RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (Db) No. 130/2020

CNR: RJHC020182542020 | URN: CRLAD / 223U / 2020

Rajesh Sharma S/o Suraj Narayan, R/o 132, Shivaji Nagar, Shastri Nagar, Bhatta Basti, Jaipur (Presently Confined In Central Jail Jaipur)

----Appellant

Versus

State Of Rajasthan, Through P.P.

----Respondent

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Connected With

D.B. Criminal Appeal (Db) No. 55/2020

CNR: RJHC020047342020 | URN: CRLAD / 107U / 2020

Priti Agarwal W/o Narayan Lal, R/o 5-Ka-11, Housing Board, Shastri Nagar, Bhatta Basti, Jaipur Raj. (At Present In Central Jail Jaipur)

----Appellant

Versus

State Of Rajasthan, Through P.P.

----Respondent

D.B. Criminal Appeal (Db) No. 245/2020

CNR: RJHC020635932020 | URN: CRLAD / 412U / 2020

Narayan Lal S/o Shri Ramkaran Agarwal, R/o 5-Ka-11, Housing Board Shastri Nagar, Bhatta Basti, Jaipur Raj. (At Present Confined In Central Jail Jaipur)

----Appellant

Versus

State Of Rajasthan, Through P.P.

----Respondent

For Appellant(s)	:	Mr. Sanjay Yadav with Mr. P.L. Saini Mr. Farooq Ahmed Ms. Soni Bajaj
For Respondent(s)	:	Mr. Amit Kumar, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE RAVI CHIRANIA

Judgment

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1.	Date of conclusion of Arguments	22 .07.2026
2.	Date on which the judgment was reserved	22 .07.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	13.10.2026

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Per, Hon'ble Justice Ravi Chirania

1. These instant criminal appeals arise out of impugned judgment dated 19.12.2019 passed by Special Judge, POCSO Act, No. 5, Jaipur Metropolitian (Rajasthan) in Sessions Case No.90/2018 (34/18) whereby the accused-appellants namely, Rajesh Sharma S/o Suraj Narayan, Priti Agarwal w/o Narayan Lal and Narayan Lal S/o Ramkaran Agarwal were convicted and ordered to undergo the sentence as under:

Name of the accused appellants	**Conviction under Section**	**Punishment**
Rajesh Sharma s/o Suraj Narayan	376(2)(n)/109 IPC 5(l)/6 POCSO	**u/s 376(2)(n) IPC -** Life Imprisonment and to pay fine of Rs. 1,00,000/-. In case of default of fine to further undergo 6 months simple imprisonment.
	366A IPC	7 years rigorous imprisonment and to pay fine of Rs. 50,000/-. In case of default of fine to further undergo 3 months of simple imprisonment.
Priti Agarwal w/o NarayaLal	376/109 IPC 6/17 POCSO	**u/s 376/109 IPC -** Life Imprisonment and to pay fine of Rs. 1,00,000/-. In case of default of fine to further undergo 6 months simple imprisonment.
	366A IPC	7 years rigorous imprisonment and to pay

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		fine of Rs. 50,000/-. In case of default of fine to further undergo 3 months of simple imprisonment.
	343 IPC	1 year simple imprisonment and to pay fine of Rs. 5,000/-. In case of default of fine to further undergo 15 days of simple imprisonment.
Narayan Lal s/o Ramkaran Agarwal	376 (2)(n) IPC 5(l)/6 POCSO	**u/s 376(2)(n) IPC-**Life Imprisonment and to pay fine of Rs. 1,00,000/-. In case of default of fine to further undergo 6 months simple imprisonment.
	366A IPC	7 years rigorous imprisonment and to pay fine of Rs. 50,000/-. In case of default of fine to further undergo 3 months of simple imprisonment.

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Learned Trial Court in terms of Section 42 of POCSO Act imposed the greater degree of punishment prescribed under Section 376 of IPC instead of punishment under Sections 5/6 and 17 of POCSO Act, 2012.

2. All the appellants herein, being aggrieved by the impugned judgment dated 19.12.2019 passed by the learned Trial Court, have filed the present appeals. Brief facts, as noted from the record of the learned Trial Court and the arguments of learned counsel, are that by way of an e-mail dated 09.12.2017, a complaint was made to the Police Station Bhatta Basti, Jaipur stating therein that the complainant, namely, Jayashashi Sharma, Co-ordinator at Child Line Center, was informed by the victim "R"

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(a minor girl), during counseling, that she is a resident of Road No. 17, Police Station Bhatta Basti, Jaipur and was taken to the home of accused appellant - Priti Agarwal in November, 2017 where she was subjected to physical assault by the appellant No. 2 by use of sticks and hands. It was further stated by the complainant that she was kept there for a week. During that period she was sexually assaulted by various persons at different places at the behest of the appellant-Priti Agarwal. It was further stated that the victim informed that appellant-Priti Agarwal used to employ minor girls for the purpose of sexual exploitation. On the said report, the police registered the FIR bearing No. 312/2017 dated 15.12.2017 (**after delay of 6-7 days**) at Police Station Bhatta Basti, Jaipur for the offences punishable under Sections 3, 4 of the POCSO Act, 2012 and Section 376 of IPC, 1860. After conducting the investigation, the police filed the charge-sheet dated 25.01.2018 against the eight persons including appellants herein. The learned Trial Court framed charges against as many as eight persons on the basis of the investigation as carried out. All the persons denied the charges and claimed trial. After the detailed trial the learned Trial Court convicted only three appellants herein, namely, Rajesh Sharma, Priti Agarwal and Narayan Lal only and the remaining five persons were acquitted by the learned Trial Court, vide judgment dated 19.12.2019.

3. To bring home the guilt, the prosecution examined 24 witnesses, namely, PW-1 victim, PW-2 Roshan, PW-3 Mohammad Ali, PW-4 Dr. Rashi, PW-5 Dr. Jitender Singh, PW-6 Dr. Babulal,

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PW-7 Vinita, PW-8 Imrat Singh, PW-9 Maghan Kanwar, PW-10-Dinesh Kumar, PW-11 Motilal, PW-12 Radhika Devi, PW-13 Jayashashi, PW-14 Asha Khatri, PW-15 Deepshika Chauhan, PW-16 Monika, PW-17 Jagmohan Sharma, PW-18 Jhabarmal, PW-19 Gopichand, PW-20 Mohammad Tasleem, PW-21 Panaa, PW-22 Harjilal, PW-23 Dr. Ravindra Sachdeva, PW-24 Dr. Vibha Sharma. In documentary evidence, prosecution exhibited 57 documents.

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4. In defence, accused-appellants exhibited documents, i.e. statements of 7 witnesses, as recorded under Section 161 of CrPC, namely, PD-1 Victim 'R', PD-2 Roshan, PD-3 Mohammad Ali, PD-4 Jayashashi, PD-5 Deepakshi Chauhan, PD-6 Aasha Khatri, PD-7 Monika. Statements of the accused-appellants were recorded under Section 313 of CrPC, wherein they denied the allegation levelled against them and claimed not guilty.

5. Learned counsel appearing on the behalf of the respective appellants have raised the following contentions, jointly, while assailing the impugned judgment of conviction:

I. That they have been falsely implicated in the present case without there being any cogent, reliable and convincing evidence and sterling witnesses in the case to support the prosecution case.

II. That there are serious contradictions in the version of the Child Helpline NGO/Institution regarding the circumstances in which the victim was found by them in an alleged abandoned condition at the Railway Station on 29.11.2017. Further, neither the victim was handed over to the police nor any FIR was lodged during the period from 29.11.2017 to 14.12.2017, when she (victim) remained at Bal Shishu Grah (CWC). Further, no effective efforts

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were made by the Child Helpline, the CWC during the aforesaid period to locate the parents of the victim and to hand her over to them.

III. That there are serious contradictions in the version of the victim in regard to alleged commission of offence against her as reported in the FIR dated 15.12.2017 (lodged with a delay of 16-17 days), her statement under Section 161 Cr.P.C. (recorded on 15.12.2017), statement under Section 164 Cr.P.C. (recorded on 18.12.2017), the test identification parade conducted in jail and her deposition before the trial Court as PW1 on 12.06.2018.

IV. That the prosecution's case suffers from material inconsistencies regarding the implication and identification of the accused person in jail. It is contended that although, only one accused person namely Priti Agarwal was named in the FIR, however during the investigation subsequently several other persons were implicated despite the victim having undergone detailed counselling before registration of FIR, in which allegedly she disclosed the commission of the offence against her by several persons.

V. That the collection, preservation and forwarding of samples give rise to serious questions regarding their evidentiary value. The victim's samples were collected on 16.12.2017 (for the incident alleged to have occurred approximately during 8-10 days prior to 29.11.2017) and of other accused persons on 17.12.2017 and 19.12.2017. It was also contended that the samples were initially forwarded for forensic examination by letter dated 27.12.2017 and deposited on 28.12.2017 and thereafter same were forwarded again by letter dated 09.01.2018 and were deposited on

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10.01.2018. There is no satisfactory explanation on record of the trial court regarding delay in forwarding the samples and to establish their safe custody, preservation and intactness throughout the intervening period, raising doubt about the possibility of contamination.

VI. That the victim has been presented as a minor girl by the Child Helpline, CWC and Police, although different ages were wrongly recorded or stated by the concerned prosecution witnesses at different stages of the proceedings, both before and after the filing of the charge-sheet and also during the trial. It was contended that no reliable documentary evidence, establishing the victim's age as below 18 years, was produced on record and was treated as a minor only on the basis of the bone ossification test, without due regard to the settled legal principles governing the determination of age through medical examination, particularly where documentary evidence of age is unavailable or has not been produced. Accordingly, learned counsel for the appellants have questioned the basis of determination of age of victim, below 18 years of age on the relevant date.

6. The above noted issues, have been jointly raised, by the learned counsel in the appeals of the three accused-appellants. The submissions advanced by the learned counsel for the respective appellants, insofar as they overlap are being considered together, apart from the additional submissions advanced on behalf of the individual appellant.

7. Learned counsel jointly submitted that the FIR bearing No.312/2017 was registered at police station Bhatta Basti, District Jaipur for the offences punishable under Section 3 and 4 of the

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Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act, 2012') and Section 376 of the Indian Penal Code, 1860. The FIR came to be registered on the basis of an e-mail dated 09.12.2017, received from P.W. 13, i.e. the complainant - Jayashashi stating that the information was given to her by the victim 'R'. It was reported that the victim was found in an abandoned condition at the railway station on 29.11.2017 and on the following day, i.e. 30.11.2017, she was handed over to Bal Shishu Grah (Child Welfare Centre). Learned counsel contended that the matter ought to have been reported to the police immediately on 29.11.2017 or the next day, i.e., 30.11.2017, when she was handed over to Bal Shishu Grah. However, she remained there (CWC) until 14.12.2017 and no report regarding the alleged offence was reported to the police during this period.

8. Learned counsel further questioned the alleged e-mail dated 09.12.2017 (Exhibit-22), contending that the document available on record is nothing but a document printed on a letter head and the same does not establish to be an email sent to the police on the said date (09.12.2017). Learned counsel argued that the letter dated 09.12.2017 has been presented as an email so as to justify the delay in reporting of incident although the record does not contain the email in its original or otherwise verifiable electronic form, therefore the letter is not an email and same also fails to justify the serious delay in lodging of the FIR.

9. Learned counsel further submitted that in the FIR, allegation was leveled only against accused appellant, namely Priti Agarwal and did not name the appellants Rajesh Sharma and/or Narayan Lal. In the statement recorded under Section 161 Cr.P.C. on

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15.12.2017 and also the statement recorded under Section 164 Cr.P.C. on 18.12.2017 also, both the accused appellants were not named by victim. On the basis of that, learned counsel for both the accused, i.e., Rajesh Sharma and Narayan Lal submitted that they have been falsely implicated and dragged in the case by police. By putting the victim under pressure, improvisation of the version was done at the subsequent stages of the investigation.

10. Learned counsel further referred to the alleged counseling of the victim by the concerned complainant and questioned as to why, despite the alleged disclosure of the commission of serious offences during counselling on 09.12.2017, the matter was not reported to the police immediately. Learned counsel further contended that the FIR came to be registered only on 15.12.2017 (after 6-7 days from the alleged e-mail dated 09.12.2017) and that the subsequent investigation resulted in the false implication of several persons including appellant Rajesh and Narayan Lal who were not named in the initial report.

11. Learned counsel also assailed the Test Identification (TI) Parade conducted in jail and contended that several persons were identified during the proceedings despite the fact that the victim having had no prior acquaintance with them. By referring to the victim's deposition, as PW-1, counsel submitted that she had clearly and specifically stated that certain persons were shown to her at the police station and on that basis, she identified them during the T.I. parade under police pressure. According to learned counsel, the circumstances surrounding the identification proceedings, when considered alongside the absence of the names

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of the accused persons from the initial version, cast serious doubt upon its reliability due to their subsequent implication.

12. Next contention of the counsel for the appellants is that the victim did not consistently attribute specific roles to all the persons who were identified during the T.I. parade and although eight persons were charge-sheeted and tried, only three were convicted, the remaining accused persons were acquitted by the learned trial Court. Learned counsel submitted that the selective attribution of roles, the surprising improvements in the victim's statements and the contradictions between the testimony of victim and the versions of the Child Helpline, the CWC and other prosecution witnesses rendered the prosecution case completely unreliable. Counsel argued that the victim's testimony, when considered in its entirety and in conjunction with the other evidence on record, did not inspire confidence and was insufficient to record the conviction.

13. In support of this contention, learned counsel relied upon the judgment of the Hon'ble Supreme Court passed in the case of **Nirmal Prem Kumar and Another v. State represented by Inspector of Police**, reported in **(2024) 20 SCC 293**, and submitted that a conviction may be based upon the sole testimony of the victim where such testimony is reliable and of sterling quality. It was argued that the testimony of the victim in the present case did not satisfy the requisite standard of reliability and that the contradictions and serious improvements at every stage, read with the testimony of the other prosecution witnesses, rendered the convictions unsustainable.

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14. The next contention of the counsel for the appellants is in respect of the collection, preservation and forwarding of the samples to the FSL. Counsel submitted that after recording the statement of victim, as noted above, the samples of the victim were collected on 16.12.2017 and of the accused persons on 17.12.2017 and 19.12.2017. Though the samples were collected on 16.12.2017, 17.12.2017 and 19.12.2017 but were sent to FSL by letter dated 27.12.2017 and deposited on 28.12.2017. However, due to non-sending of samples as per procedure, as per learned counsel, the FSL returned those samples and were re-sent by police by letter dated 09.01.2018 and desposited on 10.01.2018. In this regard, counsel argued that the samples which were collected on 16.12.2017, 17.12.2017 and 19.12.2017, in respect of the incident which occurred during 8-10 days prior to 29.11.2017 would not have been of any medical or scientific value when collected with such a delay. Further, even after collecting the samples, for an unexplained and unreasonable period, they remained at the police station. They also argued that nothing has come out from the record which would adequately and beyond doubt establish that the samples had remained properly sealed, intact and free from contamination and further the absence of reason which led to their return and again delayed and safe subsequent forwarding to FSL.

15. Learned counsel further submitted that the above delay between the collection of the samples and the time taken in forwarding them for forensic examination, was stated to cast doubt upon their non-contamination and evidentiary value. Counsel also submitted that these aspects have not been

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appreciated rather seriously ignored by the learned trial Court while passing the judgment of conviction dated 19.12.2019. In support of their submissions, concerning the forensic evidence and the effect of delay in forwarding the samples in the case, learned counsel relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Prakash Nishad Kewat Zinak Nishak v State of Maharashtra** reported in **(2023) 16 SCC 357.**

16. On the basis of the above settled law and referring to the peculiar facts of this case, counsel argued that the conviction as recorded by the learned Trial Court is unsustainable in the eye of law and deserves to be quashed.

17. Learned counsel for all the respective appellants, further argued in respect of the determination of the age of the victim who was presented as minor by the Child Helpline, CWC and the police. It was pointed out that in the FIR the age of the victim was recorded as 17 years, whereas PW-13-Jayashashi, described her age as 12 years, with no documentary support.

18. Learned counsel further argued that during investigation, police had failed to collect any reliable documentary evidence which could establish the exact date of birth of the victim and therefore, got the bone ossification test of the victim. Further, counsel referred to the testimony of PW4-Dr. Rashi, who conducted the bone ossification test and opined that the age can be between 14-16 years and further in her cross-examination she stated that there can be variation of 2-3 years and possibility that victim can be between 18-19 years on the relevant date, cannot be ruled out.

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19. It also was pointed out by the counsel that during investigation, police collected the Aadhaar Card and the birth certificate of the victim, issued by the Municipal Corporation however neither of the two documents was exhibited by the prosecution to establish the age of the victim. Learned counsel further argued and questioned the evidentiary basis of birth year recorded as 2001 in the said documents. It is only on the basis of the bone ossification test that the learned Trial Court treated the victim as a minor and on that basis the charges under the POCSO Act, 2012 were framed along with Sections of IPC and they were tried accordingly.

20. Counsel further submitted that the law in regard to determination of age was seriously ignored by the learned Trial Court while passing the impugned judgment. They referred to the judgment passed by the Hon'ble Apex Court in the case of **Rajak Mohammad Vs. State of Himachal Pradesh** reported in **2018 (9 SCC) 248** and the judgment of Hon'ble Delhi High Court passed in the case of **Court on its motion Vs. State of NCT Delhi (Criminal Reference No. 2/2024)**, reported in **2024, SCC OnLine Delhi 4484**, where the law in regard to determination of age was settled, when there was no other document and age was to be determined on the basis of bone ossification test. In the light of the above two judgments, learned counsel submitted that age of victim ought to be determined considering the statement of PW4-Dr. Rashi, which itself shows that victim was above 18 years and charges under the POCSO Act were wrongly framed and trial as was conducted was illegal and bad in law.

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21. Apart from the above common issues, as raised by counsel for appellants, learned counsel for the appellants Rajesh Sharma and Narayan Lal, in addition, raised the issue regarding recovery as shown from them and their conviction on the basis of said recoveries. As far as accused Rajesh Sharma is concerned (Criminal Appeal No. 130/2020) learned counsel argued that he was neither named in the FIR, nor in the statements recorded under Sections 161 and 164 CrPC. It was argued that he was arrested on 19.12.2017, but no recovery of any incriminating material was effected from him, except for one motor cycle bearing No. RJ 14 ND 9046 and also no medical evidence was collected against him to establish his involvement in the alleged offence. According to counsel, the only circumstance connecting him with the case was his alleged acquaintance with appellant Priti Agarwal, which, by itself, was insufficient to establish his guilt. It was, therefore, contended that the conviction of Rajesh Sharma was not supported by sufficient legal evidence.

22. Learned counsel for the accused-appellant Narayan Lal submitted that as per the version of victim, she was in the captivity of the appellant Priti Agarwal, his wife, for 7-8 days in their house. Learned counsel further argued that even if the version of the victim is treated as gospel truth, still there is nothing on record to show that victim "R" ever raised any hue and cry or made complaint to any person living in the premises/building during the period of alleged captivity.

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23. Counsel further argued that after she allegedly escaped from his house on 29.11.2017, instead of going back to her house situated 10 minutes away from the house of the accused, she went to Railway Station. Counsel also referred to the statement of PW 15 Deepakshi Chouhan, the witness of child helpline, according to whom initially she did not cooperate and gave incorrect information about herself and her parents and did not inform them about commission of any alleged offence with her. This itself is sufficient enough to note that complete case as reported was unreliable, unauthentic, full of contradictions and conviction on that basis, is unsustainable. Further, as per the FSL Report, semen attributed to the appellant (Narayan Lal) was found on the leggings (Salwar) of the victim, as according to victim he committed sexual offence against her during the alleged period of captivity, which is 8-10 days prior to 29.11.2017, for which her samples were collected on 16.12.2017 (of victim) and 17.12.2017 (of accused).

24. Counsel further submitted that samples collected in respect of incident alleged to have been committed almost 20-25 days prior to 16.12.2017 would not give any medical evidence, more so for the reason when the victim by improving her version at every subsequent stage made some serious allegations of sexual assault against other persons, who were though initially charge-sheeted and tried but were acquitted, as the victim went for selective accusation. For the above reasons, more so, when he has raised the issue of serious contamination of the samples including the delay then his conviction on the basis of medical evidence as on

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record is itself insufficient in the given facts and circumstances of the case.

25. Lastly, learned counsel for the appellant Priti Agarwal raised an independent separate argument that though she was named in the FIR dated 15.12.2017 but various serious contradictions in the story of witnesses of child helpline, prosecution witnesses including the statement of parents of victim, i.e. PW2 and PW3, shows that the story as presented is actually otherwise and correct facts were not brought on record by the police. Further, counsel submitted that the FIR was not lodged immediately despite sending the alleged e-mail dated 09.12.2017 (though not on record) for registration of the FIR, which was registered with a delay of 6 to 7 days. This shows that the complete incident as presented, in which various persons were added at every stage from the date of lodging of the FIR till test identification parade as conducted in this case is unreliable as the version of victim was highly inconsistent during the entire period.

26. Further, by referring the statement of PW2 and PW3 (parents of the victim "R"), Learned counsel for the appellant Priti Agarwal pointed out both the witnesses stated that on earlier occasions also, she left the house in the same manner and no report of such incidents were ever made to the police. Further the victim "R" did not inform her parents about commission of any alleged offence with her and did not name any person. It is the police who fabricated the story on their own. On the basis of above submissions, learned counsel for the appellant Priti Agarwal

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submitted that she has been falsely implicated in the present case.

27. It was also contended that although the FIR was registered on 15.12.2017 at 04:40 P.M., the detailed statement of the victim under Section 161 Cr.P.C. was recorded at 06:30 P.M. on the same day, yet the allegations contained in the said statement were not incorporated in the FIR. It was further submitted that the victim further did not reiterate the said allegations in her statement under Section 164 Cr.P.C., recorded on 18.12.2017. Learned counsel, therefore, argued that the successive variations in the victim's statements cast serious doubt on the prosecution case and prayed that the impugned judgment of conviction being unsustainable be quashed and set aside.

28. ***Per contra***, learned Public Prosecutor strongly opposed the three criminal appeals, as filed by the respective accused-appellants by submitting that the learned Trial Court committed no mistake or error while passing the judgment of conviction dated 19.12.2019 whereby the three accused-appellants herein were convicted and punished accordingly.

29. Learned Public Prosecutor submitted that victim was a minor girl, who was in the captivity of the accused-appellant Priti Agarwal, where she was sexually assaulted by her husband Narayan Lal and other persons including the accused-appellant Rajesh Sharma. The testimony of the minor victim cannot be doubted in terms of the fact as reported in the FIR, detailed conclusion in the charge-sheet as well as her testimony as recorded by the learned Trial Court as PW-1. Learned Public

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Prosecutor further submitted that the FSL report is also conclusive of the fact that the appellants, Rajesh Sharma and Narayan Lal have committed the sexual offence and therefore the ground as raised by appellants are not legally tenable. Learned Public Prosecutor further submitted that alleged delay in reporting the incident or minor contradictions in the version of the victim cannot be the basis to disbelief or discard the story of the prosecution which is based on the specific narration of the minor victim and scientific evidence. In view of the above, learned Public Prosecutor submitted that present appeals being devoid of merit deserve to be dismissed.

30. Heard learned counsel for the parties, perused the record of the trial court.

31. The FIR bearing No. 312/2017 dated 15.12.2017 was registered at the Police Station Bhatta Basti, District Jaipur, for the offences punishable under Section 3 and 4 of the POCSO Act, 2012 and Section 376 of IPC, 1860. Upon completion of the investigation Police filed charge-sheet on 25.01.2018, against eight persons for offences under sections 3, 4, 16 and 17 of POCSO, 2012 and offences under Sections 376-D, 366A, 120-B and 343 of IPC. Upon conclusion of the trial, five accused persons were acquitted whereas the appellants herein were convicted for the offences all sections proved against them however in terms of Section 42 of POCSO Act the higher punishment was awarded.

32. We shall first now deal with the common issues raised by the counsels for the three appellants primarily concern the circumstances in which the victim was found and subsequently

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handed over to CWC, the delay in registration of the FIR, the alleged contradictions in the successive versions of the victim, the identification and implication of the accused persons, the evidentiary value of the forensic material and the determination of the victim's age.

33. Learned counsel pointed out the contradictions in the version of the witnesses of the Child Helpline, CWC, prosecution witnesses as well as the version of the victim recorded under Section 161 and 164 of Cr.P.C and as deposed before the learned trial Court in regard to commission of the alleged offence. According to the version of witness of the Child Helpline, recorded under Section 161 Cr.P.C. and her Court testimony as PW-16, that she found the victim in an abandoned condition at the Railway Station and kept her at Railway Station and thereafter handed her over to the Bal Shishu Grah (CWC) on 30.11.2017. The statement further shows that she (victim) remained there until the registration of the FIR on 15.12.2017. While perusing the record, this Court noted that as per the statement of the other witness (PW-15) of the prosecution, also a staff/employee of Child Helpline who stated that the victim was handed over to Child Helpline by a T.T.E. (Travel Ticket Examiner) on 29.11.2017. From this point instead of handing over the victim immediately to GRP or the local Police Station on 29.11.2017 itself or on 30.11.2017, they handed her over to the Bal Shishu Grah (CWC) on 30.11.2017. The witnesses of the Child Helpline failed to give specific evidence about the recovery of the girl on 29.11.2017 at the Railway Station. No reason has come out from the testimony of the witnesses of Child

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Helpline, as to why, the FIR was not lodged immediately. This Court also noted that as per PW 15, Deepakshi Chouhan, one of the witness from Child Helpline, stated that **initially victim did not provide correct information about her whereabouts rather gave misleading information**. This Court further noted from the record that victim was having a mobile phone and certain persons tried to contact her but no investigation in that regard was conducted, as noted from record. This Court further noted that from 30.11.2017 to 14.12.2017, the victim remained at Bal Shishu Grah (CWC). Surprisingly, when minor victim, as per the prosecution, was found in an abandoned condition at the Railway Station, why no FIR was lodged at an earlier stage and further the record fails to disclose the steps taken and efforts, if any, made by the CWC and Police to locate victim's parents and to handover her to them. The absence of justification in regard to the above noted non-actions create doubt about foundation of the prosecution story and also entire activity that took place in between this period in the Bal Shishu Grah (CWC). This Court fails to understand how can a victim (who was a minor according to Child Helpline) be kept at Bal Shishu Grah (CWC) without reporting any incident to the Police, for such a long period.

34. Further, prosecution has informed that some counselling was done on 09.12.2017 by the complainant PW 13 Jayashashi, in which the victim gave narration of alleged offences committed against her by certain persons and on that basis, an E-mail dated 09.12.2017 was written to Police Station Bhatta Basti, Jaipur. After perusal of the record, the document relied upon as the email

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dated 09.12.2017 by prosecution and trial Court is a printed document on the letterhead of the Child Helpline, with an endorsement of Police referring to it as an email. The record does not contain any such said email in its original or otherwise verifiable form to show that the document is an e-mail. In a case involving allegations under the POCSO Act, it is important to examine the conduct of the Child Helpline, the Child Welfare Committee (CWC), and the police in the context of their respective roles in the case. Despite the seriousness of the allegations, the concerned NGO/Child Helpline did not approach the police station in person (so as to lodge FIR) but sent an e-mail only after a delay of approximately 7 to 8 days (from 29.11.2017). Further, even assuming that the e-mail was sent on 09.12.2017, no effective action was taken by the police between 09.12.2017 and 14.12.2017. Neither, the CWC nor the complainant took steps during this period to ascertain, whether an FIR had been registered or not. The FIR was ultimately registered on 15.12.2017 at 04:40 P.M., naming only appellant Priti Agrawal.

35. As referred by learned counsel, this Court noted that the victim's statement under Section 161 Cr.P.C. was recorded at 06:30 P.M. on 15.12.2017, **within approximately two hours of registration of the FIR, and that there are material discrepancies in the version reflected in the FIR and the victim's subsequent statement**. These discrepancies cast doubt on the grounds on the basis of which the criminal proceedings were initiated against the appellants. Learned counsel has questioned the delay in recording the victim's statement under

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Section 164 Cr.P.C., which was recorded on 18.12.2017 instead of on 15.12.2017 or during the following two days, despite, the seriousness of the allegations as reported. It is noted that the version given by the victim in her statement under Section 164 Cr.P.C. seriously differed from her earlier statement under Section 161 Cr.P.C. (just three days prior), thereby further creates suspicion on the veracity of the entire prosecution case. On these grounds, the victim's statements raised serious doubts regarding the prosecution version, upto pre-trial stage.

36. This court also considered the testimony of victim as PW-1 and noted various serious improvements, contradictions as in version also selective accusation of some persons was made on account of which five persons were acquitted despite being identified by her in TI parade.

37. The next issue raised by the counsel for the appellants is in regard to the age of the victim on the relevant date. The accused-appellants along with the other persons were charge-sheeted under sections 3, 4, 16 and 17 of POCSO, 2012 and offences under Sections 376-D, 366A, 120-B and 343 of IPC. There are serious contradictions regarding the exact age of the victim. In the FIR dated 15.12.2017, her age has been described as 17 years whereas PW-13 Jayashashi stated the victim's age as 12 years old. It is further noted that during investigation, the Police collected the Aadhar Card and a birth certificate issued by the Municipal Corporation, Jaipur, in which her year of birth was recorded as August 2001, however, both the documents were not exhibited by the prosecution, and there is no justification in the record.

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38. After perusal of the record and while also considering the arguments as raised by the counsels, this Court noted that as, police noted that there were no documents issued by public authorities available on the record on the basis of which age of the victim was recorded as August 2001 in the birth certificate or Aadhaar Card and therefore, according to this Court the documents were not exhibited by prosecution.

39. As noted in above paragraphs, there are disputes about the age of the victim and no authentic document regarding the exact age was available, so, for determination of age, a bone ossification test of victim was conducted on 16.12.2017. In the aforesaid test, PW-4 Dr. Rashi, opined the age of victim to be 14-16 years, however, in cross-examination she admitted that there can be variation of 2-3 years and while adding the said period to upper side, the age of the victim can be between 18-19 years. The statement of PW-4 are specific and clear and have substance when considered in the light of law laid down by Hon'ble Apex Court in regard to determination of age of victim in the case of **Rajjak Mohammad (supra)** and Hon'ble Delhi High Court in **Court on its own motion (Criminal Reference No. 2/2024) (supra)** wherein it was held that ossification test is not conclusive of age determination and margin of error in age ascertainment by radiological examination is two years. Further, the benefit of doubt has to go to the accused for which the period of two years is to be added to the upper age of the victim, as determined in ossification test.

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40. The relevant paragraph of **Rajak Mohammad (supra)** reads as under:

> *"7. While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused."*

41. The relevant part of **Court on its own motion (supra)** in which Hon'ble Delhi High Court answered a crucial question about age determination in POCSO cases where the victim's age is assessed by a bone ossification test is as under:

> ***"30.*** *In Shweta Gulati (supra), though the question was with respect to the payment of wages to a minor victim who had been sexually assaulted, there was no document ascertaining her age and, therefore, the bone age ossification test of victim was got conducted and as per such report, the age of the victim was determined to be in range of 17 to 19 years. The concerned Child Welfare Committee determined the age of the victim as 17 years, which order was upheld in appeal by the Court of learned ASJ. When the revision petition was filed before this Court, this Court made reference to Jarnail Singh (supra) and held that benefit of doubt, at all stages, was to go to the accused.*
>
> **31.** Para 13 to 19 of said judgment reads as under:—
>
> > ***"13.*** *The question that arises for consideration is as to whether, while determining the age of the victim, the benefit of doubt in age estimated by the bone ossification test is to go to the accused or the victim.*
> >
> > ***14.*** *The settled principle is that the ossification test is not conclusive of age determination. It is settled that it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests. The Supreme Court, in several decisions, has taken judicial notice of the fact that the margin of error in age ascertained by radiological examination is two years on either side.*
> >
> > ***15.*** *Now the question that arises for consideration is as to whether the lower of the age or the higher of the age is to be taken. If benefit of doubt has to go to the accused then one would have to take the higher limit and if benefit of doubt has to go in favour of the*

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prosecutrix then the lower of the two limits would have to be taken.

16. *It is also settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused.*

17. *In the present case as no document of age was available, the age has been determined by the Child Welfare Committee as 17 years based on the ossification report. The bone ossification test report has estimated the age as 17 to 19 years. So applying the margin of error principle, of two years on either side, the age could be between 15 to 21 years. In the present case even if the margin of error is not taken on the higher side, the upper limit of the age estimated by the ossification test is 19 years.*

18. *Giving the benefit of doubt to the accused, the age of the victim has to be taken as 19 years of age. Accordingly, the order dated 06.09.2017 passed by the Child Welfare Committee (CWC) as well as the order of the Appellate Court dated 21.02.2018 is not sustainable.*

19. *In view of the above, the impugned order dated 06.09.2017 passed by the Child Welfare Committee (CWC) as well as the order of the Appellate Court dated 21.02.2018 is set aside to the limited extent that it determines the age of the victim as 17 years."*

32. *Thus, as per the aforesaid judgment delivered on 08.08.2018, upper age was considered in order to ensure that the accused was not prejudiced in any manner. It was with the apparent objective that if there was any uncertainty, the benefit of doubt should go to accused and accused only.*

33. *Same issue again cropped up before this Court in Raju Yadav (supra). In that case, the accused had been held guilty for committing various offences including sexual assault and he filed appeal challenging his such conviction and order on sentence. Appellant took the plea that the victim was minor. In said case, there was no birth certificate or school record and bone age ossification test was got conducted, which opined her age between 15-17 years. The contention of the accused was that after taking into consideration the margin of error of 2 years, the age of the prosecutrix should be considered as 19 years on the date of offence and, therefore, the accused could not have been convicted under POCSO Act. This Court took note of the objective of POCSO Act and held that for determining the age of a child victim under POCSO Act, the inclination of the Court should be towards considering the lower side on the margin of error as that would be in consonance with the objective of POCSO Act. It was observed that it could not be the intention of POCSO Act to treat a victim, a border-line minor, as a major in case the victim did not have a birth certificate/school certificate and has undergone a bone age ossification test. The appeal was dismissed holding that such an interpretation would not be in furtherance of POCSO Act but rather in contradiction and derogation to the objective and purpose of POCSO Act. Said judgment is dated 16.05.2023 and it looks that the parties did not bring to the knowledge of the Court, the ratio given in Shweta Gulati (supra).*

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34. *Obviously, there is a conflict between the aforesaid two judgments of Shweta Gulati (supra) and Raju Yadav (supra).*

35. *However, there is one important aspect which cannot be lost sight of.*

36. *These two judgments are rendered by Single Bench of this Court.*

37. *There is a judgment of Division Bench of this Court as well as one judgment of the Supreme Court which answer the given Reference to a very large extent.*

38. *In the case of State v. Basir Ahmad, a Coordinate Bench of this Court presided over by one of us, (Suresh Kumar Kait, J.) was faced with the similar issue. The accused, who was facing trial for committing sexual assault, was acquitted by learned Trial Court observing that the age of the prosecutrix was shown to be between 17 to 19 years and, therefore, there was no conclusive evidence of her being a minor at the time of alleged offence. Consequently, the benefit was extended to the accused who was acquitted. Such order was assailed before this Court and the appeal was dismissed. This Court not only upheld the factum of consideration of the age on the upper side of ossification report while assessing the age of the prosecutrix but also approved the principle of giving further margin of two years to such upper estimated age. The pertinent excerpt from the aforementioned judgment is as under:*

39. *In context of said all important aspect of 'granting of benefit of doubt to accused at every stage', we may also refer to Rajak Mohammad v. State of Himachal Pradesh whereby the Hon'ble Supreme Court allowed the appeal of the convict who was facing charges of kidnapping and sexual assault and acquitted him while observing as under:—*

> ***"4.*** *In view of the above, the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.*
>
> ***5.*** *In this regard, we have considered the evidence and materials on record. The age of the prosecutrix has been sought to be proved by the prosecution by bringing on record the school admission form (Ext. PW 5/A) and the certificate (Ext. PW 5/B) issued by one Jasdeep Kaur (PW 5), JBT Teacher of Government School Dungi Plate. PW 5 in her deposition has stated that the writings in the school admission form (Ext. PW 5/A) are in her handwriting and the signature affixed is that of the mother of the prosecutrix.*
>
> ***6.*** *In cross-examination, PW 5 had stated that the details mentioned in Ext. PW 5/A have been obtained from the school leaving certificate issued by the Government Primary School, Tambol. The certificate issued by the Government Primary School, Tambol on the basis of which the details in the admission form (Ext. PW 5/A) was filled up by PW 5 has not been exhibited by the prosecution.*

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> ***7.*** *Nothing hinges on the document exhibited by the prosecution as Ext. PW 5/B as that is the consequential certificate issued on the basis of the entries in Ext. PW 5/A. The mother of the prosecutrix who had allegedly signed Ext. PW 5/A has not been examined by the prosecution.*
>
> ***8.*** *On the other hand, we have on record the evidence of Dr Neelam Gupta (PW 8), a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.*
>
> ***9.*** *While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.*
>
> ***10.*** *We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.*
>
> ***11.*** *We will, therefore, have to conclude that the appellant accused deserves to be acquitted on the benefit of doubt. We, consequently, set aside the order of the High Court and the conviction recorded as well as the sentence imposed and acquit the appellant-accused of the offences alleged. We further direct that the appellant-accused be released from custody forthwith unless his custody is required in connection with any other case."*
>
> *(emphasis supplied)"*

42. Considering the above two judgments and facts of this case and the age determined in the bone ossification test, i.e. 14-16 years and further adding 2 years to the upper side of age, i.e. 16 years, the age of the victim comes out to 18 years on that basis it is held that victim was not below 18 years of age and not a minor on the date of alleged offence.

43. The next issue jointly raised by the counsels is that the FIR was lodged on 15.12.2017 in respect of the incident that occurred

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during 8-9 days prior to 29.11.2017 (on which the girl was found by the child helpline at the Railway Station) i.e., after a delay 20-25 days. From 30.11.2017 to 14.12.2017, she remained at Bal Shishu Grah (CWC) and then sample of the victim were collected on 16.12.2017 and to implicate the accused persons, who were charge-sheeted, the samples were collected on 17.12.2017 and 19.12.2017. The samples collected on the above noted dates were sent to FSL by letter dated 27.12.2017 and deposited on 28.12.2017. However, they were returned back by FSL and were re-submitted on 10.01.2018 by letter dated 09.01.2018. The above dates are crucial to examine the complete allegations and the conviction of the appellants herein. First of all when the victim, allegedly, came in contact with various persons who were charge-sheeted by the police and for the above noted period she remained with Bal Shishu Grah (CWC), i.e. for 15-16 days and thereafter, the samples of the victim and the accused were collected. Prima-facie, it is difficult for any person to believe that any incriminating evidence would come out from the samples as collected which can be read against the persons as charge-sheeted in the given facts of the case.

44. The possibility of any medical or forensic evidence from samples is further impossible when the above noted dates are carefully examined, which show that that there was serious delay in sending the samples immediately to FSL. No justification has been found by this Court from the testimony of the prosecution witnesses as well as from the record as to why for almost 10-11 days, before sending the samples to FSL, and then in resending on

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09.01.2018, serious delay occurred. The law regarding the sending of samples immediately to FSL is well settled and there is no confusion in regard to the same. Due to serious delay and failure to prove and counter the allegation of the non-contamination of the samples leads this Court towards the definite conclusion that the samples so collected were contaminated and no medical and forensic evidence, as has come out from the FSL report dated 27.09.2018 and 09.05.2019, can be treated to be authentic and reliable in the above noted peculiar facts of this case, while keeping the afore-mentioned dates into consideration, so as to record the conviction of appellants-Rajesh Sharma and Naryan Lal.

45. The FSL report shows the presence of semen of appellant Narayan Lal on the leggings of the victim from the samples collected on 16.12.2017, despite the above noted serious gap in registration of the FIR, collection of samples and sending the same on first and second occasions with serious unexplained delay. This itself shows that the complete report is unreliable and cannot be taken as a basis to record conviction and therefore, learned trial court committed serious error of law while mechanically relying upon this document for recording the conviction of the accused Narayanlal. As far as, the accused Rajesh Sharma is concerned except his motorcycle, no sample was taken from him and therefore, the FSL report does not contain anything against him. Appellant-Rajesh Sharma admitted his proximity/ some acquaintance with the appellant Priti Agrawal but denied the commission of alleged offence and while considering the testimony

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of all witnesses recorded by the trial court, this Court fails to find any specific, direct and cogent evidence including of the victim as PW-1 against the appellant Rajesh Sharma, so as to sustain his conviction.

46. The Hon'ble Apex Court in the case of **Prakash Nishad @ Kewat Zinak Nishad** (supra) while acquitting the accused in a capital case, based largely on circumstantial evidence and DNA profiling, held that unexplained delay in sending samples to the Forensic Science Laboratory, coupled with failure to maintain an unbroken chain of custody, materially erodes the reliability of DNA evidence. Hon'ble Apex Court observed that samples must be submitted to the laboratory "**without any delay**" and that where the prosecution fails to explain such delay, the possibility of contamination and diminution in value cannot be ruled out. It further held that DNA evidence, being opinion evidence, cannot be treated as infallible or as the solitary basis for conviction unless its collection, preservation and transmission are shown to be free from doubt. The relevant paragraphs of the judgment reads as under:

> *"61. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to "Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers-Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India" which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken "Must be submitted in the laboratory without any delay."*
>
> *62. The document also lays emphasis on the 'chain of custody' being maintained. Chain of custody implies that*

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right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item 63. Indisputably, these "without any delay" and "chain of custody" aspects which are indispensable to the vitality of such evidence, were not complied with. In such a situation, this court cannot hold the DNA Report Ext.85 to be so dependable as to send someone to the gallows on this basis.

64. Even otherwise, on the value of DNA evidence, we may refer to an observation made by this Court, in ***Pattu Rajan v. State of T.N.****, as under;*

"52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

(Emphasis supplied)

65. Referring to the above case, a three-Judge bench in ***Manoj v. State of M.P.****, through S. Ravindra Bhat J., observed;*

"158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case."

66. In the present case, even though, the DNA evidence by way of a report was present, its reliability is not infallible, especially not so in light of the fact that the uncompromised nature of such evidence cannot be established; and other that cogent evidence as can be seen from our discussion above, is absent almost in its entirety."

47. The present case is squarely covered by the above said principles, inasmuch as the samples were forwarded to the FSL

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after unexplained delay thereby, weakening the prosecution case, therefore, the reports of FSL cannot be read against the appellant.

48. Another important issue raised by the counsels jointly and noted by this Court is the test identification parade as conducted in this case. Though, the FIR was against one person Priti Agrawal but with consistent improvement at every subsequent date, persons were implicated and arrested and test identification parade was conducted in jail. **PW-1 in her testimony stated that she was shown some of the accused persons in the police station and was made to identify them during test identification parade in jail. She further stated that the persons namely Sanjay, Rajesh Prajapat and Rajkumar have not committed any offence with her and neither she named them nor had any acquaintance with them.** This leaves doubt about the role of the persons of child helpline and the police official who conducted the entire investigation and appeared in the trial and after considering the above, this Court is of the firm belief that, intentionally the persons were initially made accused charge-sheeted and thereafter, selective accusations were made by the victim under the pressure and the influence of the police officials. For the above reason, this Court has serious doubt about the entire story of the prosecution that was mechanically believed by the trial court while passing the judgment of conviction.

49. Lastly, this Court shall now consider the allegations against the appellant-Priti Agarwal against whom named FIR was lodged

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by the complainant. It is not in dispute that in the FIR, Statements under 161 and 164 Cr.P.C. and in the testimony as PW1 of the victim, the allegations were levelled against the appellant-Priti Agarwal that she kept the victim in captivity in her house for 7-8 days and committed sexual exploitation of the victim during that period. While considering these allegations, this Court noted that victim in her statement under Section 161 Cr.P.C. stated the period of captivity to be three days. Further, victim admitted in her statements under Sections 161 and 164 of Cr.P.C., including her testimony as PW1 that she did not raise any hue and cry during the period of alleged captivity. She went to different places with the appellant-Priti Agarwal and while going from one place to another and also while staying at those places, neither any hue and cry was raised nor she asked for help. This Court further noted that as per the testimony of the witnesses of child helpline, they located the victim in the alleged abandoned condition at railway station, who stated that initially victim refused to co-operate, did not give correct information about her whereabouts rather gave misleading information. She was carrying a cellphone and after alleged escape from the house of the appellant, she went to the railway station instead of going to her house, which was just ten minutes away from the house of the appellant. This Court, further noted from the testimony of PW2 and PW3 (parents of the victim) that in the past also victim left the house in the similar manner and came back on her own and no FIR or missing person report was ever lodged by them. This Court, further noted that even during the period of alleged captivity of 7-8 days and in total missing period of 20-25 days, no FIR or missing person

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report was lodged by PW2 and PW3 which creates doubt in the mind of this Court about the complete conduct of the victim, on the basis of the above discussion according to this Court, is a major girl and also of the parents PW2 and PW3. Thereafter, from 30.11.2017 to 14.12.2017, she remained in Bal Shishu Grah and showed no inclination to go back to her house and further her act of going at different places and staying in close contact with the persons as charge-sheeted and their identification by her in the test identification parade and selective accusation during trial of some persons and selective denial of complete role of above noted persons creates total doubt about the testimony of the victim. The law in regard to the testimony of the victim is settled by the Hon'ble Apex Court in the case of **Nirmal Prem Kumar (supra)**, in which it was held that even the sole testimony of victim is sufficient to record conviction if it is reliable and of sterling quality.

The relevant paras of the judgment read as under:-

> *"13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in **Rai Sandeep v. State (NCT of Delhi)**. The Court found totally conflicting versions of the proecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined 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*

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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 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."

(underlining ours, for emphasis)

14. In ***Krishan Kumar Malik v. State of Haryana****, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:*

"31. 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. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and d position in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the

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quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

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50. In the above noted case of **Nirmal Premkumar (Supra)** Hon'ble Apex Court while considering the case of Rai Sandeep Vs State (NCT Delhi) held that testimony of the victim should not suffer from inconsistencies, contradictions, absence of basic and material details, instances etc. and testimony of any witness which suffers from the above cannot be treated to be of a sterling quality.

51. In the above noted case, Hon'ble Apex Court further held that sterling witness should be of high quality and caliber whose version of the incident must be free from contradictions and inconsistency. Hon'ble Apex Court further held that the Court while considering the testimonies of witnesses must note that in the testimony, the witness has maintained consistency from beginning to end in narration of alleged offence committed with him/her or the incident of which he/she is a witness.

52. In the light of the above judgment this court mindfully examined the testimony of the victim from statements under Section 161 and 164 Cr.P.C. and as PW1 and considered her entire conduct and that of her parents (PW-2 and PW-3) and noted that she kept on changing her version. Therefore her testimony is not sufficient, in view of the above discussed law, to sustain conviction of appellant in the present case. Lastly, this Court fails to find any justification in the statement of Investigating Officer recorded as

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PW – 17 for the inordinate delay in lodging the FIR despite receiving the e-mail on 09.12.2017 and further delay in sending of the samples for FSL. In the absence of a cogent and convincing explanation, the statement of the Investigating Officer does not inspire confidence of this Court. Consequently, this Court finds no sufficient justification to accept the explanation furnished by the Investigation Officer to place reliance upon it to bridge the gaps in the case of prosecution. Therefore, this Court has no hesitation to record that the conviction as recorded by the learned trial Court on the testimony of, not only victim, is contrary to law and based on unreliable testimony of the prosecution witnesses who failed to justify their act and conduct starting from 29.11.2017 till charge-sheet dated 25.01.2018 and in their testimony as recorded by the learned trial Court. In view of the above discussion, this Court has reached to a different conclusion, that learned trial Court Committed grave illegality while recording the conviction of the appellants herein for the above-mentioned reasons.

53. Consequently, criminal appeals filed by the appellants Rajesh Sharma, Priti Agarwal and Narayan Lal are allowed. The judgment dated 02.12.2018 is quashed and set aside.

54. The appellant No 1- Rajesh Sharma is in jail, he shall be released forthwith if not required in any other case. The Appellant No. 2- Priti Agarwal is on bail and Appellant No. 3- Narayan Lal is on permanent parole, they need not to surrender. Their bail bonds stand canceled.

55. The record of the trial Court be sent back forthwith.

56. Keeping in view the provision of Section 437-A Cr.P.C./481B.N.S.S., accused appellants are directed to furnish a

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personal bond in a sum of Rs. 25,000/- each and a surety bond of the like amount, before the learned trial Court, which shall be made effective for a period of six months, to the effect that in the event of filing of Special Leave Petition, against this judgment or for grant of leave, the accused appellants, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court as soon as he would be called upon to do so.

(RAVI CHIRANIA),J (MAHENDAR KUMAR GOYAL),J

Rinchu/

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