got the case registered. He deposed that after registration of the case, original rukka and copy of the FIR, they made efforts to trace out the prosecutrix but in vain. He deposed that IO recorded his statement.

12. **PW3 SI Jagpal Singh (as examined u/s 299 Cr.P.C. on 21.08.2004)** deposed that on 24.04.97 he was posted as SI in PS Kalkaji, PPS Govind Puri. He deposed that on that day Sh. NS came to PS and handed over to him a written complaint Ex.PW2/1. He deposed that he made endorsement Ex.PW3/1 on the same and got the case registered. He deposed that copy of the FIR is Ex.PW 3/2. He deposed that he searched the accused and the prosecutrix. He deposed that on 29.04.97 he received a notice from the court. He deposed that on 30.05.97 he came to the court. He deposed that the

prosecutrix was produced in the court. He deposed that she was sent to Naari Niketan by the court. He deposed that on 01.05.97 she was produced in the court from Nari Niketan and on permission of the court he recorded her statement under section 161 Cr PC. He deposed that he moved an application for recording of her statement under section 164 Cr PC and the same is Ex.PW 3/3. He deposed that he identified the prosecutrix vide his endorsement Ex.PW3/4. He deposed that he got her medically examined. He deposed that doctor on duty handed over to him a sealed pullanda and a sample seal which were taken into possession vide memo Ex.PW3/5. He deposed that he deposited the pullandas in the malkhana. He deposed that he searched for the accused but he was not traceable. He deposed that he obtained NBWs of accused. He deposed that he was got declared PO and the challan was filed.

13. **PW4 ASI Jagat Singh** deposed that in the year 2013 he was posted as HC at P.S. Dabri. He deposed that during the course of his posting he came to know that accused Chotte Lal @ Chhote has been declared PO in the present case vide order dated 21.05.2002 passed by Sh. Praveen Kumar, Ld. MM, Patiala House Courts, Delhi. He correctly identified the accused. He deposed that on the basis of secret information in order to apprehend accused Chotte Lal a raiding party was constituted, comprising him, Ct. Rajiv and Ct. Ashish and on 14.09.2013 they left Delhi to reach the native village of accused Chotte Lal, located at Eta (Uttar Pradesh). He deposed that on reaching there on 15.09.2013, accused Chotte Lal was arrested and intimation regarding his arrest was given to his wife and thereafter vide DD

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no. 4 B dated 15.09.2013, DO P.S Kalkaji was intimated regarding the arrest of PO Chotte Lal. He deposed that accused Chotte Lal was produced before the concerned court from there he was sent to J/C. He deposed that in this regard Kalandara U/s 41.1(c) Cr.P.C was prepared and the same is Ex. PW 4/1 bearing his signature at point A and his arrival entry at P.S. Dabri after the arrest of accused is Ex. PW 4/2 and arrest memo regarding arrest of accused was prepared and the same is Ex. PW 4/3 bearing his signature at point A. He correctly identified accused Chotte Lal.

14. **PW-5 HC Kanhaiya Lal** deposed that on 24.09.2013, he was posted as constable in PS Kalkaji and had joined the investigation of the present case with IO/SI Samar Pal, HC Prem Chand and the accused Chhote Lal @ Chhote. He correctly identified the accused. He deposed that the IO had directed him to get medically examined the accused at AIIMS Hospital. He deposed that accordingly, he alongwith HC Prem Chand took the accused to AIIMS Hospital where his medical examination and potency test was conducted. He deposed that the doctor handed over MLC of the accused alongwith blood sample in sealed condition and sample seal. He deposed that thereafter, the accused was brought to PS where the accused was produced to IO and the MLC and blood sample in sealed condition alongwith sample seal were handed over to the IO which was taken into police possession. He deposed that his statement was recorded by the IO.

15. **PW-6 HC Sheikh Riyaz** deposed that on 29.10.2013, he was

posted as constable in PS Kalkaji and on that day at about 10.00 am on the direction of the IO, MHCM handed over to him two sealed parcels alongwith forwarding letter vide RC no. 125/13 with the direction to submit the same in FSL. He deposed that accordingly, he took both the parcels to FSL and deposited the same in FSL Rohini in sealed condition against due acknowledgment and then returned back to PS. He deposed that he returned the road certificate and acknowledgment to MHCM. He deposed that till the exhibits remained in his possession the same were not tampered with. He deposed that his statement was recorded in this regard by the IO. He deposed that the acknowledgment to this effect is Ex.PW6/A bearing his signature at point A.

16. **PW-7 ASI Prem Chand** deposed that on 24.09.2013, he was posted as head constable in PS Kalkaji and on the direction of IO, he alongwith Ct. Kanhaiya reached at Saket Court where accused Chote Lal was produced and with the permission of the court he was taken for his medical examination at AIIMS Hospital. He correctly identified the accused. He deposed that accordingly, after medical examination, the doctor handed over to him the MLC, potency test report and one sealed parcel stated to be containing blood sample in gauze to Ct. Kanhaiya and then the accused was brought to Saket Court. He deposed that accused was produced before the concerned court by the IO where he was remanded to JC. He deposed that Ct. Kanhaiya handed over the MLC/potency test report to the IO and the same was taken into police possession vide memo Ex.PW7/A bearing his signature at point A. He deposed

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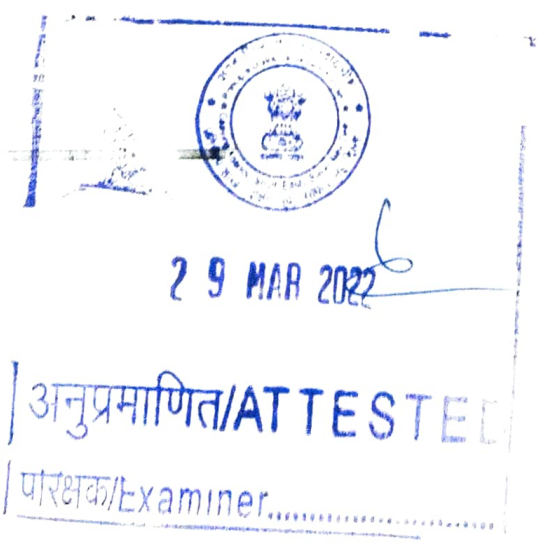
that they returned back to the PS and his statement was recorded by the IO.

17. **PW-8 HC Mahesh Chauhan** deposed that on 19.09.2013, he was posted in PS Kalkaji and had joined investigation of the present case with IO/SI Samar Pal and they reached Saket Court where accused Chotte Lal @ Chotte was produced from JC on production warrants and thereafter, IO moved application for permission of interrogation and arrest of accused which was allowed and custody of the accused was handed over to him. He deposed that accused Chotte Lal was interrogated who made disclosure statement about his involvement in the present case and thereafter he was arrested in the present case. He deposed that the arrest memo of accused is Ex.PW8/A bearing his signature at point A. He correctly identified the accused. He deposed that thereafter, accused was produced before concerned court where he was remanded to JC. He deposed that his statement was recorded by the IO.

18. During his cross examination by Ld. Counsel for accused he stated that he had merely accompanied the IO and he does not know the contents of the application which was moved seeking his custody. He stated that he does not know whether the said application is on record or not. He stated that his statement was recorded at the PS. He stated that all the documents were prepared by the IO at the PS. He denied the suggestion that he is deposing falsely at the instance of IO.

19. **PW-9 Inspector Samar Pal** deposed that on 15.09.2013, he was posted as SI in PS Kalkaji and on that day DD No. 4B was entrusted to him

regarding arrest of accused Chhote Lal who was wanted in the present case and he was declared P.O by the concerned court, the copy of the DD is Ex.PW9/A bearing his signatures at point A. He deposed that he had perused the record of the present case and moved application for production warrants of accused in order to arrest him and conduct investigation. He deposed that copy of his application to this effect is Ex.PW9/B and accordingly, production warrants were issued for 19.09.2013. He deposed that on 19.09.2013, accused Chhote Lal was produced from JC and he moved application for his interrogation and arrest which was allowed and custody of accused was handed over to him. He deposed that he had interrogated the accused out of the court room and thereafter, arrested him in the present case. He deposed that his application for permission for interrogation and arrest is Ex.PW9/C bearing his signatures at point A while the arrest memo of the accused in the present case is Ex.PW8/A bearing his signatures at point B. He deposed that he produced the accused before the concerned court where he was remanded to JC. He deposed that on 24.09.2013 with the permission of the court he took the accused for his medical examination and potency test to AIIMS Hospital. He deposed that accordingly, his potency test was conducted and he obtained his report to the said effect which is Ex.P-3 alongwith blood sample. He deposed that the blood sample was taken into police possession vide memo Ex.PW7/A bearing his signatures at point B. He deposed that he had sent HC Prem Chand to collect the document of the age of the accused but no document could be found at his native place/village. He deposed that accordingly, he moved an application before the concerned court for ossification test of the accused. He deposed that



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thereafter, he was taken to Safdarjung Hospital where his ossification test was conducted. He deposed that he had obtained the age estimation report alongwith X-ray report which are Ex.PW9/D (Colly). He deposed that he got deposited the exhibits in FSL through Ct. Md. Riyaz. He deposed that he had recorded the statement of the witnesses, collected the copy of the P.O. kalandara of the accused, recorded the statement of HC Jagat Singh and thereafter, filed the charge sheet in the court with request to club the kalandara with the present file. He deposed that he had also collected photocopy of the charge sheet filed against the accused as P.O by previous IO and got annexed the same with present file.

20. During his cross examination by Ld. Counsel for accused he stated that he had received information regarding arrest of accused on 15.09.2013 vide DD No. 4B. He stated that he had not got the accused identified through the complainant at the time when he formally arrested him in the present case. He stated that he had recorded the statement of the witnesses at PS Kalkaji. He stated that he had taken the accused for his medical examination on 24.09.2013 during lunch time. He stated that he does not remember the exact time today due to lapse of time. He stated that they remained in the hospital for about 2-3 hours and they came back to PS after getting the accused lodged in jail. He denied the suggestion that he is deposing falsely. He denied the suggestion that accused has been falsely implicated.

21. **PW-10 ASI Sitaram** deposed that on 29.10.2013 he was posted as

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Head Constable in PS Kalkaji and working as MHCM. He deposed that on that day on the direction of SI Samar Pal/IO of the present case he handed over sealed parcels pertaining to the present case to Constable Sheikh Riyaz vide RC no. 125/13 with the directions to deposit the same in FSL with forwarding letter. He deposed that constable Sheikh Riyaz took the sealed parcels to FSL and deposited the same in FSL and returned him road certificate and acknowledgement regarding acceptance of the case property i.e. Ex. PW10/A.

22. During his cross examination by Ld. Counsel for accused he denied the suggestion that he is deposing falsely. He denied the suggestion that he did not take any exhibits from the IO nor any were deposited with the FSL. He denied the suggestion that IO obtained his signatures on blank papers at the PS.

23. **PW-11 Sh. Rajbir Singh, Medical Record Technician, AIIMS Hospital** deposed that he is posted as medical record technician since 1995 in AIIMS Hospital and on receipt of the summon in respect of MLC No. 33872/97 dated 02.05.1997 of victim girl 'JD' D/o Sh. 'NS', aged about 14 years, he has been authorised to make deposition and produce the official copy of the MLC. He deposed that his authorisation letter is Ex.PW11/A bearing his signatures at point A and signatures of competent authority at point B. He deposed that he has verified the record and also seen the abovementioned MLC of the victim girl. He deposed that as per MLC the victim girl was examined by Dr. Sunita Aggarwal, Senior Resident, Department of Gynae & Obs. He

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deposed that the MLC alongwith other medical treatment documents are Ex.PW11/B (colly) bearing her signature at point A while the MLC card is Ex.PW11/C which also bears her signature at point A. He deposed that Dr. Sunita Aggarwal has joined the services of AIIMS Hospital on 01.07.1995 and left the hospital on 30.06.1998 and her present address is not known to them. He deposed that as per record the victim girl was brought by Ct. Suresh Kumar with alleged history of sexual assault. He deposed that he identified the signatures of Dr. Sunita Aggarwal on the basis of her specimen signatures available in their record. He deposed that however, the medical record of MLCs have been destroyed vide order dated 24.05.2018 upto December 2007. He deposed that copy of the said order is Ex. PW11/D.

24. **PW-12 SI Sheel Kumar** deposed that on 06.02.2017 he was posted in PS Kalkaji and on the direction of SHO, MHCM handed over to him FSL report of the present case with the direction to file the same in court. He deposed that accordingly, he had filed the FSL report through supplementary charge sheet in the court alongwith list of witnesses.

Findings

25. I have heard the arguments advanced at bar by the Ld. Defence Counsel as also learned Addl. PP for the State, carefully considered & examined the evidence recorded in the matter and perused the documents placed on record by the prosecution in this case.

26. After hearing the rival contentions raised at bar as well as on careful scrutiny of the material on record, I am of the considered opinion that the prosecution has miserably failed to bring home the guilt against the accused.

Victim's testimony is absolutely shaky and unreliable

27. Though prosecution examined victim Ms. 'J' i.e. its star/material witness as PW1 who claimed that she was kidnapped and raped by the accused, however, her testimony does not inspire confidence, is full of loopholes and contradictions. Except for her sole testimony, which is far from being sterling, there is no material on record to bring home the guilt against the accused. There is no corroboration in the form of testimony of any eye witness nor there is any circumstantial or forensic or medical evidence on record which could render the victim's version believable and trustworthy.

28. The victim since the inception i.e. during the investigation as well as during the trial kept on shifting her stand and made contrary statements rendering it absolutely unsafe to believe her or to base any conviction upon the same. In fact the most important reason for giving benefit of doubt to the accused and acquitting him is the following statement

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of the victim made on 19.09.2016 during her examination as PW1:-

"I can identify accused, if shown to me.
At this stage, Chottu is shown to the witness through video link and after seeing him, the witness stated that as 18/19 years passed so she is not able to identify him as Chottu."

29. Hence the victim failed to identify the accused as the perpetrator of crime creating immense doubt upon the prosecution case. Though Ld. Addl. PP for the State requested that the accused be shown to the witness, face to face, however the witness refused to look at the accused. The relevant portion of the testimony in this regard is reproduced hereunder:-

"At this stage, Ld. APP requests that accused be shown to the witness face to face as due to passage of time he has changed physically and it may be possible that witness may identify him after seeing him face to face. The witness states that she does not want to see the accused face to face."

30. To establish the guilt of the accused it was incumbent upon the prosecution to establish his identity through the victim but as discussed above the victim failed to identify him thus rendering the prosecution story highly doubtful. In the absence of the identification by the victim there shall always be grave doubts that it was the accused who kidnapped and raped her.

31. Apart from failing to identify the accused, victim's admission qua document Ex. PW1/DA created more doubts as regards the actual factual matrix of the case. During her cross-examination one application dated 28.04.1997 was shown to the victim and she identified her signatures on the said application i.e. Ex. PW1/DA and claimed that same pertains to her. The

relevant portion of the application dated 28.04.1997 is reproduced hereunder:-

> *"1. That I am a young girl of about 17 years of age and my date of birth is 10.05.1980.*
> *2. That the applicant voluntarily left her parental house on 19.4.97 because her parents used to harass her and beat her. The applicant left her house alone and went to Haradwar (Haridwar) at her own.*
> *3. That the applicant remained in Haridwar all alone from 19.4.97 to 27.4.97 and came back to Delhi on 28.4.97.*
> *4. That after reaching Delhi, the applicant has not visited her house as she was scared of her parents.*
> *5. That the applicant came to know from her friend that the parents of the applicant had filed a case against one Shri Chhotu stating that Chhotu and myself run away from our house. The applicant does not know who is Chhotu and she has never contacted him (Chhotu).*
> *6. That the applicant left away alone from her house and there was no other person with her."*

32. Not only the victim but her father (PW2) also identified his signatures on the said application at point B. This application was got drafted through a counsel and filed in the court on 29.04.1997. If the said document/application is to be believed then victim had left the house on her own, on account of beatings given by her parents, she went to Haridwar and came back to Delhi. According to the application, she denied that she had run away with Chotu and rather claimed that she does not know who is Chotu and she has never contacted him. This application is itself sufficient to dismiss the prosecution case more so when during their cross-examination the victim as well as her father did not even once claim that the application was forcefully got written from them or that their signatures were forcefully

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obtained on the same. It was also not their case that the contents of the application are false or that same were not read over to them. When the victim/applicant claimed that she does not know Chhotu and as discussed above failed to identify the accused in the court as well as refused to look at him face to face, it shall be absolutely unsafe to believe the prosecution story that it was the accused who had kidnapped and raped the victim.

33. No doubt that after the above application was filed, notice was issued to the IO and the victim's statement u/s 164 Cr.P.C. i.e. Ex. PW1/A was recorded on 01.05.1997 wherein she claimed that she was taken by Chotu, who married her at his house and had sexual intercourse with him, however, the damage had already been done. Most importantly the identity of this Chhotu i.e. he being the accused shall always remain doubtful in view of Ex. PW1/DA and the victim's testimony wherein she failed to identify him.

34. Apart from the above there are other loopholes, contradictions in the victim's statement which further render her version highly doubtful. During her testimony she had claimed that accused had taken her to 2-3 places, before taking her to his village, but she failed to give the name of those places. Moreover she had not claimed in her statement Ex. PW1/A or the one recorded on 21.08.2004 u/s 299 Cr.P.C. that accused had taken her to 2-3 places before taking her to his village.

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35. During her deposition she had also claimed that "*perhaps they came to know that my father had made police complaint so they left me somewhere in Kachahari.....*". Who are this "they" has not been explained either by the victim or the prosecution. As against this the victim during her statement Ex. PW1/A did not claim that the accused or "they" had left her at the Kachahari. Moreover during her testimony u/s 299 Cr.P.C. she claimed that one day landlord of the house at Delhi brought her and produced her in the court. Who this landlord is has not been explained by the prosecution or the victim. In fact the victim did not claim during her testimony, as recorded on 19.09.2016, that she had stayed at Delhi also. No address of Delhi, where she allegedly stayed was provided. Prosecution ought to have explained these facts, brought on record the particulars of the Delhi address and joined the landlord in the investigation as well as cited him as a witness. Not doing so creates further doubts upon the prosecution case.

36. During her cross-examination by Ld. Defence Counsel, the victim claimed that the house where the accused had put her, none of his family members were present and the persons who were present were relatives such as Tai, Mami etc. As against this, during her examination u/s 299 Cr.P.C. she had claimed that the mother and brother of the accused met her at the village, where the accused had taken & kept her and they appreciated the accused. These are material improvements, extremely

inconsistent statements which further renders the victim's version highly unreliable.

37. It has been held in ***Santosh Prasad @ Santosh Kumar Vs. State of Bihar dated 14.02.2020 Criminal Appeal no. 264 of 2020 arising out of SLP (Criminal) no. 3780/18*** as under:-

5.4.2. In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a "sterling witness". In paragraph 22, it is observed and held as under:

> *"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should*

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remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.4.3 In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable."

38. In ***Suraj Mal Vs State (Delhi Admn.) AIR 1979 S.C. 1408*** it has been observed by the Hon'ble Supreme Court that "Where witness makes two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness." Similar view was also taken in ***Madari @ Dhiraj & Ors. v. State of Chhattisgarh 2004(1) C.C. Cases 487***.

39. In ***Namdeo Daulata Dhavagude and others Vs. State of Maharashtra AIR 1977 SC 381*** it was held that where the story narrated by

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the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused. If one integral part of the story put forth by a witness was not believable, then entire case fails. Reliance may also be placed upon ***Ashok Narang Vs. State 2012 (2) LRC 287 (Del)***.

10. The testimony of victim/PW1 is riddled with inconsistencies, improbabilities and having material improvements rendering the same unworthy of any credence or reliability. In ***Raju v. State of Madhya Pradesh (2008) 15 SCC 133***, the Hon'ble Supreme Court has held that testimony of the victim of rape cannot be presumed to be a gospel truth and observed that false allegations of rape can cause equal distress, humiliation and damage to the accused as well. The Hon'ble Apex Court echoed the sentiments as under:-

> *"11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."*

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41. In *Tameezuddin @Tammu vs State of (NCT) of Delhi (2009) 15 SCC 566* it was held as under:

> *"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable."*

42. In *Narender Kumar Vs. State (NCT of Delhi) (2012) 7 SCC 171* the Hon'ble Apex Court held as under:-

> *"21.....However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).*
>
> *22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)*
>
> *23. In Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010) 14 SCC 534, this Court while dealing with the issue held:*
>
> *The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed.*
>
> *29 However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond*

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reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: Tukaram & Anr. v. The State of Maharashtra,, AIR 1979 SC 185; and Uday v. State of Karnataka, AIR 2003 SC 1639).

30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected."

43. Though during her statement Ex. PW1/A she had claimed that accused made sexual intercourse with her at his residence in his village against her wishes, however, during her deposition she claimed that the sexual relationship were made with her wishes. Though she qualified the same by claiming that she was very young and was not having any free will, however, it is to be seen that according to the victim her date of birth is 10.05.1980 and she was around 17 years old at the relevant time. Though the victim claimed her age to be 17 years, however, prosecution has not brought on record any document which could convincingly prove the exact age of the victim or that she was indeed 17 years old. No birth certificate or municipal record or hospital record was ever brought on record to prove/establish the exact age of the victim. The only document relied upon by the prosecution to establish the age of the victim is Mark A. Mark A is a photocopy of her

school leaving certificate which was got identified through the victim's father during his examination u/s 299 Cr.P.C. Apart from getting it identified as Mark A, during the testimony of PW2, prosecution did not bother to examine any witness from the school or to produce the original of the said document. According to the said document the victim's date of birth is 10.05.1985, as against this in Ex. PW1/DA victim and her father had claimed her date of birth is to be 10.05.1980 while also claiming that she is about 17 years old. As against these two documents, in complaint Ex. PW2/1 the victim's age is mentioned as 15 years. Furthermore in Ex. PW1/A she had claimed her age to be 14 years. All this creates grave doubts as regards the exact age of the victim.

44. Prosecution also failed to explain as to on what basis the victim's date of birth was entered as 10.05.1985 in Mark A. According to Mark A victim had taken admission in 6th class in the said school in the year 1996 and she left the same in 1997. No record of the previous/primary school attended by the victim was ever brought on record by the prosecution. Victim must have definitely studied in other schools but for the reasons best known to it, the prosecution did not produce any such record from any such school. This is despite the fact that during her testimony the victim had claimed that she had studied upto 5th class in a MCD school near her house. Considering the nature of allegations and the ambiguity as regards the date of birth of the victim, non production of any authentic document on the basis

of which date of birth of the victim was entered as 10.05.1985 in Mark A and non production of previous school records renders the prosecution case as regards the age of the victim shaky and untrustworthy. Prosecution could not convincingly prove that she was indeed less than 18 years of age.

45. In ***State (Govt. of NCT of Delhi) v. Shailesh Kumar (2019) 260 DLT 344 (DB)*** the Hon'ble High Court of Delhi has held:

> *".....23. In the present case, the father of the victim, PW-5 deposed that he did not know the date of birth of his daughter as he was illiterate, nor was he in a position to state her current age. He stated that he got the victim admitted in the school in class-I in the village and at that time, she was about 3-4 years old. In his cross-examination, PW-5 admitted that he did not have any proof regarding his daughter's date of birth. It is therefore clear that the father of the victim had not submitted any document to the school at the time of getting his daughter admitted in class-I, on 12.08.2005, to establish her date of birth as 10.01.2000, as recorded by the school. He was candid enough to state that being illiterate, he did not know the date of birth of the victim and that she was between 3-4 years old when she was admitted in class-I.*
>
> *24. In the absence of any primary material based on which the age of the victim was recorded in the school register, it is not possible to accept her date of birth as 10.01.2000. Moreover, even the teacher from the school in question, who had appeared as PW-3, had stated that he had given a handwritten document to the police on 17.12.2014 (Ex.PW3/C), wherein he had recorded that when a child attains the age of 5+ years, the parents approach the school for their admission. If one goes by the said statement, then the testimony of the victim's father to the effect that he had got her admitted in class-I when she was about 3-4 years, cannot be accepted, as it is premised on mere guess work.*
>
> *25. In Brij Mohan Singh (supra), the Supreme Court observed that in actual life, it frequently happens that persons give false age of a child at the time of admission in the school so that later in life, he would have an advantage when seeking public service for which the minimum age for eligibility is often prescribed. In Vishu v. State of Maharashtra reported as (2006) 1 SCC 283, while dealing with a similar issue, the Supreme Court had yet again observed that very often parents furnish incorrect date of birth to the school authorities*

to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeachable documents.

.....27. We are of the opinion that in the absence of any material document based on which the entry of the date of birth of the victim has been made in the school register, mere production of the school register that records inter alia her date of birth as 10.01.2000, would not suffice. The victim was admitted in the school by her father, an illiterate person, who himself admits that he did not have any proof regarding the date of birth of his daughter. The facts mentioned above show that the prosecution has not been able to discharge the burden cast on it to prove that the age of the victim was below 18 years at the time of the alleged commission of offence and that being the only ground taken in this appeal to assail the impugned judgment, we do not find any reason to interfere in the subsequent findings returned by the trial court rejecting the prosecution version that on 25.09.2014, the respondent had kidnapped the victim with the intention to compel her to marry him against her will and he had committed penetrative sexual assault upon her and raped her. Once it is held that the girl was over 18 years of age and competent to give her consent, the question of the respondent raping her does not arise……..".

46. In the ***State (GNCT of Delhi) v. Mohd. Irfan (2017) 242 DLT 237 (DB)*** the Hon'ble High Court of Delhi held:

".....13. At the same time, it has been held in Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604 (paragraph 15) that an entry relating to date of birth made in a school register is not of much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. [See also State (Govt. of NCT of Delhi) v. Charan Singh, 2017 SCC OnLine Del 8186 (paragraphs 16-21)]

14. We may also notice a judgment of the Punjab and Haryana High Court in Jaipal Singh v. State of Haryana, (2003) 2 RCR (Cri) 310 (DB): 2002 SCC OnLine P&H 598 (paragraphs 11 and 12) wherein the Court had disbelieved the school certificate stating the age of the prosecutrix to be 15 years which was conflicting with the age mentioned in the FIR, MLC and as stated by the prosecutrix herself and her father and the entry was not based on any birth certificate but upon a statement from her father and held the prosecutrix to be a major on the date of the incident."

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47. Age of the victim was a crucial aspect, which the prosecution failed to convincingly prove. Allegations of kidnapping could not be substantiated by the prosecution either. According to the complaint Ex. PW2/1 her father had claimed that the victim had taken cash as well as jewellery worth Rs. 10,000/- at the time when she had went away from the house on 19.04.1997. Victim made no such claim and the prosecution case is absolutely silent as regards recovery of any cash or jewellery articles. Nonetheless this itself creates doubts upon the prosecution case of kidnapping as it somehow point towards the victim's preparation, intention to leave the house. Though the victim claimed that she had left the house on the asking of the accused and he had been alluring her claiming that he loves her and wants to marry her, however, during her cross-examination she stated "*Perhaps I had not told to my family members that chottu used to allure me to marry with him. I had not made any complaint to any authority in this regard*". If indeed the accused was alluring her she could have and rather should have complained to her parents. Her not doing so coupled with the contents of Ex. PW2/1 dismisses the prosecution case of kidnapping altogether. This is more so when the victim did not claim during her testimony as recorded on 19.09.2016 or during her examination u/s 299 Cr.P.C. on 21.08.2004 or Ex. PW1/A that the accused had forcefully taken her with him. It is not her case nor of the prosecution that the accused had taken the victim against her will or against her consent/wish. It is not her case that she had resisted the so claimed taking of her by the accused or raised hue and cry or sought help.

According to the victim she was taken to the number of places but not even once she sought anyone/public's help or raised any hue & cry, which in my opinion she would have definitely done so had she been forcibly taken by the accused or kidnapped by the accused. Considering the age of the victim no case of kidnapping u/s 363 or 366 IPC is made out against the accused.

48. It has been held in ***Thokorlal D. Vadgama Vs. The State of Gujarat 1973 AIR 2313*** as under:-

The statutory language suggests that if the minor leaves her parental home, completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in s. 361, I.P.C. *But if the, 'guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed: with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be, difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating an encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him.*

We may however briefly advert to the decision in S. Varadaraja v. State of Madras (1965) 1 SCR 243, on which Shri Dhebar placed principal reliance, Shri Dhebar relied on the following passage at page 245 of the report :-
"It will thus be, seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what, we have to find out is whether the part played by the appellant amounts to "taking', out of the keeping of the lawful guardian of 'Savitri, We have no doubt that though Savitri had been left by S. Natarajan at the house of- his relative K. Natarajan, she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K.

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Examiner

Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant".

From this passage, Shri Dhebar tried to infer that the case before us is similar to that case and, therefore, Mohini herself went to the appellant and the appellant had absolutely no involvement in Mohini's leaving her parents' home. Now the relevant test laid down in the case cited is to be found at page 248 :-

"It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning ,the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what, she was doing voluntarily joins the accused person. In such a case we do not think theft the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the gurdian.

49. In the case at hand there are serious doubts that the accused had taken the victim with him, in view of Ex. PW1/DA. Nonetheless in ***Balasahib Vs. The State of Maharashtra 1994 CRLJ 3044*** the court was confronted with the situation where it was found that minor victim had accompanied the accused voluntarily stayed with him in the very presence of his family members and there was consent on the part of the victim. The Hon'ble Maharashtra High Court quoted with approval an extract from the book of Ratan Lal and Dhiraj Lal on the law of crimes to the effect :– " *A minor may not be competent to give her consent to her taking but a minor is*

certainly competent to leave the protection of her guardian of his or her own accord. Therefore, it is immaterial whether the girl alleged to be kidnapped was a minor or not in so far as her leaving the house of her own accord is concerned. If a minor girl leaves her home without any persuasion or inducement held out by the accused so that she has got fairly away from home and then goes to him, his not restoring her to her home is no infringement of the law. To sustain a conviction, the prosecution has to prove that the accused had some active part in the minor leaving her guardian's house. The offence under Section 363 is not a continuing one and it really consists in the initial act of taking her from the keeping of her lawful guardian."

50. In ***Rameshwar Giri Vs. State 2014 SCC Online Del 3286*** it was held as under:-

15. As noted supra, the victim was aged 15 years and 9 months on the date of the offence meaning thereby that she was at the age of discretion; she was studying in the 7th standard and as such it cannot be said that she did not know the consequence of her act. More so, this is not a case where there was any persuasion on the part of the accused which can amount to a „taking" or „enticing" the victim as is the language contained in Section 361 of the IPC. Version of PW-5 is coherent in this regard. She has stated that while she was standing near the public park, the accused invited her to accompany her for sightseeing and she accordingly did so. In these circumstances, it cannot be said that the accused was guilty of taking the victim out of the keeping of her lawful guardianship; she was admittedly standing at the public park when he invited her to join him for sightseeing. There was no active persuasion on the part of the accused; it was an invitation extended by him to the girl which was accepted by her.

16 As held by the Supreme Court in AIR 1965 SC 942 S. Varadarajan Vs. State

such an act would not tantamount to „taking". The observations of the Apex Court in this context are as under:-

"The offence of "kidnapping from lawful guardianship" is defined thus in the first paragraph of s. 361 of the Indian Penal code :

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

8. It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping..... .....

11. It must, however, be borne in mind that there is a distinction between "taking : and allowing a minor to accompany a person. The two expression are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alieged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

12. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking". "

17. This version is further fortified by the fact that the victim was admittedly

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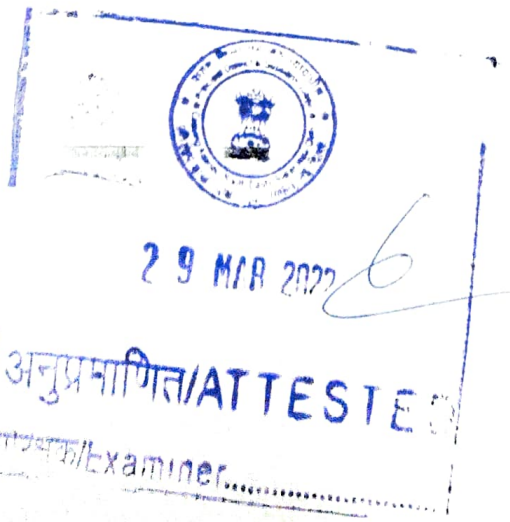
known to the accused as he was residing in the same street since the last 2 years. The fact that the accused was known to the victim is also admitted by both PW-6 and PW-7 i.e. the mother and father of the victim. PW-5 had accompanied the appellant for sightseeing; they did sightseeing for one hour in Delhi; then by a TSR, the appellant took her to the railway station; people were gathered there to purchase tickets. Tickets were purchased by the appellant from the railway station from where he took her to Bihar which would be a more than one day journey. The victim stayed in the village of the appellant 2-3 days. She was never threatened by the persons living in that house. 5-6 ladies were also present. Other persons from the village also came to meet her. The MLC of the victim also shows that there was no injury upon her person. This corroborates the argument of the learned counsel for the appellant that the victim was not subjected to any force.

18. This Court thus necessarily draws the conclusion that the victim was a consenting party with the accused. The offence of rape as defined under Section 375 of the IPC (unamended) is not made out as for the purposes of rape to qualify as a minor, the victim should be less than 16 years. As noted supra, the victim was aged 15 years & 9 months on the date of the offence i.e. just about three months short of the age of 16. Being in the age of discretion; this Court is of the view that she was conscious of her act in accompanying the accused and it cannot be said to be an act of force. The accused is entitled to an acquittal for the offence under Section 376 of the IPC. He is accordingly acquitted of the said charge.

19. Even for the offence under Section 363/366 of the IPC since the victim had accompanied the appellant for sightseeing on her own and having met him at a public place, the ingredients of Sections 363 & 366 which necessarily entail a "taking" or "enticing from the lawful guardianship" is not met."

51. In ***Ranbir @ Kala Vs. State CRL. MC. 1746/2014 dated 10.07.2015*** the Hon'ble High Court of Delhi quashed FIR registered u/s 363 IPC and observed as under:-

"Full-Bench of this Court in Court on Its Own Motion (Lajja Devi) & Ors. v. State, 2012 (3) JCC 148 has authoritatively held as under:-
"If the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted and Court will be within its power to quash the proceedings under Section 363 or 376 IPC. Here again no straight jacket



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formula can be applied. The Court has to be cautious, for the girl has right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. have to be taken into consideration."

52. In ***Kuldeep Tyagi Vs. State NCT of Delhi, 2013 (135) DRJ 613***, the Hon'ble High Court of Delhi held as under :

"Penal Code, 1860 Section 376 - Rape - Consent - On the verge of attaining majority - Sufficient intelligence to understand the significance and moral quality of the act she was consenting to - Friendship with the accused and had no grievance against this conduct and behavior at any time- She accompanied the accused with his friends to different places at Shimla, Nainital and Mussorie – She never informed her parents and kept it a secret – She had physical relations with the accused at different places with her consent without any resistance - She never lodged any complaint against the accused for cheating her, never insisted the accused to marry her and never informed her parents about her friendship with the accused and his promise to marry – Case of voluntary consent - Conviction set aside - Appeal allowed.

53. In ***Vijay Kumar Vs. State of NCT of Delhi, CRL.A. 325/2013 decided on 14.08.2015***, it was held that when the victim accompanied the accused willingly, did not raise any alarm, consensually had sexual intercourse with him, lived in his native place for 8–9 days, had accompanied the accused with her consent, the accused was acquitted of the charge of the offence of rape.

54. Reliance may also be placed upon ***Shahanwaj Alam Vs. State (GNCT of Delhi) CRL.A 556/2013 dated 08.09.2015,Vikas Kumar Vs. State CRL. A 1000/13 dated 18.05.2016*** and ***Mehmood @ Mudia Vs. State 1998 Crl. L.J. 2408***. The exact age of the victim being uncertain and her

own claim that she was 17 years old in Ex. PW1/DA coupled with other facts and circumstances points towards the direction that in case she had gone with the accused, which is otherwise highly doubtful, still she had attained the age of discretion and hence she knew exactly what she was doing, she knew the repercussions which could follow.

55. Prosecution case may be true but criminal jurisprudence says that prosecution case must be true. There is a long distance between "may be true" and "must be true". It is cardinal principle of criminal jurisprudence that an accused is presumed to be innocent. The burden lies on the prosecution to prove the guilt of accused beyond reasonable doubt. The prosecution is under a legal obligation to prove each and every ingredient of offence beyond any doubt, unless otherwise so provided by any statute. This general burden never shifts, it always rests on the prosecution. In a criminal trial however intriguing may be the facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. Reliance may be placed upon the law laid down in ***Hansraj Vs. State of Haryana (2004) 12 SCC 257, Daya Ram v. State of Haryana, 1997(1) R.C.R.(Criminal) 662), Partap v. State of U.P. (SC) 1976 A.I.R. (SC) 966, Vijayee Singh v. State of U.P. (SC) 1990(3) S.C.C. 190, Nasir Sikander Shaikh v. State of Maharashtra (SC) 2005 Cri.L.J. 2621*** and ***Jarnail Singh v. State of Punjab (SC) 1996(1) R.C.R.(Criminal) 465.***

56. Therefore in view of above discussion, the accused is entitled for acquittal for the offences he has been charged of.

57. I order accordingly.

Announced in the open court
on 28th October 2021

(GAURAV RAO)
ASJ-01 (POCSO) South East
Saket Courts, New Delhi