

**IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS JUDGE-II
(NORTH-WEST): ROHINI COURTS: DELHI**

Session Case No. 62/2011

Unique Case ID No.: 02404R0169342011

State Vs. (1) Mukesh @ Bittoo
S/o Prithvi Raj
R/o A-655, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(2) Prabhans Yadav @ Ramjane
S/o Sh. Ram Yadav
R/o A-660, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(3) Deepak @ Deepu
S/o Prem Kumar
R/o Samta Vihar, Mukundpur,
Bhalswa Dairy, Delhi
(Convicted)

(4) Ravinder Kumar @ Raju
S/o Prithvi Raj
R/o A-648, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(5) Rajeev @ Bunti
S/o Mahesh Kumar
R/o E-1741, Jahangir Puri,
Delhi
(Convicted)

FIR No.: 90/11
Police Station: Jahangir Puri
Under Section: 376 (2) (g)/363/342/366/34 IPC

Date of committal to sessions court: 4.7.2011

Date on which orders were reserved: 12.1.2012

Date of which judgment pronounced: **13.1.2012**

JUDGMENT:

As per allegations, on 19.3.2011 at about 5:00 PM at A-333 Behind ITI, Jahangir Puri, Delhi all the accused namely Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti in furtherance of their common intention kidnapped the prosecutrix 'R' (name of the prosecutrix is withheld as this is a case under Section 376 Indian Penal Code) aged about 16 ½ years from the lawful guardianship of her parents with intent that she may be forced or seduced to illicit intercourse. It is also alleged that all the accused wrongfully confined the prosecutrix 'R' from proceeding in any direction in which she has a right to proceed. Further, as per the allegations in furtherance of their common intention they all committed rape upon the prosecutrix 'R' at Jhuggi No. A-655, Jahangir Puri, Delhi.

BRIEF FACTS/ CASE OF THE PROSECUTION:

The case of the prosecution is that on 20.3.2011 one Shakeel Ahmed who is a resident of Tilak Bazar, Karkhane Wali Gali, Delhi had made a complaint that his daughter 'R' aged about 16½ years who had come to Jahangir Puri to the house of her mama (maternal uncle) on 14.3.2011 along with her mother, was missing since 19.3.2011. On the basis of the complaint made by Shakeel Ahmed, initially a case under Section 363 Indian Penal Code was registered.

On 21.3.2011 an information was received in the Police Station Jahangir Puri vide DD No. 89B that the girl who was kidnapped on 19.3.2011 had been recovered. Pursuant to the said information ASI Ved Prakash reached at main road K Block, near Mother Dairy Booth, Jahangir Puri where the prosecutrix 'R' was present along with her relatives. Thereafter on 22.3.2011 she was produced before the Ld. Metropolitan Magistrate for recording her statement under Section 164 Cr.P.C. In her

statement made to the Ld. MM the prosecutrix had stated that on 19.3.2011 at about 5:00 PM when she was standing in the gali near the house of her maami (maternal aunt), five boys came on foot and forcible took her to the Jhuggi of Bittoo whose name she came to know later and all the five boys took turns in committed rape upon her. She had further informed the Ld. MM that during this period all the said boys were addressing each other by their names i.e. Bittoo, Ramdesh, Bunti, Raju and Deepu. According to her, all the said boys kept her captive till 6:00 PM of 21.3.2011 and during this period they committed rape upon three-four times. She had also stated in her statement under Section 164 Cr.P.C. that on the evening of 21.3.2011 Bittoo left her near the toilet and when she was standing there, her Khala (Mausi) Naeem came there and took her back.

On the basis of the same, the provisions of Sections 376 (2) (g), 342/34 IPC were added. On 22.3.2011 the accused Mukesh @ Bittoo was arrested and the other accused namely Prabhans Yadav @ Ramjane, Deepak @ Deepu and Ravinder Kumar @ Raju were also arrested whereas the accused Rajeev @ Bunti had himself surrendered on 2.4.2011. After completion of investigations charge sheet was filed against all the accused.

CHARGE:

Charges under **Sections 363/366/342/376(2)(g)/34 Indian Penal Code** were settled against the accused to which they pleaded not guilty and claimed trial.

EVIDENCE:

In order to prove its case the prosecution has examined as many as **Eighteen witnesses** as under:

Prosecutrix/ public witnesses

PW4 Shakeel Ahmad is the father of the prosecutrix who has deposed that he used to work in food market at Seelampur and has six

children including three daughters. According to him, his youngest daughter 'R' aged about 16 years at that time had come to the house of her *mama* at Jahangir Puri on 19th of the month which he does not remember and on the same day, in the evening she was missing. He has testified that his daughter was suffering from fits during those days and was undergoing treatment at Kalawati Hospital. According to PW4, he made efforts to trace her but she could not be traced after which he made complaint to the police on 20th day of the month which complaint is **Ex.PW4/A**.

With the permission of the Court, the Ld. Additional Public Prosecutor for the State put leading questions to the witness regarding date and alluring, during which he has admitted that his daughter had gone to the house of her *mama* at Jhuggi no. 333, behind ITI on 14.03.11 and went missing on 19.03.11. He has also admitted that he had stated to the police in his statement **Ex.PW4/A** that his daughter was taken away by some unknown person by alluring her. According to him, he had given the birth certificate of his daughter 'R' to the Investigating Officer which was taken into possession vide seizure memo **Ex.PW4/B**. The witness has further deposed that his daughter was recovered on 21.03.11 near Shauchalaya by one public person namely Rizwan who took Naeem wife of his brother in law Israel and thereafter Naeem and Rizwan brought his daughter from there. He has testified that he was called in the Police Station and his statement was recorded by the Investigating Officer. He has proved the memo of recovery of his daughter prepared by the Investigating Officer vide **Ex.PW4/C**. According to him, two accused persons who were brothers were arrested in this case from their jhuggi and another accused was apprehended later on. The witness has proved the memo regarding the arrest of the accused which are **Ex.PW4/D**, **Ex.PW4/E** and **Ex.PW4/F** and their personal memos which are **Ex.PW4/G**, **Ex.PW4/H** and **Ex.PW4/I**.

In his cross-examination the witness has deposed that he had made a 100 number call as soon as he came to know that his daughter was missing and the PCR officials and the local police had come to the house of his in-laws. According to the witness, he did not hand over the photograph of his daughter to them. He has testified that his daughter had never gone alone to his in-laws' house in the past and was always accompanied by somebody. He has admitted that he had given the description of clothes worn by his daughter as per details provided to him by the members of his in-laws. He has denied the suggestion that his daughter had gone to his in-laws' house in his absence and has voluntarily stated that he had himself left her there. The witness has further denied that he had signed on a blank paper which was converted into his complaint **Ex.PW4/A**. He does not recollect whether the police officer had read over to him as to what was written in the document **Ex.PW4/A**. The witness has testified that he had never given any medical papers of his daughter to the Investigating Officer or that he had lodged a false complaint.

PW8 Smt. Naeema has deposed that the prosecutrix 'R' is the daughter of *nanad* of her sister. According to her, on 21.03.11 one boy namely Rizwan informed her that a girl who appeared to be 'R' was standing near Shauchalaya and asked her to see that girl. She has testified that she went there and identified the girl as 'R' after which she brought the prosecutrix to her house and thereafter to her *mami* Naseeb. She has deposed that at that time her parents, mami, nani were already present there and she handed over the prosecutrix to them.

In her cross-examination the witness has deposed that her house is situated leaving one street from the house of her sister. According to her, the prosecutrix 'R' had come once at her residence prior to this incident i.e. about two days prior to the incident, along with her mother at

about 12.00 Noon and left at about 2.00 or 2.30PM after which she came to know that the prosecutrix was missing. She has testified that she also made efforts to trace the girl but she could not locate her. The witness has further deposed that Rizwan had come to her at about 7.00 or 7.30PM and left her house after giving information to her. She has testified that she took about five minutes in reaching Shauchalaya and Rizwan met her in the street while she was going to purchase vegetables from market. She has admitted that their streets are very narrow and has deposed that Rizwan had already seen the photograph of the prosecutrix 'R' which was got published. The witness has admitted that the area where the said Shauchalaya is situated is thickly populated and public persons used to come there. She has further admitted that the public persons were passing near the public toilet at that time. According to her, she saw the prosecutrix 'R' alone while standing near a van which was parked there but she does not remember the colour of the clothes worn by 'R' at that time and states that it was a salwar suit and not a jeans pant and T Shirt. She has denied the suggestion that 'R' did not meet her near sauchalya or that she did not bring the prosecutrix to her house.

The **prosecutrix 'R'** has been examined as **PW9** wherein she has deposed that on 19.03.2011 she had gone to the house of her *mami* at K Block, Jahangir Puri and at about 5:00 PM when she was standing in the gali near the house of her *mami*, five boys who were coming on foot came in the gali out of which one of them caught hold of her and they thereafter took her to a room situated in the next gali. According to the witness, all the said five boys did *galat kaam* with her. He has also deposed that theres boys were addressing each other with names due to which reason she came to know about their names i.e. Bittoo, Raju, Ramjane, Deepu and Bunti. She has testified that she was held by these boys and they kept her captive

for about three days and on 21.03.2011 she escaped from their clutches. The witness has also deposed that during this period, all these boys did *galat kaam* with her on two-three occasions (*sab ladko ne 2-3 baar mere saath galat kaam kiya tha*). On a specific Court Question as to what she meant by Galat Kaam the witness has explained that the boys had removed her clothes and touched her on her private parts and after removing their clothes they had committed rape (*balatkaar*) upon her. It was also observed by the Court that while explaining the above the victim was *feeling very apprehensive and shy and she gave the explanation after great persuasions*. On further Court Question, the witness has deposed that all the accused had raped her two-three times (*Sabhi ne 2-3 baar kiya tha*). She has also specifically stated that it was accused Bittoo boy who had lifted and taken her to the room. She has proved that police had come to the house later and she showed the room where she was kept captivated where the incident had taken place and thereafter she was medically examined. The witness has proved that on the following day her statement was recorded by the police and she had also come to the Court when her statement which is **Ex.PW9/A** was recorded. The witness has further proved the arrest memos of accused Mukesh @ Bittoo which is **Ex.PW9/B**, arrest memo of accused Prabhans Yadav @ Ramjane which is **Ex.PW4/D**, arrest memo of accused Deepak @ Deepu which is **Ex.PW4/E** and arrest memo of accused Ravinder @ Raju which is **Ex.PW4/F**. According to PW9, she was studying in 7th class at that time and she had also gone to the Jail where she identified one of the accused as **Bunti** who was the person who had caught hold of her and dragged her to the room and committed rape upon her first, which TIP proceedings of accused Rajeev @Bunti is **Ex.PX7**. The witness has further proved the personal search memo of accused Mukesh which is **Ex.PW9/C**, personal search memo of accused Ravinder which is **Ex.PW4/G**, personal

search memo of accused Deepak which is **Ex.PW4/H** and the personal search memo of accused Prabhans Yadav which is **Ex.PW4/I**.

Here, I may observe that during the course of trial the behaviour of some of the accused became aggressive and therefore this Court vide order dated 20.9.2011 directed the future production of the accused Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Deepak @ Deepu, Ravinder @ Raju and Rajeev @ Banti in the Court by way of video conferencing. On 14.10.2011 when the accused Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Ravinder @ Raju and Rajeev @ Banti were produced by way of Video Conferencing from Tihar Jail and the accused Deepak @ Sonu was produced from Rohini Jail by way of Video Conferencing, the prosecutrix correctly identified the accused by pointing out towards them and by naming them as Raju, Bunti, Bittoo, Deepak and Ramjane. In fact when the accused Prabhans Yadav @ Ramjane was produced by Video Conferencing, he tried to conceal his identity and tilted his face downwards away from the camera due to which reason the prosecutrix was initially not sure if he was the same person who had also committed the offence on her but when the camera was zoomed on to him, she immediately identified him as Ramjane as one of the accused who had also committed rape upon her. She has identified **Bunti** (Rajeev) as the one who had caught hold of her. She has also identified **Bittoo** and has deposed that said room where she was taken belonged to Bittoo.

In her cross-examination the witness has deposed that the police had come to her house on the same day when her father had called and they had her to the police station. According to her, first she was taken to the police station and from there she had gone to the hospital. She has also stated that before she was taken to the police station she had changed her clothes after taking a bath. On a specific court question the witness has

explained that she was wearing a pajama kurta which she was wearing at the time of incident which was still at the house of her mami and the undergarments which she was wearing at the time of incident were taken away by the police officials on the same day without washing. The witness has testified that she is studying in Laxmi Kanya Senior Secondary School from 6th class onwards and prior to this she was studying in a school near Novelty Cinema but she does not recollect the name of the said school. She has admitted that she had failed in two-three classes and that is why she had to repeat the classes but has denied the suggestion that she is more than 18 years of age and her parents had deliberately given her wrong age. She has deposed that she had never visited the house of her mami alone in the past and has voluntarily added that even this time i.e. when the incident took place, her mother had come with her. She has also admitted that she is suffering from epilepsy but has denied the suggestion that she had given her statement to the police on the tutoring of the Counselors. According to her, when she went to police station Raju (Ravinder) and Bittoo (Mukesh) were arrested from the room by the police. She has denied the suggestion that she had falsely implicated the accused persons at the instance of the police officials. The witness has admitted that she had signed the various arrest memo's and personal search memo's after returning from the hospital when she went to the police station for the second time. The prosecutrix has admitted that the place where she was taken is situated in a thickly populated area but has denied that the room where she was taken has a small door and only one person can enter at a time and that too by bending the neck or by stooping over. According to her, the place where the said room is situated is singly storey and is only constructed till the ground floor and the toilet is situated outside the room. She has admitted that there is no tap in the room but has denied that there was no source of water and has

voluntarily added that there was a matka inside the room. On a specific Court question the witness has stated that the room was locked from outside due to which reason she did not go out of the room to attend the call of nature. According to the witness, her sister was present at the house of her mami at the time of incident and the gali from where she was lifted/dragged is about two gali's away from the house of her mami. She has testified that she had told the Ld. MM in her statement that the gali is at KB-2 Block. On a specific court question the witness has stated that it was wrongly mentioned in the statement that the gali from where she was taken is the gali in front of the house of her mami and the gali from where she was lifted is a wide gali. She has denied the suggestion that the gali in question is so small that only one person or at the most two persons can pass over it but has admitted that in the said gali a large number of persons remain as it is a thickly populated area. She has also deposed that she had raised an alarm when she was dragged by Bunti but nobody had come to her rescue. According to the prosecutrix, she had told the Ld. MM that Bunti was the person who had dragged her but when confronted with her statement **Ex.PW9/A** the said fact was not found mentioned. She has testified that it hardly took one to two minutes to reach the room from the house of her mami and the place where she was lifted to the room is just half kilometer. According to PW9, when she came out from the house she had told her mami that she was going to make purchases and at that time she only had a five rupees coin with her at that time which coin had fallen down at the time when she was dragged. The witness has denied the suggestion that she came to know about the names of the accused when she was told by the police and has voluntarily added that the accused were calling each other by their names and that is how she came to know of their names. She has also denied the suggestion that the room where she was

kept had adjoining jhuggi's with common walls and has voluntarily added that there was no room/ jhuggi adjoining the room where she was taken. According to her, there was no khidki/ window in the said jhuggi/ room. She has admitted that she had not given description of the accused persons to the police when they had inquired from her for the first time and has voluntarily stated that she had given only their names. The witness has also denied the suggestion that the undergarments which she was wearing at the time of incident were not handed over to the investigating officer or were washed. She has further denied the suggestion that she had falsely implicated the accused persons on the asking of her maternal parents and uncle.

PW14 Sh. Rizwan is a resident of the same area who has deposed that on 21.03.2011 in the evening he noticed one girl whose name was 'R' standing near the public toilet. According to the witness, he had seen the photograph of the girl in the public notice pasted in the area regarding her being missing. He has testified that he immediately contacted her family who is also residing in the vicinity and told them that 'R' was standing outside the toilet. The witness has deposed that on this the mausi of 'R' took her back and after giving the information to the family of 'R' he went back home.

In his cross-examination the witness has deposed that the place where the prosecutrix 'R' was standing outside public toilet is hardly five minutes walking from the house of her mausi where he gave the information. According to the witness, he saw the prosecutrix 'R' standing alone and he did not notice anybody else from the public. He has admitted that the chowkidar is present round the clock as the said toilet is being used by the public persons. He has also deposed that he is related to the prosecutrix 'R' and her family and has explained that he had never seen the

prosecutrix previously but has voluntarily added that he had only seen her in the public notice where her photographs was also reflected. He has denied the suggestion that being related to the prosecutrix he has been planted as a witness by the police.

Medical Evidence/ Witnesses:

PW5 Dr. Kalpana has deposed on behalf of Dr. Mamta, SR Gynae who was reported to be on maternity leave. According to the witness, as per record on 22.03.11 Dr. Mamta was working as SR Gynae who examined the prosecutrix/ Patient 'R' daughter of Shakeel Ahmad, aged about 16 years who was referred for gynae examination with alleged history of kidnap by someone on 19.03.11. She has proved the MLC of the prosecutrix which is **Ex.PW5/A** and has deposed that Dr. Mamta had examined the aforesaid patient under the supervision of Dr. R S Mishra who was working as CMO in the hospital.

In her cross-examination the witness has admitted that as per record there was no external injury over abdomen or breast. She is unable to comment whether the prosecutrix 'R' was habitual to sexual intercourse. She has admitted that the MLC was not prepared in her present nor Dr. Mamta has signed the aforesaid MLC in her presence but has voluntarily added that she is her colleague and worked with her in the hospital.

PW6 Dr. Gopal has deposed on behalf of Dr. Uma Kant and Dr. Yetender. According to him, as per record on 24.03.11 Dr. Uma Kant examined the patient. Prabhans Yadav @ Ramjane S/o Sh. Ram Yadav, aged about 23 years, male vide MLC **Ex.PW6/A** and the patient was referred to SR Surgery by Dr. Uma Kant where Dr. Yetender further examined the patient vide endorsement at point C. He has proved that Dr. Yetender has given the opinion that the patient was capable of committal sexual assault. The witness has further deposed that on 25.03.11 when Dr. Praveen Tiwari

was working as JR whereas Dr. Yetender was working as SR Surgery, Dr. Praveen Tiwari examined the patient Ravinder S/o Sh. Prithvi Raj aged about 43 years, male vide MLC **Ex.PW6/B** and Dr. Yetender has given the opinion that the patient was capable of doing sexual assault. He has also deposed that on 25.03.11 while Dr. Praveen Tiwari was working as JR whereas Dr. Yetender was working as SR Surgery, Dr. Praveen Tiwari examined the patient Deepak S/o Prem Kumar aged about 24 years, male vide MLC **Ex.PW6/C** and Dr. Yetender has given the opinion that the patient was capable of doing sexual assault. PW6 has testified that on 02.04.11 he was working as CMO and Dr. Vinod Kumar was working as JR Casualty and Dr. Amit was working as SR Surgery. According to him, on that day Dr. Vinod Kumar examined the patient Rajeev @ Bunti S/o Mahesh Kumar, aged about 28 years, Male vide MLC **Ex.PW6/D**. He has further deposed that on 22.03.11 while Dr. Arun was working as CMO and Dr. Hari Om Kumar Solanki was working as JR and Dr. Yetender was working as SR Surgery, Dr. Hari Om Kumar Solanki examined the patient Mukesh @ Bittoo S/o Prithvi Raj, aged about 33 years, male vide MLC **Ex.PW6/E**. The witness has also deposed that on 02.05.11 while he was working as CMO and Dr. Sanesh N. Garde was working as JR Casualty, Dr. Sanesh N. Garde has examined the patient Mukesh @ Bittoo S/o Prithvi Raj aged about 33 years, Male vide MLC **Ex.PW6/F** wherein Dr. Yetender has opined that the accused Mukesh@ Bittoo is capable of committing rape. According to him, on 25.08.11 while Dr. V.K. Jha was working as CMO and Dr. Vinod was working as JR, Dr. Vinod Kumar examined the patient Deepak @ Deepu S/o Prem Kumar, aged about 24 years, male vide MLC **Ex.PW6/G**. He has testified that on 25.03.11 while Dr. V K Jha was working as CMO and Dr. Vinod was working as JR, Dr. Vinod Kumar examined the patient Ravinder Kumar @ Raju S/o Prithvi Raj, aged about

43 years, male vide MLC **Ex.PW6/H**. He has also proved that on 25.03.11 while Dr. V.K. Jha was working as CMO and Dr. Vinod was working as JR, Dr. Vinod Kumar examined the patient Parabhans Yadav @ Ramjane S/o Sri Ram Yadav, aged about 23 years, male vide MLC **Ex.PW6/I**. The said witness has not been cross-examined by the Ld. Defence Counsel and his testimony has gone uncontroverted.

PW7 Dr. V K Jha has proved the MLC of accused Deepak @ Deepu S/o Prem Kumar, aged about 24 years, male which is **Ex.PW6/G**; the MLC of Ravinder Kumar @ Raju S/o Prithvi Raj, aged about 43 years, male which is **Ex.PW6/H** and the MLC of accused Prabhans Yadav @ Ramjane S/o Sri Ram Yadav, aged about 23 years, male which MLC is **Ex.PW6/I**. He has not been cross-examined by the Ld. Defence Counsels and hence his testimony has gone uncontroverted.

PW10 Dr. R.S. Mishra has deposed that on 22.03.2011 while he was working as CMO BJRM hospital, he examined the prosecutrix 'R' D/o Shakeel Ahmed aged about 16 years, female vide MLC **Ex.PW5/A**. According to him, the patient was referred to SR Gynae for further examination.

Police/ official witnesses:

PW1 HC Phool Kumar is the MHCM who in his examination in chief by way of affidavit **Ex.PW1/1** has proved that on 20.3.2011 the exhibits of the present case were deposited with him vide entry no. 3303 in register no. 19 which entry is **Ex.PW1/A**. According to him on 6.5.2011 the exhibits of this case were sent to FSL through Ct. Vinod vide R/C No. 56/21/11 in register no. 21 copy of which is **Ex.PW1/B**. He has proved that till the time the exhibits remained in his possession, the same were not tampered in any manner. He has not been cross-examined by the Ld.

Defence Counsels and his testimony has gone uncontroverted.

PW2 Ct. Vinod is also a formal witness who in his examination in chief by way of affidavit **Ex.PW2/1** has proved that on 6.5.2011 he took the exhibits of this case from the MHCM vide RC No. 56/21/11 dated 06.05.11 copy of which is **Ex.PW1/B** and deposited the exhibits at FSL, Rohini. He has proved that till the time the exhibits remained in his possession the same remained intact. In his cross-examination the witness has deposed that he had taken four sample seals and five sealed pullandas to the FSL.

PW3 HC Sukhpal is also a formal witness being the Duty Officer who has in his examination in chief by way of affidavit **Ex.PW3/1** deposed that on 20.3.2011 while posted as Duty Officer at Police Station Jahangir Puri, he received a rukka sent by ASI Ved Prakash through Ct. Nanhe Ram on the basis of which he recorded the FIR of the present case which is **Ex.PW3/A**. He has also proved having made his endorsement on the rukka which is **Ex.PW3/B**. He has not been cross-examined by the Ld. Defence Counsels despite opportunity.

PW11 Sh. Rakesh Saxena, Sub Registrar, Death and Birth department, City Zone, Asaf Ali Road, MCD Office had brought the record pertaining to the date of birth of the prosecutrix 'R'. According to him, as per their record the date of birth of the prosecutrix 'R' D/o Shakeel Ahmed, R/o 1335, Gali Karkhane Wali, Tilak Bazar, Delhi-06 is **10.01.1994** which date of birth certificate bear the registration number 01 and date of registration is 19.01.1994 and the name of the mother mentioned in the certificate is Shagun. He has placed on record the copy of said certificate which is **Ex.PW11/A** and the copy of the relevant register showing the entry at serial No.1 which is **Ex.PW11/B** running into two pages.

In his cross-examination the witness has deposed that the above certificate had been issued on the basis of the personal information given to their office by Shakeel Ahmed, father of the child. According to him, no other document has been attached along with the information and the certificate was issued on the basis of the above information.

PW12 L/Ct. Seema has deposed that on 22.03.2011 she was posted at Police Station Jahangirpuri and on that day she joined investigations after receiving informations from ASI Ved Parkash who was present along with the prosecutrix who had been recovered vide recovery memo **Ex.PW4/C**. She has proved that she accompanied the prosecutrix 'R' D/o Shakeel Ahmed to BJRM hospital where her medical was got conducted after which she was handed over the MLC along with exhibits/kit which she brought to the Police Station and handed over to ASI Usha. According to the witness, there were total number of 12 exhibits and she handed over the same to ASI Usha who seized the same and prepared the seizure memo which is **Ex.PW12/A**.

In her cross-examination the witness has deposed that she received the information from ASI Ved Parkash at about 9:30 AM and reached the BJRM hospital along with the prosecutrix at about 12:30 PM. She has testified that she was alone with the prosecutrix who was accompanied by her “bhua” and “tyai”. According to her, she had put her signatures on the MLC in the hospital when the exhibits were handed over to her. She has testified that all the exhibits were sealed with the seal of the hospital. She has admitted that when she reached the spot the prosecutrix had already been recovered by ASI Ved Parkash and she only signed the recovery memo which was prepared by him. The witness has also deposed that she had reached ITI K Block at 9:30 PM where she had signed the recovery memo and that the prosecutrix was taken to the hospital straight

from the place where the recovery memo was prepared and not via police station. She has denied the suggestion that she did not check if the seal of hospital was intact or not.

PW13 SI Sandeep Kumar has deposed that on 21.03.2011 while posted at Police Station Jahangirpuri, at about 8:15 PM he received DD No. 89 B copy of which is **Ex.PW13/A** pursuant to which he along with Ct. Ghase Ram reached at K Block, Main Road, Jahangirpuri. According to the witness, in the meantime when he was on the way to reach at K Block, main road, Jahangirpuri he received the information recording DD No. 90 B from Duty Officer of Police Station Jahangirpuri copy of which DD is **Ex.PW13/B**. According to him, when he reached near Mother Dairy booth, prosecutrix 'R' and her father Shakeel Ahmed met him near mother dairy booth who disclosed about the fact of the present case and when he made inquiries they shown him the copy of the FIR. He has deposed that on seeing the FIR he made a call to ASI Ved Parkash on which ASI Ved Parkash came at the spot where he handed over the custody of prosecutrix and her father to him.

In his cross-examination the witness has admitted the prosecutrix was already present with her father when he reached the spot and later after ASI Ved Parkash reached the spot she was formally handed over to her father. He has also admitted that he is not aware from where the girl had been recovered.

PW15 Ct. Lokender has deposed that on 02.04.2011 he was posted at Police Station Jahangirpuri and on that day the accused Rajeev @ Bunti, had been brought to the Police Station by his mother. The witness has proved that the accused was interrogated by the Investigating Officer and his disclosure statement was recorded which is **Ex.PW15/A** after which the accused was arrested vide memo **Ex.PW15/B** and his personal searched

was conducted vide memo **Ex.PW15/C**. The witness has proved that pursuant to his disclosure the accused took them to K Block Jhuggi Jahangirpuri and pointed out Jhuggi No. A-655 as the place where they had kept the prosecutrix 'R' and committed rape upon her along with his friends on which pointing out memo was prepared by the Investigating Officer which is **Ex.PW15/D**. The witness has also deposed that the said jhuggi was found locked and the accused was taken to BJRM hospital for his medical examination after which the doctor handed over to him the exhibit along with the MLC of the accused which he brought to the Police Station. He has proved that he handed over the exhibits along with the MLC of the accused Rajeev @ Bunti to the Investigating Officer who seized the same vide memo **Ex.PW15/E**. According to him, thereafter the accused was produced before illaka magistrate and remanded for Judicial custody. He has correctly identified the accused Rajeev @ Bunti in the Court.

In his cross-examination the witness has deposed that the signatures of the mother of the accused Rajeev were not taken on the documents prepared by the Investigating Officer at the police station. He has denied the suggestion that the accused Rajeev did not make any disclosure to the Investigating Officer or that the same was recorded by the Investigating Officer of her own. He has denied the various other suggestion put to him by the Ld. Defence Counsels.

PW16 SI Ved Parkash has deposed that on 20.03.2011 while posted at Police Station Jahangirpuri, on receipt of DD No. 8B copy of which is **Ex.PW16/A** he along with Ct. Nanhe Lal reached at house No. 892, Jahangirpuri where complainant Shakeel Ahmed met him who made his statement which is **Ex.PW4/A**. He has proved having made his endorsement on the same which is **Ex.PW16/B** and having got the case registered through Ct. Nanhe Lal. He has deposed that after registration of

the case Ct. Nanhe came at premises No. 892 and handed over to him a copy of the FIR and original rukka and made the search of daughter of complainant but finding no clue he along with Ct. Nanhe returned to police station. According to the witness, on the next day i.e. on 21.03.2011 SI Sandeep informed him that the prosecutrix of the present case had been recovered on which information he reached at main road, K Block, near mother dairy booth, Jahangirpuri where SI Sandeep, prosecutrix, her father, her tyai and some other relatives met him. The witness has testified that when he made inquiries he was told by the father of the prosecutrix that a wrong had been done with the girl on which he called up the police station and requested them to send a lady officer. PW16 has further deposed that after sometime L/Ct. Seema came after which he got the prosecutrix medically examined through L/Ct. Seema after preparing her recovery memo **Ex.PW4/C**. According to PW16, the tai of the prosecutrix along with some other ladies also accompanied the prosecutrix to the hospital. The witness has further deposed that thereafter he went back to the police station and made detail inquiries from the family members of the prosecutrix but they were unable to provide him with the complete details. He has deposed that after informing the SHO about the situation further investigations were marked by the SHO to a lady officer and in the morning ASI Usha had come from Police Station Model Town when he handed over the complete case file to ASI Usha through MHC(R). The witness has also deposed that in the morning Ct. Seema handed over the MLC and exhibits to ASI Usha after which the prosecutrix was interrogated by ASI Usha. According to him, thereafter he along with Ct. Anil accompanied ASI Usha and prosecutrix to K Block jhuggi where she pointed out jhuggi/ house No. A-655 as the place where she had been held captive and when they reached there one boy came out of the jhuggi and the prosecutrix pointed out

towards him as Mukesh as one of the persons who had committed rape upon her. He has proved the pointing out memo prepared by ASI Usha which is **Ex.PW16/C**; arrest of the accused Mukesh vide memo **Ex.PW9/B** and his personal search was conducted vide memo **Ex.PW9/C**. According to PW16, the accused Mukesh was duly interrogated by ASI Usha who recorded the disclosure statement of the accused which is **Ex.PW16/D**. The witness has deposed that from the said Jhuggi the accused Mukesh also got recovered a bed sheet which the Investigating Officer seized vide memo **Ex.PW16/E** and also sealed the same with his (witness's) seal i.e. VP. Thereafter the accused Mukesh was sent to the BJRM hospital for his medical through Ct. Anil after which they returned to the Police Station. According to him, Ct. Anil returned after 30-45 minutes after getting the medical of the accused Mukesh conducted and in his presence Ct. Anil handed over the exhibits and the MLC of the accused to the Investigating Officer. He has deposed that the accused Mukesh was thereafter produced before the Ld. Illaka magistrate and was sent to the judicial custody.

The witness has correctly identified the accused Mukesh in the Court as well as the case property i.e. the bluish colour bed sheet which was got recovered by the accused Mukesh which is **Ex.P-1**.

In his cross-examination the witness has deposed that he made inquiries from Shakeel Ahmed at house No. 892, Jahangirpuri regarding as to how he came to know about the missing of his daughter but he had not mentioned the aforementioned fact as disclosed by Shakeel Ahmed. According to him, he had not seized any medical record of the prosecutrix pertaining to her mental disorder and has denied the suggestion that he had not collected any medical record of the prosecutrix regarding her ailment/mental disorder as there was no record available or that the prosecutrix was not suffering from any ailment as alleged. The witness has also deposed

that he had not made any inquiries or collected any record pertaining to the medical ailment from Kalawati hospital. He also states that he had made inquiries from the neighbourhood from where the girl had got missing at Jahangirpuri and not from Tilak Bazar, Delhi -06 where the family of the prosecutrix resides. He has testified that he did not record the statement of the neighbours from whom he had made inquiries. According to him, he received the information about the recovery of the prosecutrix in the police station but he does not remember if before leaving the police station he had made any ravangi or DD entry with regard to the information given by SI Sandeep. He has also deposed that when the prosecutrix returned to the police station ASI Usha had come but he is unable to tell if there were any persons from some NGO for counseling of the victim. The witness has testified that ASI Usha had come to the Police Station at about 9 AM. He has denied the suggestion that before arrival of ASI Usha the prosecutrix had already been sent at home and has voluntarily stated that she remained at the police station. PW16 has admitted that the place where jhuggi No. A-655 is situated is thickly populated area and that the gali where it is situated is three to four or four to four and a half feet wide. He has denied the suggestion that two persons cannot easily pass through this gali simultaneously and has voluntarily stated that it is four to four and a half feet wide and two to three persons can pass through simultaneously. The witness has also deposed that no public persons /neighbours were ready to join the investigations at the spot at A-655 and has voluntarily added that they simply stated that they knew nothing and were reluctant. He is unable to tell the numbers of the other jhuggies situated on either side of A-655 or its front or backside. He has denied the suggestion that they did not join any person in the investigations as no investigations were conducted at the spot. The witness has admitted that when they went to A-655 the family

members of the prosecutrix were also present. He has stated that the signatures of the family members of the prosecutrix were not taken on the pointing out memo of A-655 or on the disclosure statements and other documents prepared by the Investigating Officer at the spot including seizure memo of the bed sheet. According to the witness, the seal after use was handed over to him in the police station later on and he does not recollect any site plan being prepared in his presence. He has deposed that the premises of jhuggi No. A-655 is double story and the door on the ground floor is about six feet high and also wide i.e. of a normal size. According to him, the approach to the first floor to the jhuggi is from the wooden stair case which opens in the gali. He has denied that the width of the stair case is about 18-20 inches and has voluntarily added that it is about two feet. The witness has admitted that only one person can climb from the stair case at a time. He has deposed that the crime team was not called in his presence for inspection of the said jhuggi and has admitted that the bed sheet **Ex.P1** is available in the market. This Court has specifically observed that it was a normal bed sheet being sold in the market. The witness has denied the suggestion that the bed sheet has been planted upon the accused or that no recovery was effected as deposed by him. He has also denied that he had not joined the investigations as deposed by him or that accused was not apprehended in the manner as deposed by him.

PW17 WASI Usha has deposed that on 22.03.2011 she was posted in Police Station Model Town and on that day pursuant to an information she came to Police Station Jahangir Puri where W/Ct. Seema and ASI Ved Prakash met her. According to the witness ASI Ved Prakash disclosed to her about the facts of the present case after which she collected the case file of the present case from MHC(R). The witness has further deposed that she called the representative of the NGO in the police station

in whose presence she made inquiries from the prosecutrix 'R' who was present in the Police Station and she recorded her. He has testified that prior to the interrogation of 'R' W/Ct. Seema handed over her 12 (twelve) sealed parcels which she seized vide memo **Ex.PW12/A** and she deposited the said parcels with the MHC(M). According to the witness, the prosecutrix 'R' lead her, ASI Ved Prakash, Ct. Anil alongwith Lady Ct. Seema at A-655 and pointed out towards the Jhuggi and in the meanwhile the accused Mukesh was coming out from the jhuggi whom the prosecutrix had pointed out. She has proved the pointing out memo of the said jhuggi which is **Ex.PW16/C** and when the jhuggi was searched the accused Mukesh got recovered one light blue colour bed sheet from the first floor which was sealed with the seal of VP and seized vide memo **Ex.PW16/E**. She has also proved having recorded the disclosure statement of the accused which is **Ex.PW16/D**. According to her, the accused Mukesh was thereafter arrested vide memo **Ex.PW9/B** and his personal search was carried out vide **Ex.PW9/C** after which she sent the accused Mukesh to BJRM Hospital for his medical examination and she along with the prosecutrix and the case property returned to the police station which the case property was deposited with the MHC(M). The witness has testified that the prosecutrix was thereafter produced before the Illaqa Magistrate and her statement under Section 164 Cr.P.C. was got recorded. She has deposed that in the meantime Ct. Anil produced the MLC and accused Mukesh was produced before the court concerned from where he was sent to Judicial Custody. She has also proved that on 22.03.2011 the father of the prosecutrix handed over her the photocopy of birth certificate of the prosecutrix 'R' which was seized vide memo **Ex.PW4/B** and the said birth certificate is **Ex.PW11/A**. According to her, on the same day she handed over the case file to MHC(R) during her tenure of investigation. She has correctly identified the accused

Mukesh in the Court.

In her cross-examination the witness has deposed that she reached Police Station Jahangir Puri at about 9.30-10.00 AM but she does not remember whether she had recorded any arrival entry at Police Station Jahangir Puri when she visited there. She has admitted that the persons from NGO had talked with the prosecutrix before she made enquiries from her but has denied the suggestion that the family relatives of prosecutrix were present when she made enquiries from the prosecutrix. She does not remember whether she had made a departure entry when she left the police station Jahangir Puri along with the prosecutrix and other police officials. According to her, she left the police station at about 11-00-11.30AM and the Jhuggi A Block is situated at walking distance of about ten to fifteen minutes from police station. She has testified that she did not produce the prosecutrix before the SHO before leaving police station and has admitted that the place where jhuggi No. A-655 is situated is thickly populated area and that the gali where it is situated is three to four feet wide. The witness has further deposed that she had called public persons from the area to join the investigation but no public persons/ neighbours were ready to join the investigations at the spot at A-655 but she did not give any legal notice to them nor she could tell their names and addresses. She is unable to tell if there is any toilet in any of the jhuggies situated in A Block and states that she did not notice the same and she did not notice any toilet in jhuggi No. A-655. She is unable to tell if there was no water connection in jhuggi No. A-655 and states that she had not noticed the same. According to her, the signatures of the prosecutrix were not taken on the pointing out memo of A-655 or on the disclosure statements and other documents prepared by the her at the spot including seizure memo of the bed sheet but her signatures were taken on the arrest and personal search memo of the accused Mukesh.

She has denied the suggestion that no signatures were present on the documents i.e. seizure memo, pointing out memo and disclosure statement of the accused because they were not present at the spot nor any investigations were conducted as deposed by her. According to the witness, she had not prepared any site plan of jhuggi No. A-655. She does not remember if the door of the premises jhuggi No. A-655 were of 4-4 ½ feet in height. The witness has testified that she did not seize the documents pertaining to ownership of jhuggi No. A-655 and she had not noticed whether there is an electricity connection in the said jhuggi. She has admitted that the width of the staircase leading to the first floor of the Jhuggi is about 18-20 inches and that only one person can climb from the staircase at a time. PW17 has also deposed that she had not picked up or seized any torn pieces of cloth, buttons or blood stains etc. from the said jhuggi since nothing was present. According to her she had not picked up any chance print from the said jhuggi. The witness has denied the suggestion that the bed sheet has been planted upon the accused or that no recovery was effected as deposed by her. She has further denied the suggestion that the signatures of the accused were taken on blank papers and form which was later on converted into various memos and documents.

PW18 SI Vineeta Prasad is the Investigating Officer of the present case who has deposed that on 22.3.2011 while posted at Police Station Jahangirpuri, the investigation of this case was assigned to her. According to her, after receiving the case file from MHCR, she gone through the same and came to know that the accused Mukesh had already been arrested by the initial Investigating Officer whereas other four accused were yet to be arrested. She has testified that on 24.3.2011 she alongwith Ct. Anil left the police station in search of other accused in the evening time and she along with Ct. Anil reached in Jhuggi No. A-655, K Block,

Jahangirpuri where prosecutrix 'R' and her father met them. According to her, on asking the prosecutrix showed her the jhuggi where she had been confined and while they were returning, the prosecutrix pointed out towards Prabhans @ Ramjane, who was apprehended and interrogated who made disclosure statement which is **Ex.PW18/A**. She has proved that the accused Prabhans @ Ramjane was arrested vide memo **Ex.PW4/D** and his personal search was carried out vide memo **Ex.PW4/I**. She has testified that the accused Prabhans Yadav also pointed out the jhuggi where he had committed the wrong act upon the prosecutrix and pointing memo in this regard is **Ex.PW18/B**. According to the Investigating Officer she recorded the statement of the prosecutrix 'R' and her father after which they were let free from the spot whereas she went with the accused to BJRM hospital where his medical was got conducted. The witness has also deposed that after the medical examination of accused Prabhans @ Ramjane, the doctor handed over her the blood sample of accused in sealed condition which was taken into possession vide memo **Ex.PW18/C** and thereafter they returned to police station and accused Prabhas @ Ramjane was put behind the bars. The Investigating Officer has also deposed that on 25.3.2011 she along with Ct. Anil, Ct. Amar left the Police Station for investigations and the prosecutrix and her father were joined in the investigations and went to Jhuggi No. A-655, K Block Jahangirpuri where accused Ravinder @ Raju and Deepu @ Deepak were found present. She has testified that the prosecutrix pointed out towards both Ravinder @ Raju and Deepu @ Deepak on which they were interrogated and they made their disclosure statements which are **Ex.PW18/D** and **Ex.PW18/E**. She has proved that the accused Ravinder @ Raju and Deepu @ Deepak pointed out the place of offence vide memo **Ex.PW18/F1** and **Ex.PW18/F2** after which both the accused were arrested vide memos **Ex.PW4/E** and **Ex.PW4/F** and their

personal search was carried out vide memos **Ex.PW4/G** and **Ex.PW4/H**. She has also stated that she recorded the statements of 'R' and her father and let them free from the spot after which both the accused Ravinder @ Raju and Deepu @ Deepak were taken to BJRM hospital for their medical examination and after medical examination of the accused, doctor handed over blood samples of both the accused in two small bottles which were sealed with seal of BJRM which were taken into possession vide memos **Ex.PW18/G**. According to PW17, she returned to Police Station and case property was deposited with the MHCM. She has testified that thereafter the potency examination of all three accused Prabhans Yadav, Ravinder @ Raju and Deepu @ Deepak was got conducted on 26.3.2011 after which they were sent to judicial custody. She has further deposed that on 2.4.2011 accused Rajeev @ Bunti was produced in the police station by his mother after which the accused was interrogated who made his disclosure statement which is **Ex.PW15/A**. She has proved that the accused Rajeev @ Bunti was arrested vide memo **Ex.PW15/B** and his personal search was carried out vide memo **Ex.PW15/C** and thereafter the accused Rajeev @ Bunti pointed out Jhuggi No. A-655 vide pointing out memo **Ex.PW15/D**. She has testified that Rajeev was got medically examined from BJRM hospital and after his medical examination the doctor concerned handed over the blood sample of accused duly sealed with the seal of BJRM hospital which was seized vide memo **Ex.PW15/E** and the accused was sent to judicial custody thereafter. The witness has further deposed that during investigations it revealed that the blood sample of accused Mukesh could not be obtained and hence with the permission of the Court she produced the accused before MS, BJRM hospital where after the medical examination the doctor handed over a sealed parcel (blood sample of accused Mukesh) in sealed condition, which was seized vide memo **Ex.PW18/H**. According

to her, on 25.4.2011 the accused Rajeev @ Bunti was tendered for judicial TIP wherein he was duly identified by the prosecutrix. She has proved that during investigations she prepared the site plan which is **Ex.PX**, collected a hand written document from Prithvi Raj who was the owner of Jhuggi No. A-655 which document was seized vide memo **Ex.PX1** and the said hand written document is **Ex.PX2**. She has further proved having recorded the statements of witnesses and the deposit of exhibits at FSL Rohini. According to her, the charge sheet was prepared and filed in the Court and the report was received from the FSL after the filing of charge sheet which reports **Ex.PW18/I** and **Ex.PW18/J** were filed in the Court. She has correctly identified all the accused in the Court.

In her cross-examination the witness has deposed that she did not make any specific inquiry from the prosecutrix regarding the description and details of the accused when she first met her on 24.3.2011. According to the witness, it did not come to her knowledge that Jhuggi No. A-655 had been sealed by the first Investigating Officer by putting a lock. She has admitted that Juggi No. A655 was locked when she reached there on 24.3.2011 and that first floor room was also locked. The witness has also admitted there is no grill/ parapet wall on the first floor and that if a person does not take the assistance of the wall while climbing on the staircase he can fall down because there is no support on the first floor. She has admitted that the passage leading to the door on the first floor is about 1/ 1.25 ft. wide. The witness has denied the suggestion that she had not prepared any site plan of the jhuggi and has voluntarily stated that she had prepared the site plan showing the situation/ placement of the jhuggi in the area but not specifically of the room from inside. PW18 has admitted that that the jhuggi is situated in thickly populated area but has denied the suggestion that even two persons cannot walk in the street in which Jhuggi

A-655 is situated because it is too narrow and has voluntarily stated that even three to four persons can walk. She has also admitted that many persons collected at the time of apprehension of accused Ramjane. According to her, she had seen the body inspection memo of accused Mukesh in the file which was handed over to her but after going through the challan the witness has stated that body inspection memo of accused Mukesh is not there on the record. She has testified that she had recorded her arrival entry when she returned back to the Police Station on 24.3.2011 but she does not remember the DD Number. The witness has also deposed that she recorded her departure entry on 25.3.2011 when she left the police station and reached at Jhuggi No. A-655 at about 8/8:30 AM. She has admitted that many public persons collected when accused Ravinder and Deepak were apprehended from inside the Jhuggi No.A-655. According to her, she had not sealed premises No. A-655 on 24.3.2011 and had not affixed any notice on the gate of said jhuggi nor she made any site plan of the jhuggi A655 on 25.3.2011. She has denied the suggestion that all memos and documents were prepared in the police station on 25.3.2011. The witness has also deposed that she had not seized any hue and cry notice from the parents of the prosecutrix. She further states that she had recorded an entry on 2.4.2011 reflecting that accused Rajeev was produced in the police station by his mother but she does not remember the DD number nor she had annexed the copy of the same along with the challan. The witness has testified that she had obtained the signatures of mother of accused Rajeev on personal search memo and arrest of memo but after seeing the arrest and personal search memos of accused Rajeev which are **Ex.PW15/B** and **Ex.PW15/C** it is observed that the signatures of the mother of Rajeev were not present. According to the witness, she had not collected any documentary proof pertaining to ownership from Prithvi Raj the alleged

owner of the Jhuggi No. A-655 nor she seized any copy of electricity/ water bill from him. She has admitted that **Ex.PX2** which is the handwritten statement of Prithvi Raj S/o Kishori Lal is not addressed to anybody nor it mentioned any case particulars and that she did not sign **Ex.PX2** after taking the same from Prithvi Raj. PW18 has also admitted that she did not take and seize any rent receipt/ rent note from Prithvi Raj to prove that the accused were residing in the premises as tenants and has voluntarily added that he did not hand over any such document to her. She has testified that she had made inquiries from Prithvi Raj if he was in possession of any rent agreement and he told her that it was all oral. She has denied the suggestion that she had not made any queries from Prithvi Raj regarding in which capacity the accused persons were residing in the jhuggi because he has been planted as witness in this case or that accused persons were not residing in the jhuggi and were not in possession of the said jhuggi at any point of time as alleged. The witness has also denied the suggestion that she did not carry out the investigations fairly and properly or that accused persons have been falsely implicated in this case.

STATEMENT OF ACCUSED/ DEFENCE EVIDENCE:

After completion of prosecution evidence the statement of the accused were recorded under Section 313 Cr.P.C. wherein all the incriminating evidence was put to them which they have denied.

The accused **Mukesh @ Bittoo** has stated that he is innocent and has nothing to do with the alleged incident. According to him, he has been falsely implicated.

Similarly the accused **Prabhans Yadav @ Ramjane** has stated that he is innocent and has nothing to do with the alleged incident. According to him, he has been lifted from his house and has been falsely

implicated. He has denied having made any disclosure statement to the police.

The accused **Deepak @ Deepu** has stated that he is innocent and has nothing to do with the alleged incident. According to him, he has been lifted from his house and has been falsely implicated. He has denied having made any disclosure statement to the police.

The accused **Ravinder Kumar @ Raju** has similarly stated that he is innocent and has nothing to do with the alleged incident. According to him, he has been lifted from his house and has been falsely implicated. He has denied having made any disclosure statement to the police.

Similarly the accused **Rajeev @ Bunti** has stated that he is innocent and has nothing to do with the alleged incident. According to him, he has been falsely implicated. He has denied having made any disclosure statement to the police.

SPOT INSPECTION BY THE COURT UNDER SECTION 310 CR.P.C.:

During the course of trial, major controversy and disagreement had emerged between the prosecution and the defence on the aspect of the spot i.e. house of the maternal uncle of the victim where she had come on a visit along with her mother, the spot from where the prosecutrix was allegedly kidnapped, the spot where the victim was held captive for three days and allegedly gang-raped and the spot from where the victim was allegedly spotted and recovered.

Keeping in view the fact that no site plan (rough or scaled) had been placed on record and the controversies/ discrepancies revolving around the aforesaid issues were material, this Court vide order dated 11.1.2012 was of the view that it had become necessary for the Court to

visit and inspect the following spots/ places in terms of the provisions of **Section 310 Cr.P.C.**

- i) The spot where the house of the maternal uncle of the victim is situated where she had come at the time of the incident.
- ii) The spot/ place from where the prosecutrix was allegedly dragged/ kidnapped.
- iii) The spot/ place where the victim was allegedly gang raped.
- iv) The spot/ place where the victim was allegedly spotted and got recovered.

Pursuant to the above this Court conducted the spot visit on 12.1.2012 and inspected the above spots:

Jhuggi No. K-892 was inspected from outside only to ascertain its location. This was the place where the police first met Shakeel Ahmed the father of the prosecutrix on 20.3.2011 after the call was made to the PCR. It was observed that the said house is near the main road and the approach to the house from the main road is convenient. The spot is also reflected in the rough site plan prepared **at the spot by the Court.**

Further, House No. A-333 was inspected where the words KA-333 were written on the board outside and it was informed by the residents that the Block number is K but the words KA have been mentioned because of the splitting of the jhuggi into two portions which were owned by two different persons and these numbers were observed to have been given privately. This was the house of the maternal uncle i.e. mama of the prosecutrix where she had gone for a visit and this court observed that gali in front was hardly two feet wide.

This Court also inspected the crossing/ spot from where the prosecutrix was allegedly dragged/ taken away by the accused and it observed that this spot was hardly seven steps from the house no. A-333

(slightly ahead) and was only three to three and a half feet wide.

Further, House No. K-655 where the prosecutrix was taken and kept for two to three days and allegedly raped was inspected and it was observed that the house/ jhuggi was constructed upto the first floor. This Court inspected both the ground and first floor. The way to the first floor was observed to be from the gali on the backside which was hardly about 30-35 steps away from the spot from where the prosecutrix was dragged and it took about one minute to reach the same from the place where the prosecutrix was dragged. The ground floor was divided into two portions. The room on the back portion was bearing no. K-655 whereas the room on the front portion was bearing no. K-647. The first floor had two rooms and both were found to be having the No. K-655. The gali on the front side was about 4-5 feet wide whereas the gali from where the approach to the first floor room was possible was about three feet and at the same time the roofs were not very high and there was a fixed wooden ladder for going to the first floor and it was observed that one could easily move up the ladder without any difficulty as there was support of adjoining wall. It was also observed by the Court that keeping in view the low height of the roof it was not difficult to lift or even drag a young girl up the ladder when more than one person is involved.

The ground floor rooms were also inspected with the due permission of the residents. After entering inside the Jhuggi, it was found that there was a wall separating the two rooms with an opening in the form of a door which appeared to be a recent construction. The lady residing there informed that she was staying there for last more than seven to eight years. Initially she was residing in only the front room bearing no. K-647 but recently the tenant residing in the back portion bearing no. K-655 had vacated and therefore she had taken the said portion also on record due to

which reason the two rooms had now been joined by creating above opening. She also informed the Court that the roof rights were with the owner of the back portion and hence the number of rooms on the first floor was also K-655 (not 647). This Court further observed a water outlet in the room on the backside (i.e. K-655) in the corner which was perhaps being used by the occupants for washing purposes. It was also observed that the entire ground floor and first floor structure was pucca construction. The rooms on the ground floor were slightly below the road level with not very high doors (but one could enter easily without bending/ stooping). It was also observed that the roof of the adjoining jhuggi which was only constructed till ground floor was much lower to the roof to the Jhuggi No. K-655 and therefore, in case if any person is held captive on the first floor, it would not be possible to either call out or catch the attention of person residing there. Further, the jhuggi in front of the jhuggi where the incident reportedly took place belonged to the accused Prabhans Yadav and perhaps it was for this reason that the prosecutrix could not catch the attention of any other person in the vicinity and none came to her rescue.

Further, the public toilet where the prosecutrix was recovered was also inspected and it was found to be at a distance of hardly three to five minutes from the jhuggi where she had been held captive. This Court also observed that there were two routes to reach the said public toilet, one through the main gali via main road and another from the gali's inside the Jhuggi cluster.

This Court further observed that the entire area was an unauthorized Jhuggi Cluster with hundreds of people residing there, open drainage and many of the galis which were hardly one to one and a half feet wide. Some of the galis were even three or five feet wide (as reflected in the rough plan drawn by the Court at the spot). The jhuggi's were mostly a

pucca construction and population density was extremely high with a low and suppressed voice/ sound quality on account of noise. Many of the house were below the level of the gali and in case if two or more persons surrounded a young girl they could easily drag her away without anybody noticing the same in view of the nature of congestion. Many of the Jhuggies were found with single door and no ventilation. The Jhuggi No. 655 (first floor) rooms were found to be having water outlets inside the rooms which water flowed into the open drains outside through pipes. In one of the rooms on the first floor there also existed a water tap and a temporary partition in the corner which was being used as a washroom though it cannot be stated whether it was an old feature or a recent addition. The windows (as indicated in the rough site plan prepared by the Court) were small with iron grills affixed on it. Distance between House No. 655 to main road was hardly observed to be 300-350 steps. This Court also prepared a rough site plan on the spots so visited which was made a part of the memorandum of relevant facts which now forms a part of the Judicial Record (in terms of the provisions of Section 310 Code of Criminal Procedure).

FINDINGS:

I have heard the arguments advanced before me by the Ld. Addl. PP for the State and the Ld. Defence Counsels. I have also gone through the written synopsis/ memorandum of arguments and the evidence on record:

No delay in registration of FIR:

It is evident from the record that there is no delay in registration of FIR and the information regarding the prosecutrix having gone missing was given to the police at the earliest possible opportunity

thereby lending credibility and authenticity to the version of the prosecution. In the case of ***State of Rajasthan Vs. Om Prakash*** reported in ***(2002) 5 SCC 745***, the Hon'ble Supreme Court has held that in case where delay is explained by the prosecution in registering the case, the same could be condoned moreover when the evidence of the victim is reliable and trustworthy.

A Similar view was taken in ***Saheb Rao Vs. State of Maharashtra*** reported in ***AIR 2006 SC 2002*** and ***Tulshidas Kanolkar Vs. The State of Goa*** reported in ***(2003) 8 SCC 590***, wherein it was held by the Supreme Court as follows:

“The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusation of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so the mere delay in lodging of first information report does not in any way render prosecution version brittle.”

Applying the settled principles of law to the facts of the present case it is borne out from the record that as soon as soon as the prosecutrix went missing from the family of her maternal grand mother at Jahangir

Puri. It is only natural that on 19.3.2011 the father of the prosecutrix who is a resident of Gali Karkhane Wali, Tilak Bazar, Central Delhi first tried to search for her in the area and also with his relatives and it is only when he failed to trace her that he made a call to PCR on 20.3.2011 (on the following day) after which DD No. 89B was recorded without any loss of time. It is writ large that the father of the prosecutrix had given information to the police at the earliest possible opportunity and the delay if any is only natural and has been explained leaving little scope for doubt on the prosecution case.

Age of the prosecutrix:

During the course of arguments the accused had raised one of the defence that the prosecutrix 'R' was a major/ adult being more than 18 years of age at the time of the incident. A specific suggestion in this regard was made not only to the prosecutrix but also to the father of the prosecutrix which has been specifically denied. I may observe that the date of birth certificate has been placed on record and the same had been handed over to the Investigating Officer by the father of the prosecutrix namely Shakeel Ahmed which certificate was taken into possession vide seizure memo **Ex.PW4/B**. The said birth certificate has been placed on record which is **Ex.PW11/A** showing the date of birth of the prosecutrix as **10.1.1994** which aspect has also been duly proved by Sh. Rakesh Saxena (PW11), Sub Registrar (Death and Birth) where her mother's name has been found as Shagun.

It is a settled law that to render a document admissible under **Section 35** of the **Evidence Act**, three conditions must be satisfied, **firstly** that entry is relied on must be one in a public or other official book, register or record; **secondly** it must be an entry stating a fact in issue or relevant fact; and **thirdly** it must be made by a public servant in discharge of his

official duty, or any other person in performance of a duty specially enjoined by law. The above ingredients being fulfilled, the entry relied upon being in a public/ official book made by a public servant and duly proved as such, is admissible in evidence and the accused having failed to controvert the same I hereby hold that on the date of incident the prosecutrix was aged about **17 years and two months**.

Consent of the prosecutrix:

One of the defence raised by the Ld. Counsel is that the prosecutrix was a consenting party and it is for this reason that there are no indication of force being used upon her as evident from the MLC. It is also submitted by the Ld. Defence Counsels that had the prosecutrix been dragged or lifted as claimed by her, she would have raised an alarm and somebody would have certainly noticed the same and would have come to her rescue which is not the case which implies her consent. The Ld. Addl. PP for the State on the other hand has vehemently argued that the prosecutrix was not a resident of the area and had come to the house of her maternal grand-mother only to visit her maternal family. He has also argued that being unknown to any of the accused prior to the incident, the question of consent even otherwise does not arise.

I have considered the rival contentions. At the very outset, I may observe that the provisions of **Section 114 A** of the **Indian Evidence Act** provides that in a prosecution for rape under sub section 2 of Section 376 of the Indian Penal Code where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and **she states in her evidence before the court that she did not consent, the court shall presume that she did not consent**. The presumption as aforesaid is rebuttable and it was necessary for the accused to have rebut the same which they have failed to do.

The prosecutrix in the present case a young girl of 17 years is physically and mentally weak since she was suffering from neurological disorder (seizures) at the time of the incident. The spot from where the prosecutrix was allegedly left and taken to the house where she was held captive is hardly 30 steps or may be even less and it hardly take a minute to reach the place where she had been held captive. As observed by this Court during the Spot Visit on 12.1.2012 the area in question is highly congested with small galies, overflowing drains, high population density and low voice/ sound quality in view of the congestion making it difficult to hear or even understand anything being said. Therefore, in case of any alarm if so raised at any given point of time and it would be difficult to hear the cries of any person in normal time when people are awake and active.

It is evident that at the time of the incident the prosecutrix was casually standing in the gali outside when all of sudden the five accused zoomed in and surrounded her out of whom one of them caught hold of her hand and dragged her to the room hardly a minute away from the place where she was standing. Obviously, she would have been too shocked and scared at that time to have reacted in any manner. At this stage, it is necessary for this Court to observe that on account of her neurological problem and mental condition perhaps it was not possible for the prosecutrix to have resisted the offenders and reacted as any other normal person. She was held captive for almost two-three days i.e. from evening 19.3.2011 to evening of 21.3.2011 and during the spot inspection by the Court on 12.1.2012 it was observed that even if she would have raised an alarm it may not have alerted any person there being only one small window in the room closed with iron grills with the house of the accused Prabhans Yadav on one side across the gali and there being no construction on the first floor of the adjoining jhuggi and the gali on the third side being

about five feet wide and there being no opening or widow on the fourth side. Mere absence of external injuries or resistance on behalf of the prosecutrix does not imply her consent.

There is nothing on record to show that the victim before this Court was a woman of questionable character with lewd and lascivious behaviour. Even otherwise, assuming that the victim was habituated to sexual intercourse no such inference like victim being a girl of loose moral character is permissible to be drawn from that circumstance alone. Rather, on the contrary it has been duly proved that at the time of incident was a school going girl belonging to a conservative Muslim family residing at Gali Karkhane Wali, Tilak Bazar, Central Delhi who had come to visit her maternal grand-mother along with her mother and became an easy target of the local hoodlums in view of her medical problem and weak understanding.

Keeping in view the social status and the background of the prosecutrix, it is not possible that the family of the prosecutrix put her reputation to risk in the circle and society to which they belonged and hence, the question of the consent on the part of the prosecutrix who has specifically deposed to the extent that she was dragged and held captive and raped during the period does not arise.

Medical Evidence:

In so far as the accused Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Deepak @ Deepu, Ravinder @ Raju and Rajeev @ Bunti are concerned, the prosecution has successfully proved their capability in performing sex. The MLC of the prosecutrix has also been proved by Dr. Kalpana which MLC is **Ex.PW5/A**. It is evident from the MLC **Ex.PW5/A** that the prosecutrix aged 16 years was brought to BJRM Hospital with an

alleged history of being kidnapped by somebody on 19.3.2011 and was medically examined on 22.3.2011. **She (prosecutrix) had disclosed to the doctor that she has changed her clothes but not taken bath.** It is evident from the testimony of Dr. Kalpana there were no external injuries and the doctor has not been able to tell whether the prosecutrix was habitual to sexual intercourse or not. I may also observe that the prosecutrix is a young girl aged about 16 years who according to her father Shakeel Ahmed (PW4) had been suffering from neurological disorder (seizures) even at the time of the incident and her mental condition was not upto the mark.

The MLC of the prosecutrix **Ex.PW5/A** establishes that the hymen was torn and admitting two fingers easily. This conclusively proves that the prosecutrix had been subjected to repeated sexual intercourse (semen stains have been detected in the cervical secretions sent to FSL and also on the bed sheet **Ex.P1** got recovered by the accused Mukesh @ Bittoo). Mere absence of external injuries over abdomen and breast does not mean that there was no incident. It establishes that the prosecutrix did not offer any resistance. In the present case the prosecutrix a young girl aged about 16 years had been picked up by as many as five men. Her physical and mental condition was not such that she could have offered any resistance. Perhaps the reason why the prosecutrix is alive today is only because she did not offer any resistance. Had she resisted she would surely have been either killed or subjected to intense brutality. The absence of injuries on the body of the prosecutrix as pointed out by the Ld. Defence Counsel cannot be read in favour of the accused under the given circumstances.

The medical record of the prosecutrix 'R' has been placed on record which shows that she is a patient of neurological disorder

(seizures)and regularly receiving treatment from Kalawati Hospital. I may observe that Epilepsy is a disorder of the central nervous system, specifically the brain and in epilepsy the brain's electrical rhythms have a tendency to become imbalanced resulting into recurrent seizures. An epileptic may experience learning problems related to his seizures. Several major factors may contribute to these learning difficulties are seizure-related effects, medication-related effects, psychosocial factors, and developmental disorders. No single factor relating to a child's seizures accurately predicts what, if any, impact her epilepsy will have on her learning abilities. Aspects of her seizure disorder that may come into play when talking about academic potential include what the cause of her epilepsy might be, at what age she began having seizures, the seizure type/s she experiences, what part of her brain is affected by her seizure activity, and how frequently the seizures happen. Different seizure types can have different impacts on a child's school performance. For example, a child's memory may be adversely affected by a generalized tonic-clonic (grand mal) seizure or a complex partial seizure. Absence seizures, which are characterized by a brief loss of consciousness, may prevent a child from hearing and seeing what is happening around him while he is having seizures. This loss of contact with his surroundings can therefore impede his learning. Children may also fall behind from missing school for doctor's appointments, tests, or while recovering from a major seizure as has happened with the prosecutrix in the present case.

In the present case the medical record of the prosecutrix has been placed on record which is **Ex.C1** showing that the prosecutrix 'R' is suffering from neurological disorder (seizures) for which she had been receiving continuous treatment. As per the record she had also suffered one episode of seizure on 28.9.2011 and had been regularly receiving treatment

even till November 2011. The said record reveals that in October 1998 the prosecutrix was hardly 15 Kg and had an abnormal ECG. As per the said record she had weakness of right half body followed by tonic spasm of the right side for almost 30-40 minutes during which period she remained detached from surroundings for almost one to one and a half hour which has been her regular affair. It is also evident from her cross-examination that she has admitted having failed in school on two or three occasions (establishing her weak mental status).

Here, I may observe that according to the first version given by the prosecutrix to the police and also to the doctor, she had not taken her bath and only changed her clothes when she was taken to the hospital. In the Court the prosecutrix had stated that she had taken a bath. The medical condition of the prosecutrix establishes her weak mental state and the possibility of the prosecutrix having forgotten whether she did take a bath or not on account of memory loss (due to history of neurological disorder) cannot be ruled out. Even otherwise, the presence/ detection of semen in cervical, mucus and vaginal secretions collected by the doctors (from BJRM Hospital) within a matter of hours of the last intercourse, proves that the version given by the prosecutrix to the doctor that she had not taken a bath was correct.

Forensic Evidence:

It has been duly proved that the following samples had been collected by Dr. Mamta at BJRM Hospital:

1. Nail scrapping
2. Cervical mucus collection
3. Cervical culture
4. Slides of vaginal secretion

5. Vaginal washings
6. Breast swab
7. Rectal examination slide culture
8. Clipping of pubic hairs
9. Matted pubic hairs
10. Oral swab
11. Urine and Oxalate blood vial
12. Blood collection of victim.

The said exhibits were sent to FSL for examination and as per the FSL report **Ex.PW18/J** duly proved by the Investigating Officer.

As per the medical jurisprudence, in a case of sexual intercourse human semen can remain in the vagina for a very long time since the since sperms have a tendency to move upwards and it may be possible to detect them in the cervical mucus and vaginal secretions even if the prosecutrix had taken a bath. However, where a woman has been raped by a number of persons, the results qua identity may not be conclusive under the said circumstances unless the cervical, mucus and vaginal secretions are subjected to DNA Profiling/ Matching, though even in case of DNA profiling the results would depend upon the number of individuals involved, their relationship with each other (since in case of siblings there may be a similarity in profile), the gap when the prosecutrix was subjected to intercourse with different men (i.e. possibility of a particular semen remaining within the body of the victim etc.

I may observe that scientific evidence in the form of the Forensic reports play very important and key role, not only in punishment of accused but also in release of innocent kept in judicial custody for long time. A large number of exhibits relating to the offence of rape are being

referred to forensic laboratory for blood/ semen examination being important evidence which are being examined by following the traditional blood grouping system as A,B,O and AB Type. This is not a full proof technique because even if blood groups are matching they may be of any other person also because more than 25% of population may have the same group of blood and semen. Here, I may observe that DNA profiling/ matching technology has emerged over the last two decades which is a full proof technique as no two persons in this world can share the same DNA profile. Further, DNA is also more resistant to decomposition, while the blood groups antigens are very much prone to disintegration due to microbial attack. Also, in a routine A,B,O type of grouping more material for blood stains/ semen stains is required than those required for DNA profiling test whereas for DNA profiling, DNA can be amplified million times in lab which is not possible in case of routine blood grouping. The DNA profiling can easily establish the liability of the individual accused. It has therefore become necessary for the Investigating Agencies and also for the State to ensure that in cases of sexual assault particularly in cases involving gang-rape or cases where the identity of the accused is not known to the victim or where victim is a child, that the DNA profiling is made mandatory for effective dispensation of Justice. I am hopeful that with due intervention of the senior officers of State and the Police, the existing scientific technology (DNA Profiling/ Matching) shall be put to its best utilization so as to ensure that the guilty are not let off and the innocent do not suffer.

In the present case, DNA Profiling/ Matching has not been done and unfortunately the Court had to rely upon the forensic result obtained by using the traditional technique of blood grouping and semen detection though under the given circumstances a full proof detection by

using DNA Matching/ Profiling may also not have been possible in view of the involvement of large number of offenders and the time factor involved.

The report of the FSL **Ex.PW18/J** being admissible in evidence per-se (as per the provisions of **Section 293 Cr.P.C.**) the expert has not been called to the Court nor any request has been made by the accused seeking his examination. The report **Ex.PW18/J** conclusively establishes that **Semen Stains have been detected on the bed sheet recovered from the room of accused Mukesh @ Bittoo at this instance. Further, cervical mucus and vaginal secretions collected from the victim also show the presence of semen.** This confirms the allegations regarding the prosecutrix being subjected to sexual intercourse.

Identity of the accused:

At the very outset I may mention that none of the accused have been named in the FIR which had been registered on the basis of the complaint given by the father of the prosecutrix namely Shakeel Ahmed to the effect that his daughter 'R' aged about 16 ½ years with a weak mental condition, had gone to the house of her maternal uncle (mama) at A-333, Behind ITI, Jahangir Puri and was missing and could not be traced despite best efforts and he suspected that some unknown persons had taken her away. Further, the case of the prosecution is that on 21.3.2011 the prosecutrix 'R' was found standing outside the public toilet and was immediately taken home from where she was taken to the Police Station and it was within a matter of hours that the accused Mukesh @ Bittoo was apprehended on pointing out of the prosecutrix without any delay. When the prosecutrix was taken to the Police Station by her family, she informed the police that on 19.3.2011 at about 5:00 PM she was standing alone in the gali outside the house of her mami when five boys came on foot and

dragged her to the jhuggi of accused Bittoo (Mukesh) where they committed rape upon her. She thereafter informed the police that the boys were addressing each other by names i.e. Bittoo, Raju, Deepu, Banti and Ramjane and these boys had held her captive for about two days and was thereafter abandoned on 21.3.2011 in the evening.

Firstly the prosecutrix 'R' is not a resident of the area (she is residing with her father at Karkhane Wali Gali, Tilak Bazar, Central Delhi) and had come to Jahangir Puri on a visit to the family of her maternal grand-mother along with her mother and as per the evidence on record was not a frequent visitor to the area.

Secondly at the time of the incident the prosecutrix was studying in class 7th in Laxmi Kanya Senior Secondary School (situated in Central Delhi) at the time of the incident and was not known to any of the accused (who are all residents of Jahangir Puri). Rather, it is not the case of any of the accused that the prosecutrix was previously known to any one of them.

Thirdly the prosecutrix in her first statement to the police immediately after her recovery named all the five accused. I may observe that the prosecutrix had at the first instance informed the police the names of the offenders which she came to know while they were addressing each other and was not aware of their actual names at that time.

Fourthly on 22.3.2011 when her statement under Section 164 Cr.P.C. was recorded by the Ld. MM (**Ex.PW9/A**) she has specifically named the offenders (accused before this Court) and informed the Ld. MM about the names by which they were addressing each other. Therefore, under these circumstances, the possibility of any of the accused being named or implicated later on does not arise.

Fifthly within a few hours of her recovery after she was medically examined the prosecutrix led the police to the room where she was held captive and immediately identified the accused Mukesh @ Bittoo who was coming out of the said Jhuggi. In fact Mukesh @ Bittoo had been apprehended and arrested on the pointing out of the prosecutrix within a few hours. Mukesh @ Bittoo has been correctly identified by the prosecutrix in the Court as the person who in whose room she had been kept during the period of captivity and who had also committed rape upon her.

Sixthly the accused Prabhans Yadav @ Ramjane has been correctly identified in the Court by the prosecutrix as one of the persons who had committed rape upon her. In fact he had been apprehended and arrested on the pointing out of the prosecutrix on 24.3.2011. Here, I may observe that when the accused Ramjane @ Prabhans Yadav was produced through Video Linkage, during the identification he was shying away from the camera due to which reason the prosecutrix was initially hesitant in identifying him and it was only when the camera was zoomed upon him she immediately identified him as as one of the persons who had committed rape upon her and was being referred to by the other offenders as Ramjane.

Seventhly on 25.3.2011 the prosecutrix again joined the investigations and the accused Ravinder @ Raju who is the brother of the co-accused Mukesh @ Bittoo and also the accused Deepak @ Deepu were found present in Jhuggi No. A-655, K Block Jahangirpuri and were apprehended on the pointing out of the prosecutrix. In fact in the Court during her deposition the prosecutrix has correctly identified Ravinder as Raju and the accused Deepak as Deepu.

Eighthly on 2.4.2011 the accused Rajeev @ Bunti had been surrendered in the Police Station by his mother. On 25.4.2011 the prosecutrix 'R' correctly identified the accused Rajeev @ Bunty during the

Judicial Test Identification Parade conducted in the jail which proceedings are **Ex.P-7** (not disputed by the accused and also proved by the prosecutrix). She specifically identified the accused Rajeev @ Bunti as the boy who had caught hold of her and dragged her to the room of Bittoo (Mukesh) and had first committed rape upon her only after which the others took turns in committing rape upon her.

Ninthly it has become necessary for this court to observe that the prosecutrix 'R' who was examined in the Court (in camera proceedings) as PW9 had correctly identified all the accused namely Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Ravinder @ Raju, Rajeev @ Bunti and Deepak @ Deepu who had been produced through Electronic Video Linkage system since the accused had been publicly exhibiting aggressive behaviour and were obstructing trial. The prosecutrix 'R' correctly identified all the accused who were produced via Video Conferencing by not only pointing out towards them but also by names by which the accused were addressing each other while the prosecutrix was held captive by them. It was noticed by the Court that the prosecutrix while identifying the accused was only aware of the names by which the accused were addressing each other and also explained to the Court that she only came to know of their actual names later after their arrest. Here, I may also observe that while the accused Prabhans Yadav @ Ramjane was being produced by way of Video Conferencing he tried to conceal his identity by titling his face downwards (away from the camera) on account of which initially the prosecutrix was hesitant with regard to his identity as to whether he was one of the offenders or not but as soon as the camera was zoomed on to him, she immediately identified by addressing him as Ramjane and pointed out towards him as one of the accused who had committed rape upon her. This only fortifies the belief of the Court that there is no false implication and the

prosecutrix has identified only those persons who were actually involved in the offence or else she would have identified one and all including Ramjane at the first instance which did not happen.

Lastly there is nothing on record to show that the family of the prosecutrix or the prosecutrix were previously known to any of the accused or had any reason to falsely implicate the accused as alleged. More over the identification and apprehension being soon after the recovery of the prosecutrix without any loss of time the chances of false implication or the prosecutrix having mistakenly identified any of the accused, does not arise. There is no doubt in the mind of the court with regard to the credibility of the prosecutrix and therefore, under these circumstances, I find no reason to discard the testimony of the prosecutrix to the extent of identification of the accused and I hold that the identity of all the accused namely Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Deepak @ Deepu, Ravinder @ Raju and Rajeev @ Bunti stands established.

Sole testimony of the prosecutrix is reliable and truthful:

Coming now to the evidence against the accused, undisputedly in a case of sexual assault it is the prosecutrix/ victim whose testimony is more reliable than that of any other witness. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but only a Rule of Prudence. As per the case of the prosecution the prosecutrix 'R' is a resident of Gali Karkhane Wali, Tilak Bazar (Central Delhi) and had come to Jahangir Puri on 19.3.2011 to visit the maternal family of her mother (mama) at K Block, Jahangir Puri and while she was standing in the gali near the house of her mama at about 5:00 PM five persons came on foot and were passing through the gali when one of them i.e. accused Rajeev @ Bunti caught hold her hand while all of them took

her to a room (belonging to the accused Mukesh@ Bittoo) where she was kept for three days and during this period all the accused who were not previously known to the prosecutrix but whom she could identify by pointing out towards them and names by which she had heard them addressing each other, repeatedly raped her on two or three occasions. It is further the case of the prosecution that on 21.3.2011 the accused Mukesh @ Bittoo left/ abandoned the prosecutrix near the public toilet where she was spotted by one Rizwan who alerted her family and it was Naeema the Mausi of the prosecutrix who thereafter brought her home. Having come to know that a wrong act had been done with the prosecutrix, the police was immediately informed and the victim was rushed to the BJRM Hospital where her medical examination was conducted. After her examination the prosecutrix took the police to the place where she was held captive where she identified the accused Mukesh @ Bittoo who was coming out of the Jhuggi who was apprehended and arrested on her pointing out. On 22.3.2011 the prosecutrix was also produced before the Ld. MM where her statement under Section 164 Cr.P.C. was recorded wherein she specifically gave the names of the accused by she had heard them addressing each other during the period of her captivity. On 24.3.2011 the prosecutrix again joined the investigations and the accused Prabhans Yadav @ Ramjane was apprehended and arrested on her pointing out. Again on 25.3.2011 the prosecutrix accompanied the Investigating Officer to the premises where she had been held captive wherein the accused Ravinder @ Raju and Deepak @ Deepu were apprehended and arrested on her pointing out. The accused Rajeev @ Bunti surrendered in the Police Station on 2.4.2011 and the prosecutrix correctly identified him in the judicial Test Identification Parade conducted in the jail on 25.4.2011.

Coming first to the statement of the prosecutrix made to the Ld. MM at the first instance under Section 164 Cr.P.C. The relevant portion of the same is being reproduced as under:

*“.... Main pichle Somvar ko yani 14.3.2011 ko apni maa Shabnam ke saath apni naani ke vahan Jahangir Puri milne va kuch din saath rehne aai thi. Shanivar yani 19.3.2011 to sham karib paanch baje main naani ke ghar ke saamne wali gali meain akele khari thi. Tabhi paanch larke vahan aaye aur **mujhe jabardasti utha kar le gaye.** Veh paanchoon paidal hi aaye they. **Mujhe uthakar vah Bittoo ki jhuggi mein le gaye.** Yeh naam mujhe baad me maloom hua. Vahan paanchoon ne milkar mere saath kapre utaar kar badtamiji ki aur paanchoon ne mere saath galat kaam kiya. Is dauraan paanchoon aapas mein ek doosre kaa naam le rahe they. Inka naam **Bittoo, Ramdesh, Banti, Raju aur Dipu hai.** En sabne mujhe 21.3.2011 tak sham 6 baje tak bandhak banaye rakha aur is dauraan teen-chaar baar galat kaam kiya. Kal shaam Bittoo mujhe pessaab khane ke paas chor gaya. Jab mujhe vahaan chora aur vahan main khari thi to meri khala Naeem vahan mil gayi. Veh mujhe lekar ghar aai aur vahan main-ne apni khala, ammi, abbu, naani, aur behen va jija ko saari baath hatai. Dobara kaha ki mere maami va maami bhi vahan they, Phir iski police mein report ki gayi.....”*

The above proceedings under section 164 Cr.P.C. wherein the above statement has been record, have not been disputed by the accused which proceedings are **Ex.P-2** and **Ex.P-3** respectively. The prosecutrix in her testimony before the Court has proved the above statement which is **Ex.PW9/A.**

Now coming to the deposition of the prosecutrix before the Court. The relevant portion of the same is reproduced as under:

“..... On 19.03.2011, I had gone to the house of my mami at K Block, Jahangir Puri. On 19th March of this year at about 5 pm I was standing in the gali near the

house of my mami. 5 boys who were coming on foot came in the gali out of which one of them caught hold of me and took me to a room situated in the next gali. All these 5 boys did galat kaam with me. These boys were addressing each other with names and that is how I came to know about their names i.e. Bittoo, Raju, Ramjane, Deepu and Bunti. I was held by these boys and they have kept me captivating for about 3 days and on 21.03.2011 I had escaped from their clutches. During this period, all these boys did galat kaam with me on 2-3 occasions (sab ladko ne 2-3 baar mere saath galat kaam kiya tha).

Court Ques: Galat Kaam se kya matlab hai?

Ans. They had removed my clothes and touched me on my private parts and after removing their clothes they committed rape (balatkaar) upon me.

Court Observation: The victim is feeling very apprehensive and shy and after great persuasions she has come out.

Court Ques: Who all committed rape on you? (kis kis ne rape kiya tha)

Ans. Sabhi ne 2-3 baar kiya tha.

I can identify all the accused persons.

Court Ques: Who was the boy who has lifted you and taken you to the room?

Ans. Bittoo.

The police had come to the house later and I showed them room where I was kept captive and where the incident had taken place and thereafter I was medically examined. Next day my statement was recorded by the police. I had also come to the Court. My statement is Ex. PW9/A, the arrest memo of accused Mukesh is Ex. PW9/B bearing my signatures at point A, the arrest memo of accused Prabhans Yadav @ Ramjane is already Ex. PW4/D bearing my signatures at point D, the arrest memo of accused Deepak is already Ex. PW4/E bearing my signatures at point C, the arrest memo of accused Ravinder @ Raju is already Ex. PW4/F bearing my signatures at point B. I was studying in Seventh class at that time.

I had also gone to the Jail and I identified one of the accused as Bunti who was the person who had caught

hold of me and dragged me to the room and committed rape upon me first.....”

I may also observe that the Investigating Officer had also recorded the statement of the prosecutrix under Section 161 Cr.P.C. which cannot be used upon for corroboration (since it can only be used for confronting the witness) and it is only the statement recorded by the Ld. MM under Section 164 Cr.P.C. which is relevant for our purpose.

Before evaluating the above statements of the prosecutrix on the touch stone of truthfulness and credibility, it is necessary to briefly discuss the guiding principles of law as laid down by the various Courts.

I may observe that the Hon'ble Supreme Court has in the case of ***State of Rajasthan Vs. Biram Lal*** reported in ***2005 AIR (SC) 2327*** has held that:

“.....It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the court is satisfied that the evidence of prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases , the Court may look for corroboration from independent sources or from the circumstances of the case before recording an order of conviction. In the instant case the allegations were that the accused during night entered the prosecutrix room and committed rape on her, the evidence of the prosecution was found worthy of credit and implicitly reliable.....”

In the year 2006 the Hon'ble Apex Court in the case of ***State of Himachal Pradesh Vs. Asha Ram*** reported in ***AIR 2006 SC 381*** had observed that:

“..... The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of a victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault and to convict an accused where her testimony inspires confidence and is found to be reliable. It is settled law that corroboration is a condition for Judicial Reliance on the testimony of the prosecutrix and is not a requirement of law but a guidance of Prudence under the given circumstances. Even minor contradiction or insignificant discrepancies in the statement of the prosecutrix cannot be a ground for throwing out, an otherwise reliable prosecution case.

It was further observed by the Hon'ble Court that:

“..... No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to.....”

Further, in the case of ***Vishnu Vs. State of Maharashtra*** reported in ***2006 AIR (SC) 508*** it was observed by the Hon'ble Apex Court that:

“..... In the traditional non-permissive bounds of society of India, no girl or woman of self-respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect of getting married with suitable match. Not only

she would be sacrificing her future prospect of getting married and having family life, but also would invite the wrath of being ostracized and outcast from the society she belongs to and also from her family circle. From the statement of the prosecutrix, it was revealed that the accused induced her to a hotel by creating an impression that his wife was admitted in the hospital and that he would see her first and then drop the prosecutrix at her residence whereas, in fact, she was not admitted in the hospital. On the pretext of going to Hospital, he took her to a hotel, took her inside a room, closed the door of the room, threatened her to finish her if she shouted and then forcibly ravished her sexually. A clear case of rape, as defined under Section 375 Clause third of IPC was found established against the accused....”

Also in the case of ***Bharwada Boginbhai Hirji Bhai Vs. State of Gujarat*** reported in ***1983 (CRI) GJX 0252 SC: AIR 1983 SC 7453 (1)*** it was observed by the Hon'ble Supreme Court that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complaints of rape or sexual molestation be viewed with doubt, disbelief or suspicion? To do so is to justify charge of male chauvinism in a male dominated society.

Applying the settled principles to the facts of the present case I may observe that **Firstly** the prosecutrix 'R' is not a resident of Jahangir Puri where the incident took place. She is residing with her father at Karkhane Wali Gali, Tilak Bazar, Central Delhi and had come to Jahangir Puri on a visit to the family of her maternal grand-mother along with her mother. As per the evidence on record she was not a frequent visitor to the area. At the time of the incident she was studying in class 7th in Laxmi Kanya Senior Secondary School (situated in Central Delhi) at the time of the incident and was not known to any of the accused (who are all residents of Jahangir

Puri).

Secondly the prosecutrix in her first statement to the police immediately after her recovery and also in her statement to the Ld. MM under Section 164 Cr.P.C. dated 22.3.2011 **Ex.PW9/A** as aforesaid has specifically named all the five accused. In her statement **Ex.PW9/A** the prosecutrix had given those names of the offenders (accused before this Court) by which they were addressing each other during the period of her captivity and therefore the question of false implication and tutoring does not arise.

Thirdly immediately after her recovery the prosecutrix was rushed to the BJRM Hospital where her MLC was prepared wherein she had informed the doctor about the history of being kidnapped by someone on 19.3.2011 and recovered at 6:00 PM on 21.3.2011 and with a history of sexual assault. The MLC of the prosecutrix **Ex.PW5/A** confirms the history of sexual assault (hymen being torn) and the samples of the cervical mucus, cervical culture and vaginal secretion and vaginal washing were immediately taken without any loss of time which exhibits were sent to the FSL. The FSL report **Ex.PW18/J** confirms the presence of semen in the above samples again establishing the sexual assault upon the prosecutrix.

Fourthly the prosecutrix in her testimony has proved having joined investigations and having led the police to the room where she was held captive, wherein she identified the accused Mukesh @ Bittoo who was coming out of the said Jhuggi as the person in whose room she had been kept during the period of captivity and who had also committed rape upon her. She has also proved the apprehension and arrest of the accused Prabhans Yadav @ Ramjane on 24.3.2011 and the accused Ravinder @ Raju and Deepak @ Deepu on 25.3.2011 which finds due corroboration from the testimonies of the other police officials. The accused Rajeev @

Bunti who had later surrendered in the Police Station was duly identified by the prosecutrix at the first instance in the Judicial Test Identification Parade on 25.4.2011 vide proceedings **Ex.P-7**. She has correctly identified all the accused in the Court when they were produced through Video Linkage by pointing out towards them and also by their names as known to her.

Fifthly I may observe that while the accused Prabhans Yadav @ Ramjane was being produced by way of Video Conferencing he tried to conceal his identity by titling his face downwards (away from the camera) on account of which initially the prosecutrix was hesitant with regard to his identity as to whether he was one of the offenders or not but as soon as the camera was zoomed on to him, she immediately identified by addressing him as Ramjane and pointed out towards him as one of the accused who had committed rape upon her. This actually goes to confirm that there is no false implication and the prosecutrix has identified only those persons who were actually involved in the offence or else she would have identified one and all including Ramjane at the first instance which did not happen.

Sixthly there is nothing on record to show nor it is the case of any of the accused that the prosecutrix or the family of the prosecutrix were known to any of the accused or their families or had any reason to falsely implicate the accused as alleged.

Seventhly it is observed by this Court on the spot visit that the house K-892 is virtually on the main road near the Mother Dairy and was convenient to reach due to which reason the father of the prosecutrix had given the said address belonging to one of his relatives while making the PCR call on 20.3.2011 and it is for this reason that the PCR officials had first reached K-892.

Eighthly the Ld. Defence Counsels have submitted that there is a material contradiction and discrepancy in the testimony of the prosecutrix

with regard to the place/ spot where the prosecutrix was held captive and raped by the accused i.e. whether it was on the first floor or the ground floor. Ld. Counsels have also submitted that in case if the testimony of the prosecutrix that she was held captive on the ground floor is contrary to the testimony of the Investigating Officer who has shown the place of incident as a room on the first floor from where the bed sheet had been got recovered by the accused Mukesh @ Bittoo (which bed sheet has detected positive results for semen stains). The Ld. Defence Counsel has also pointed out that there is no toilet in the Jhuggi where she was held captive and it is impossible that a young girl could be held captive in the said house for almost three days against her wishes under these circumstances. I have considered the submissions made before me. I may observe that a visit to the spot had been conducted by the Court on 12.1.2012 in order to get a first hand stock of the various places and spots relevant to the case. Before coming to the observations made at the spot, it may be noted that the prosecutrix has a history of neurological problem (seizures) in respect of which she is receiving regular treatment from the Hospital and her medical records speaks volumes of her physical and mental state. A young girl who had to face the trauma of repeated sexual assaults by five men cannot be expected to remember every minute detail of the place of her captivity at a time when her major concern was her own survival. Keeping in view the medical condition of the prosecutrix 'R', the possibility of her having got confused with regard to the details of the place where she had been held captive i.e. whether it was a room on the first floor or the ground floor or whether there were other rooms around the said room where she was held captive or whether there was any water outlet or a place where she could ease herself, cannot be ruled out and are immaterial once the offence stands established and the identity of the accused is proved. Even otherwise, it has

been observed by the Court that the arguments so raised by the Ld. Defence Counsel stands totally demolished in view of the spot inspection by the Court on 12.1.2012 in the presence of the Ld. Defence Counsels revealing that area in question which is a highly congested Jhuggi cluster has a very high population density and low sound/ voice quality (in view of congestion). The room in question is hardly 30 steps away from the place from where the prosecutrix was dragged and it hardly took less than a minute to reach the same through a narrow congested lane/ gali which at some places hardly permitted two persons to pass at a time. It was also observed by the Court that there was no first floor constructed on the jhuggies adjoining the one where prosecutrix was held captive and its terrace was much lower to the terrace of the building in question. On one side of the jhuggi there is a gali which is more than five feet wide with houses on the other side whereas on the other side the jhuggi of the accused Prabhans Yadav @ Ramjane is situated. It was further observed that the wooden stairs leading to the first floor were wide and strong enough to sustain the weight of many persons which is evident from the fact that this Court along with the Defence Counsels, Public Prosecutor and the officials of the local police had personally climbed up the wooden stairs to reach the first floor without any difficulty. The possibility of these accused having literally dragged and partially carried her to the first floor of the Jhuggi (roof of which was not very high), cannot be ruled out.

Ninethly the Ld. Defence Counsels had highlighted the contradictions in the testimony of the prosecutrix with regard to the description of the place where she had been held captive. I may observe that by an large it is not expected to a victim of rape to possess the photographic memory and recall the details of the incident being overtaken by the events. The prosecutrix not having anticipated the occurrence, there

being an element of surprise, the mental faculties cannot be expected to be attuned to absorb the details and the prosecutrix before the Court already having been suffering from a long neurological problem, cannot be expected to accurately recall and reproduce every detail. It is only natural for the prosecutrix under the given circumstances to get confused or mixed up when interrogated and examined later. Further, the possibility of the victim of sexual assault being over-owed by the court atmosphere and piercing cross-examination made by the counsel and out of nervousness getting mixed up with the facts and also getting confused with regard to the sequence of events and thereby filling up the details by imagination at the spur of the moment, is only natural. It is perhaps for this reason that the prosecutrix a young school going girl, when questioned and asked to explain how she eased herself and attended to the call of nature for three days she faltered. In an attempt to conceal her condition and answer to questions relating to her personal hygiene she not only improved upon the earlier information given to the doctor that she had not taken any bath by stating in the Court that she had taken a bath but also added that she did not attend the call of nature for three days which does not appear probable. The inspection of the entire premises of both first floor and ground floor clarified the position and it was observed by the Court that all the rooms (both on the first floor and ground floor) have a water outlet in the corner and in fact also having the facility of water. This court also observed that this facility of water outlet opening in the outside drains was available virtually in all the jhuggies in the area which were semi-pucca constructions. It is a matter of common knowledge that a major chunk of the Indian population particularly women who reside in village or slums with no sewer facility make use of these dry toilets and often make shift structures which are constructed within the existing paraphernalia. Women

folk living in slums usually make use of these temporary structures constructed within the room itself with outlets opening on drains outside to ease themselves inside the premises itself. Under these circumstances the possibility of the prosecutrix easing herself in the room (with a water outlet and facility of water) where she was held captive cannot be ruled out. Here, I may observe that in a similar case (**Ref.: *State of Punjab Vs. Gurmeet Singh*** reported in ***AIR 1996 SC 1393***) the Hon'ble Supreme Court had observed that while every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the Court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and ever nervous or confused to speak and her silence or a confused stray evidence may be wrongly interpreted as “discrepancies and contradiction” in her evidence.

Tenthly the testimony of the prosecutrix after she was abandoned at the public toilet finds due corroboration from the testimony of Naeema who had brought her back home and there is no reason to doubt the same thereby establishing the sequence of events. The prosecutrix has been very categorical in her testimony while identifying Rajeev @ Bunti as the person who had caught hold of her when she was dragged to the house of Mukesh @ Bittoo where it was Rajeev @ Bunti who had first raped her and thereafter all the accused namely Mukesh @ Bittoo, Prabhans Yadav @ Ramjane, Deepak @ Deepu and Ravinder @ Raju committed rape upon her on two-three occasions. No doubt, there is a general tendency amongst the victims at times to exaggerate in order to secure a revenge for the offence

committed on them and the possibility of the prosecutrix exaggerating to the extent that she had been raped by each of the accused on two-three occasions during the period of her captivity cannot be ruled out but there is nothing on record to even remotely suggest that any of the accused before the Court had been falsely implicated by her for extraneous considerations. In this regard I may add that the ***Explanation no.1 to clause (g) of Section 376 (2) of Indian Penal Code*** is very categorical and provides that where a **woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape** within the meaning of this subsection and this makes the role attributed to each of the accused irrelevant once the common intent of the accused stand established making all equally liable for the offence of rape.

Lastly the Ld. Counsel has argued that the fact that the prosecutrix had been left in front of the public toilet, it is unbelievable that she would have been held captive or else she would not have been left. In this regard I may observe that the accused Mukesh @ Bittoo and Prabhans Yadav @ Ramjane have criminal record in the area and perhaps it is one of the reasons that anyone who would have noticed the prosecutrix being taken away by these men did not come to the rescue of the prosecutrix. It is also this criminal background of the accused coupled with the compliant conduct of the prosecutrix which perhaps made them confident that nobody would lay hands upon them and they let her go after the incident.

Hence, in view of my aforesaid discussion, I hereby hold that the testimony of the prosecutrix who is a victim of sexual assault inspires confidence and is found to be reliable. It also finds due corroboration from the medical and forensic evidence on record and contradictions so highlighted by the Ld. Defence Counsels cannot be a ground for throwing

out the otherwise reliable prosecution case. Further, there is nothing on record to show that the prosecutrix who is a young school going girl of 17 years belonging to a conservative Muslim family would have sacrificed her chastity by falsely implicating the accused by inventing a story of sexual assault upon her. Even her demeanor in the Court establishes that there is no likelihood of her being tutored and she is a truthful witness.

Common Intention:

The case of the prosecution is that the accused Mukesh @ Bittoo, Rajeev @ Bunti, Ravinder @ Raju, Prabhans Yadav @ Ramjane and Deepak @ Deepu in furtherance of their common intention abducted the prosecutrix 'R' from the gali outside her maternal grand-mother's house and held captive from 19.3.2011 to 21.3.2011 and committed rape upon her. Now, it has to be seen whether Section 34 Indian Penal Code is attracted or not. Section 34 has been enacted on the principal of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be if pre-arranged or on the spur of the

moment, but it must necessarily be before the commission of the crime. The true concept of the Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in **Ashok Kumar Vs. State of Punjab** reported in **AIR 1997 (1) SCC 746** the existence of a common intention amongst the participants in a crime is the essential elements for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision. The Section does not say “the common intentions of all” nor does it say “an intention common to all”. Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in section 34, when an accused is convicted under section 302 read with section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in **Chinta Pulla Reddy Vs. State of A.P.** reported in **1993 Supp (3) SCC 134**.

Applying the settled principles of law to the fact of the present case, I may observe that the evidence on record conclusively establishes that all the accused Mukesh @ Bittoo, Rajeev @ Bunti, Ravinder @ Raju, Prabhans Yadav @ Ramjane and Deepak @ Deepu were together walking down the lanes of the K-Block Jhuggi cluster and while passing through the

gali adjoining House No. KA-333 where the prosecutrix 'R' was standing the accused Rajeev @ Bunti caught hold of her while all the accused together dragged her to the house/ jhuggi of Mukesh @ Bittoo where Ravinder @ Raju real brother of Mukesh @ Bitto also resides. It also stands established that the prosecutrix was kept locked and held captive in the room belonging to Mukesh @ Bittoo where Rajeev @ Bunti was the first person who committed rape upon her after which all the accused took turns in raping the victim. It further stands established that during the period of her captivity till 21.3.2011 all the accused repeatedly raped her and on the evening of 21.3.2011 abandoned her near the Public Toilet from where she was recovered. It is writ large that in the present case the common intention developed at the spur of the moment when the accused Mukesh @ Bittoo, Rajeev @ Bunti, Ravinder @ Raju, Prabhans Yadav @ Ramjane and Deepak @ Deepu were together walking down the lane where the prosecutrix was standing. The testimony of the prosecutrix coupled with the medical and forensic evidence establishes the commission of sexual assault upon the victim and there is ample material on record to prove that all the accused persons shared common intention pursuant to which all of them committed the offence of rape upon the prosecutrix.

Discrepancies and contradictions:

Ld. Defence Counsels have pointed out the major discrepancies and contradictions in the testimonies of the various witnesses examined by the prosecution. It is pointed out that PW4 Shakeel Ahmed has deposed that as soon as he came to know that his daughter was missing he made a PCR call but there is no record of PCR nor any PCR official has been examined pertaining to the said call made by the complainant and the entire story of investigating agency is silent about the alleged visit of local police to the house of in-laws of the complainant. It is argued that according to the

prosecutrix she visited the house of her maternal aunt (mami) on 19.3.2011 i.e. the day of incident and has nowhere stated that she went to K Block, Jahangir Puri. According to the Ld. Counsel as per the prosecution story the house of the maternal aunt of the prosecutrix is A-333 whereas the IO has stated in the rukka that they went to the spot (jaye bakua i.e. K-892) or K Block which raises a serious doubt on the prosecution story. Further, it is pointed out that the prosecutrix has nowhere stated in her examination in chief as to show she freed herself from the alleged clutches of the accused persons and how she get back to her home. It is argued that as per the prosecutrix the place where the said room is situated is a single story and is only on ground floor whereas according to the prosecution story the said house is double storied and the prosecutrix was kept on the first floor.

I have considered the submissions made before me. Before proceeding to analyse the evidence on record, it is necessary to discuss the law relating to the discrepancies and contradictions. In the case of ***State of H.P. Vs. Lekhraj and another*** reported in ***JT 1999 (9) SC 43*** it was observed by the Supreme Court of India as that:-

*“In the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like.....
.....The traditional dogmatic hyper technical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial.”*

Further, in the case of ***Surender Singh v. State of Haryana*** reported in ***JT 2006 (1) SC 645***, the Hon'ble Supreme Court of India has observed as under :-

“It is well-established principle of law that every discrepancy in the witness statement cannot be treated as a fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity.”

As far as minor inconsistencies are concerned in the statement of the witnesses it is held in ***Ousu Varghese v. State of Kerala***, reported in **(1974) 3 SCC 767** that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In the case of ***Jagdish Vs. State of Madhya Pradesh***, reported in **AIR 1981 SC 1167**, the Supreme Court has held that When the discrepancies are comparatively of minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. Also in the case of ***State of Rajasthan Vs. Kalki***, reported in **(1981)2 SCC 752** it has been held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Even otherwise, when an eye witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully made his testimony totally non-discrepant. Courts have to bear in mind that it is only when discrepancies in evidence of witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. Too serious a view to be adopted on mere variations falling in the narration of

incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

The Supreme Court had an opportunity to discuss as to why discrepancies arise in the statements of witnesses. In the judgment of ***Bharwada Boginbhai Hijri Bhai Vs. State of Gujarat***, reported in **1983 (CRI) GJX 0252 SC: AIR 1983 SC 7453 (1)**, the Hon'ble Supreme Court pointed out the following reasons as to why the discrepancies, contradictions and improvements occur in the testimonies of the witnesses.

(a) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(b) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(c) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(d) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(e) In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

(f) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in

rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated lateron.

(g) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, of fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved through the witness is giving a truthful and honest account of the occurrence witnessed by him perhaps it is a sort of psychological defence mechanism activated on the moment.

Applying these settled principles to the facts of the present case, **Firstly** coming to the discrepancy pointed out by the Ld. Defence in respect of the House No. 892, I may observe that this is not the place where the incident had happened but is the spot from where the PCR call had been made by Shakeel Ahmed (PW4) the father of the prosecutrix regarding the missing of his daughter pursuant to which the police had gone for attending the call. The words “*jaye bakua*” have been used loosely only to specify the same and it is observed by this Court on the spot visit that the said address is virtually on the main road near the Mother Dairy an aspect which was noticed by the Court during the inspection of the spot on 12.1.2012 and convenient to reach. Hence, the possibility of the father of the prosecutrix having given this address to the police being convenient cannot be ruled out and cannot be read to be place of the incident only being the place from where the PCR call had been made by Shakeel Ahmed in respect of which the DD No. 89B was recorded at Police Station Jahangir Puri. Here, I may observe that the PCR forms have been placed on record by the Investigating Officer along with the charge sheet.

Secondly in so far as the discrepancy with regard to the spot of incident i.e. the place/ spot where the prosecutrix was held captive and raped by the accused i.e. whether it was on the first floor or the ground floor, I may observe that the spot visit by the Court on 12.1.2012 has finally set the controversy at rest. The prosecutrix has a history of a neurological problem (seizures) in respect of which she is receiving regular treatment from the Hospital and her medical records speaks volumes of her physical and mental state. A young girl who had to face the trauma of repeated sexual assaults by five men cannot be expected to remember every minute details with regard to the place of her captivity at a time when her major concern is her own survival. Keeping in view the medical condition of the prosecutrix 'R', the possibility of her having got confused with regard to the minute details of the place where she had been held captive i.e. whether it was a room on the first floor or the ground floor or whether there were other rooms around the said room where she was held captive or whether there was any water outlet or a place where she could ease herself, cannot be ruled out and are immaterial once the offence stands established and the identity of the accused is proved.

Thirdly the Ld. Defence Counsels have also argued that the stair case leading to first floor of the Jhuggi no. 655 is too narrow that only one person can climb at a time and it is impossible that the prosecutrix was taken to that room by using the staircase as alleged by the prosecution. In this regard, I may observe that the argument so raised by the Ld. Defence Counsel totally stands demolished in view of the spot inspection by the Court on 12.1.2012 in the presence of the Ld. Defence Counsels wherein it was found that the staircase in question was wide and strong enough to sustain the weight of many persons. In fact this Court along with the Defence Counsels, Public Prosecutor and the officials of the local police

had personally climbed up the said wooden stairs without any difficulty and it was observed that it would have been easy for able bodied, average built men to drag or even lift a young girl particularly when five men were involved. The possibility of these accused having literally dragged and partially carried her to the first floor of the Jhuggi, cannot be ruled out.

Fourthly the Ld. Defence Counsel has vehemently argued that it was not possible for the accused to have dragged the prosecutrix to the room in question in broad day light as she would certainly have raised an alarm. In this regard I may observe that during the spot inspection dated 12.1.2012 it was observed by the Court that the area in question which is a highly congested Jhuggi cluster has a very high population density and low sound/ voice quality. The room in question is hardly 30 steps away from the place from where the prosecutrix was dragged and it hardly took less than a minute to reach the same through a narrow congested lane/ gali which at some places hardly permitted two persons to pass at a time. Therefore, under these circumstances the possibility that initially the prosecutrix was suddenly alarmed and taken over by the events so as to react and resist immediately, cannot be ruled out. Further, it is noticed that even if she would have raised an alarm after being surrounded by five men, it is difficult that anybody would have noticed the same in view of the high level of congestion with many people speaking and shouting simultaneously at various places. Further, it was also observed by the Court that even if the prosecutrix would have shouted or raised an alarm it was not possible for her to have caught anybody's attention as there was no first floor constructed on the adjoining jhuggi whose terrace was much lower to the terrace of the building in question. On one side of the jhuggi there is a gali which is more than five feet wide with houses on the other side whereas on the other side the jhuggi of the accused Prabhans Yadav @ Ramjane is

situated.

Fifthly with regard to the argument of the Ld. Defence Counsels highlighting the contradictions in the testimony of the prosecutrix with regard to the description of the place where she had been held captive, by an large it is not expected to a victim of rape to possess the photographic memory and recall the details of the incident being overtaken by the events. The prosecutrix not having anticipated the occurrence, there being an element of surprise, the mental faculties cannot be expected to be attuned to absorb the details and the prosecutrix before the Court already having been suffering from a long neurological problem, cannot be expected to accurately recall and reproduce every detail. It is only natural for the prosecutrix under the given circumstances to get confused or mixed up when interrogated and examined later. Further, the possibility of the victim of sexual assault being over-owed by the court atmosphere and piercing cross-examination made by the counsel and out of nervousness mixed up the fact getting confused with regard to the sequence of events and thereby filling up the details by imagination at the spur of the moment, is natural and perhaps it is for this reason that when the prosecutrix a young school going girl was unable to explain how she eased herself while attending the call of nature for three days. In an attempt to conceal the condition of her personal hygiene she not only improved upon the earlier information given to the doctor that she had not taken any bath by stating in the Court that she had taken a bath and also stated that she did not attend the call of nature for three days. The inspection of the entire premises of both first floor and ground floor clarified the position and it has been observed by the Court that all the rooms (both on the first floor and ground floor) have a water outlet in the corner and in fact also having the facility of water. This court also observed that this facility of water outlet opening in the outside drains

was available virtually in all the jhuggies which were semi-pucca constructions and it is a matter of common knowledge that women folk living in such slums usually make use of these temporary structures to ease themselves inside the premises itself. Therefore, under these circumstances the possibility of the prosecutrix easing herself in the room (with a water outlet and facility of water) where she was held captive cannot be ruled out. Here, I may observe that in a similar case (**Ref.: *State of Punjab Vs. Gurmeet Singh*** reported in *AIR 1996 SC 1393*) the Hon'ble Supreme Court had observed that while every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the Court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and ever nervous or confused to speak and her silence or a confused stray evidence may be wrongly interpreted as “discrepancies and contradiction” in her evidence.

Lastly the Ld. Defence Counsels have also argued that no public notice (hue and cry notice) in respect of missing of the prosecutrix 'R' has been placed on record and hence, the testimony of Rizwan to the extent that he had seen the photographs of the prosecutrix in the public notice cannot be relied upon. I have considered the submissions made. Admittedly no public notice has been placed on record and hence no doubt, this aspect does not stand conclusively established but this in itself will not be fatal to the prosecution case. It has come on record that it is not only the family of the maternal uncle (mama) of the prosecutrix who is residing in the area but also the sister of his wife namely Naeema and other relatives

i.e. her maternal grandmother, mausi, taya, tai etc. who are residents of that area. After the father of the prosecutrix came to the area and searched for her that all the relatives came to know that the prosecutrix 'R' had been missing. It is only natural that under the given circumstances they were searching for her being alerted as the prosecutrix was of a weak mental condition (as claimed by her father Shakeel Ahmed). Rizwan also a distant relative of the prosecutrix has proved that he was aware that the prosecutrix was missing and there is no reason to doubt this claim because when Rizwan who found a girl resembling the prosecutrix 'R' standing near the public toilet, he immediately alerted Naeema about the same. Rizwan in his cross-examination has stated that he had never met the prosecutrix prior to this incident which appears to be correct because had he seen the prosecutrix previously he would have certainly identified her and taken her back which he did not do but rather chose to inform Naeema as he was not sure of it himself. The failure of the Investigating Officer to place the public notice on record cannot be fatal to the prosecution case once the recovery of the prosecutrix from in front of the public toilet stands proved from the oral testimonies of both Rizwan and Naeema.

No reason for false implication of the accused:

It is an admitted case of the prosecution that none of the accused were known to the prosecutrix prior to the incident. It is not the defence of any of the accused that any one of them was previously known to the prosecutrix 'R' or with her mama/ mami or that there existed any kind of previous dispute or animosity between them. The accused when questioned in their statements under Section 313 Cr.P.C. as to why they had been named by the prosecutrix, evaded to give a straight answer and simply stated that "***it was incorrect***". I may observe that to almost all the incriminating evidence put to the accused the only answer they chose to

give was that “*it was incorrect*” and at the end when asked if they wanted to say something the only thing they chose to state was that “*they had been falsely implicated*”.

No doubt, the case of the prosecution is required to stand on its own legs yet it is necessary for the accused to controvert the material so brought on record by the prosecution and informed the Court of his defence. In the absence of any material placed before the Court to show that the family of the prosecutrix and anyone of the accused had any kind of link or history of dispute, the question of any false implication of the accused by the prosecutrix 'R' does not arise particularly when she herself did not know them previously and was not even aware of their identity prior to the incident. Even otherwise, in a case of rape it is necessary for the Court has to bear in mind human psychology and behavioural probability while assessing the testimonial potency of the victim's version. Which girl will foist a rape charge on a stranger unless a remarkable set of facts or clear motives are made out? The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbablise the hypothesis of false implication (Ref.: *Krishan Lal Vs. State of Haryana* reported in *AIR 1980 SC 1252*) as in the present case.

FINAL CONCLUSION:

In the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* reported in *AIR 1984 SC 1622*, the Apex Court has laid down the tests which are pre-requisites before conviction should be recorded, which are as under:

- 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;*

2. *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
3. *The circumstances should be of conclusive nature and tendency;*
4. *They should exclude every possible hypothesis except the one to be proved; and*
5. *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

Applying the above principles of law to the present case it is evident that the identity of all the accused stands established. It stands established that there is no delay in the registration of FIR. It also stands established on 14.3.2011 the prosecutrix 'R' aged about 17 years who is a resident of Gali Karkhane Wali, Tilak Bazar (Central Delhi) had come to visit her maternal family along with her mother residing at House No. A-333, Jahangir Puri, Delhi. It has also been established that the prosecutrix 'R' is suffering from neurological disorder (seizures) and is receiving regular treatment from Kalawati Hospital for the last many years and even at the time of the incident she was under treatment. It further stands established that on 19.3.2011 at about 5:00 PM while she was standing in the gali, all the five accused who were coming on foot, dragged her/ partially lifted her to the Jhuggi of accused Mukesh @ Bittoo and Ravinder @ Raju (being real brothers) where she was held captive for three days (i.e. till 21.3.2011 evening). It also stands proved and established that during this period of three days all the accused namely Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti committed rape upon the prosecutrix 'R' two-three times each. Further, it

stands established that on 21.3.2011 the prosecutrix 'R' was abandoned by the accused and she was noticed standing near the Public Toilet after which information was given to her relatives who immediately brought her home. It further stands established that after having come to know that some wrong act had been done with the prosecutrix, the police was informed of the same. It has also been proved and established that the prosecutrix 'R' was immediately taken to the BJRM Hospital where her medical examination was got conducted and samples/ exhibits were taken and handed over to the Investigating Officer. It also stands established that after her medical examination and within a few hours of her recovery the prosecutrix led the police to the room/ spot where she had been held captive which room belonged to Mukesh @ Bittoo. It further stands established that when the prosecutrix and the police party reached the spot the accused Mukesh @ Bittoo who was coming out of the Jhuggi was immediately identified by the prosecutrix and apprehended at her instance after she identified him as one of the offender who had committed rape upon her. It further stands established that the prosecutrix joined investigations on 24.3.2011 and the accused Prabhans Yadav @ Ramjane was apprehended on the pointing out of the prosecutrix and again on 25.3.2011 when the prosecutrix joined the investigations the accused Ravinder @ Raju and Deepak @ Deepu who were found present in Jhuggi No. A-655, K Block Jahangirpuri were apprehended after the prosecutrix identified them as the offenders who had committed rape upon her during the period of her captivity. It has also been proved and established that on 2.4.2011 the accused Rajeev @ Bunti had been brought to the Police Station by his mother and surrendered after which he was arrested and the Judicial Test Identification Parade of the accused Rajeev @ Bunti was also got conducted in the Jail wherein the prosecutrix has identified the accused Rajeev @

Bunti as the boy who had caught hold of her and dragged her to the room and first committed rape upon her. The medical and the forensic evidence establishes the allegations of rape having been committed upon the prosecutrix. The Forensic Report also conclusively establishes the presence of Semen Stains on the bed sheet recovered from the room of accused Mukesh @ Bittoo at this instance and also in the cervical mucus and vaginal secretions collected from the victim thereby confirming the allegations regarding the prosecutrix being subjected to sexual intercourse.

The prosecution has proved the identity of the accused, the manner in which the offence has been committed, place of commission of the offence, the investigation including the documents prepared, MLC, etc. There is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative. The evidence of the prosecution witnesses is natural and trustworthy and corroborated by the medical & forensic evidence and the witnesses of the prosecution have been able to built up a continuous link.

The prosecutrix 'R' has duly identified all the accused namely Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti in the Court and has attributed specific roles to them. She has identified the accused Mukesh @ Bittoo as the boy whom the Jhuggi where she was taken and held captive, belongs and the accused Rajeev @ Bunti as the boy who had caught hold of her and dragged her to the room and first committed rape upon her. She has also identified the accused Mukesh @ Bittoo; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti as the boys who had committed rape upon her.

The testimony of the prosecutrix who is a victim of sexual assault inspired confidence and has been found to be reliable. The testimony of the prosecutrix coupled with the medical and forensic evidence establishes the commission of sexual assault upon the victim and there is ample material on record to prove that all the accused persons had pursuant to a common intention kidnapped the prosecutrix 'R' aged about 17 years from lawful guardianship of her parents with the intent that she be forced/ seduced to illicit intercourse and thereby wrongfully confined the prosecutrix 'R' in Jhuggi No. K-655 from 19.3.2011 to 21.3.2011 in order to prevent her from proceeding in any direction in which she has right to proceed and also repeatedly having committed rape upon her during this period of her confinement.

In view of the aforesaid, I hereby hold that the prosecution has been able to prove and substantiate the allegations against all the accused. Once it is established that the accused persons had acted in concert and dragged the prosecutrix to the house of accused Mukesh @ Bittoo where the victim was raped then all the accused can be held guilty of the offence under Section 376 Indian Penal Code in terms of Explanation no. 1 to clause (g) of Section 376 (2) of Indian Penal Code irrespective of whether the prosecutrix had been raped by one or more of them. It is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim (**Ref: *Pramod Mahto Vs. State of Bihar* reported in *AIR 1989 SC 1475*).**

Therefore, I hold all the accused namely Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti guilty of having kidnapped the prosecutrix 'R' aged about 17 years from lawful guardianship of her parents with the intent that she be forced/ seduced to illicit intercourse and of having wrongfully confined the

prosecutrix 'R' in Jhuggi No. K-655 from 19.3.2011 to 21.3.2011 in order to prevent her from proceeding in any direction in which she has right to proceed and of repeatedly having committed rape upon her during this period of her confinement; thereby establishing the charges under **Sections 363/366/342/376 (2) (g) IPC** on account of which the aforesaid accused are accordingly convicted.

Be listed for arguments on the point of sentence on **19.1.2012**.

Announced in the open court
Dated: 13.1.2012

(Dr. KAMINI LAU)
ASJ-II(NW) ROHINI

**IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS JUDGE-II
(NORTH-WEST): ROHINI COURTS: DELHI**

Session Case No. 62/2011

Unique Case ID No.: 02404R0169342011

State Vs. (1) Mukesh @ Bittoo
S/o Prithvi Raj
R/o A-655, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(2) Prabhans Yadav @ Ramjane
S/o Sh. Ram Yadav
R/o A-660, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(3) Deepak @ Deepu
S/o Prem Kumar
R/o Samta Vihar, Mukundpur,
Bhalswa Dairy, Delhi
(Convicted)

(4) Ravinder Kumar @ Raju
S/o Prithvi Raj
R/o A-648, Behind ITI,
Jahangir Puri, Delhi
(Convicted)

(5) Rajeev @ Bunti
S/o Mahesh Kumar
R/o E-1741, Jahangir Puri,
Delhi
(Convicted)

FIR No.: 90/11
Police Station: Jahangir Puri
Under Section: 376 (2) (g)/363/342/366/34 IPC

Date of Conviction: 13.1.2012

Arguments heard on: 25.1.2012

Date of sentence: **28.1.2012**

APPEARANCE:

Present: Sh. Taufique Ahmed, Addl. Public Prosecutor for the State.

All the five convicts namely Mukesh @ Bittoo, Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti in judicial custody with Sh. Aseem Bhardwaj and Sh. Vijay Kumar Advocates.

ORDER OF SENTENCE:

Vide my detailed judgment dated 13.1.2012, the accused Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti have been held guilty of the offence under **Sections 363/366/342/376 (2) (g) IPC** and accordingly convicted.

The prosecutrix 'R' aged about 17 years who is a resident of Gali Karkhane Wali, Tilak Bazar, Delhi – 110006 (Central Delhi) an old patient of neurological disorder (seizures) and weak understanding (weak mental capabilities) receiving treatment from Kalawati Hospital, had come to visit the maternal family of her mother on 14.3.2011 at A-333, Behind ITI, Jahangir Puri, Delhi. On 19.3.2011 at about 5:00 PM she was standing in the gali just about seven steps away from her maternal uncle's jhuggi. The five accused who were coming on foot, dragged her/ partially lifted her to the Jhuggi of accused Mukesh @ Bittoo and Ravinder @ Raju (being real brothers) where she was held captive for three days. During this period of three days all the accused namely Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti repeatedly committed rape upon the prosecutrix 'R'. On 21.3.2011 the prosecutrix 'R' was abandoned by the accused and she was noticed standing near the Public Toilet after which information was given to her relatives who immediately brought her home and informed the police of the same, after having come to know that some wrong act had been done with the

prosecutrix. She was immediately taken to the BJRM Hospital where her medical examination was got conducted. Within a few hours of her recovery the prosecutrix led the police to the room where she was held captive from where the accused Mukesh @ Bittoo who was coming out of the Jhuggi was apprehended after the prosecutrix identified him as one of the offender who had committed rape upon her. On 24.3.2011 the accused Prabhans Yadav @ Ramjane was also apprehended on the pointing out of the prosecutrix and again on 25.3.2011 when the prosecutrix joined the investigations the accused Ravinder @ Raju and Deepak @ Deepu who were found present in Jhuggi No. A-655, K Block Jahangirpuri were apprehended on her pointing out. On 2.4.2011 the accused Rajeev @ Bunti had been brought to the Police Station by his mother and surrendered where he was arrested. The Judicial Test Identification Parade of the accused Rajeev @ Bunti was also got conducted in the Jail wherein the prosecutrix has identified the accused Rajiv @ Bunti as the boy who had caught hold of her and dragged her to the room and first committed rape upon her.

The prosecutrix 'R' had appeared in the Court and had correctly identified all the accused not only by pointing out towards them but also by their nick names (since they were addressing each other by their nick names). She had specifically identified the accused Rajiv @ Bunti as the boy who had caught hold of her and dragged her to the room and first committed rape upon her and had also identified the other accused as the boys who had committed rape upon her. The Medical Evidence and the Forensic Evidence substantially and conclusively established the factum of rape being committed upon the prosecutrix.

This being the background, on the basis of the testimonies of the various witnesses examined by the prosecution including the prosecutrix 'R' and the medical & forensic evidence on record, this Court has held all

the accused Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti guilty of having kidnapped the prosecutrix 'R' aged about 17 years from lawful guardianship of her parents with the intent that she be forced/ seduced to illicit intercourse and of having wrongfully confined the prosecutrix 'R' in Jhuggi No. K-655 from 19.3.2011 to 21.3.2011 in order to prevent her from proceeding in any direction in which she has right to proceed and of repeatedly having committed rape upon her during this period of her confinement; thereby establishing the charges under **Sections 363/366/342/376 (2) (g) IPC** on account of which the aforesaid accused have been accordingly convicted.

Heard arguments on the point of sentence. The convict **Mukesh @ Bittoo** aged about 35 years is 8th class pass and was working as Security Supervisor. He has a family comprising of aged father, two married brothers, one married sister, wife, one son and one daughter. He is also involved in another case bearing **FIR No. 138/08, Police Station Jahangir Puri**, under **Section 308 IPC**.

The convict **Prabhans Yadav @ Ramjane** a young boy of 24 years is 8th class pass and is a labour by profession. He has a family comprising of aged father, mother who is paralyzed and one younger brother. He is involved in another case bearing **FIR No. 138/08, Police Station Jahangir Puri**, under **Section 308 IPC**.

The convict **Deepak @ Deepu** aged about 24 years is totally illiterate and was working in a Band. He has a family comprising of three married sisters only and is not involved in any other case.

The convict **Ravinder @ Raju** aged about 48 years is 8th class pass and is a Auto Driver by profession. He has a family comprising of aged father, two married brothers (including convict Mukesh @ Bittoo), one married sister and wife. He is not involved in any another case.

The convict **Rajeev @ Bunti** a young boy of 22 years is 8th class pass and was employed in a factory at the time of his arrest. He has a family comprising of ailing father, mother, brother, sister and wife. He is not involved in any another case.

Ld. Counsels for the convicts have vehemently argued that the convicts Ravinder @ Raju, Rajeev @ Bunti, and Deepak @ Deepu are first time offenders and are not involved in any other case. It is pointed out that the convict Prabhans Yadav @ Ramjane is mentally disturbed for which he is under treatment from Mental Hospital GTB, Dilshad Garden. It is also argued that the convict Prabhans Yadav has already been acquitted in case FIR no. 133/09, PS Jahangir Puri, under Section 308 IPC. The Ld. Counsels have also pointed out that the convicts Rajeev @ Bunti, Prabhans Yadav @ Ramjane and Deepak @ Deepu are young boys and are the helping hands of their respective families. It is requested that a lenient view be taken against all the convicts.

On the other hand, the Ld. Addl. PP for the State has prayed for a strict punishment for the convicts keeping in view the nature of offence and allegations involved. He has argued that the convicts deserve no leniency since the offence in the present case has been committed upon a minor a patient of neurological disorder and seizures for last number of years.

I have considered the rival contentions. This case is a glaring example of the growing menace of sexual abuse of young girls. Rape is an abominable and ghastly and it worsens and becomes inhuman and barbaric when the victim is not physically and mentally upto the mark, as in the present case who is subjected to unwanted physical contact by five perverted male adults. The provisions of Section **376 (2) (g)** Indian Penal

Code reads that whoever commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

The Hon'ble Supreme Court has in the judgment of **State of Andhra Pradesh Vs. Gangula Satya Murthy** reported in **JT 1996 (10) SC 550**, observed as under:

“Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity..”

In the case of **Shri Bodhisattwa Gautm Vs. Miss Subhra Chakraborty** reported in **AIR 1996 SC 922**, the Hon'ble Apex Court observed that:-

“The entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisions.”

It has been held by the Hon'ble Supreme Court in the case reported in **AIR 2000 Supreme Court 1470** that:

Socio-economic, status, religion, race caste or creed o the accused or the victim are irrelevant considerations in

sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court.

It is necessary for the court to keep in mind that the object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. The Courts are expected to operate the sentencing system so as to impose such sentence which reflects the conscience of the society and sentencing process has to be stern where it should be. (Ref: ***Siddarama and Ors. Vs. State of Karnataka*** reported in **2006 IV AD (Crl.) SC 78**).

The offence of rape is barbaric in nature where the victim is ravished like an animal for the fulfillment of desire and lust of another man. As observed by Hon'ble Mr. Justice Arijit Pasayat a murderer destroys the physical frame of the victim whereas the rapist degrades and defiles the soul of a helpless female. As per the official statistics a total number of **568** cases of rape have been reported in Delhi alone in the year 2011 out of which only 2% have been committed by strangers. This is one case where the offenders were was not related or previously known to the victim. If unreported cases were to be included, the figure would be much high but most of the cases are not reported by the victims because of the various reasons such as family pressure, behaviour of the police, the unreasonably long and unjust process and application of law and resulting consequences

thereof.

The prosecutrix 'R' was a soft and vulnerable target and due to her medical condition, she was not in a position to offer any resistance to the convicts. The convicts have taken advantage of a helpless and defenceless minor girl who could not even try to escape or express herself and was an easy and vulnerable prey. She must have undergone immense physical pain and agony when the offence was committed. The convicts went on to commit the ghastly, abominable, inhuman and barbaric act of rape, violating the person of the prosecutrix despite her medical condition giving a lifelong trauma to the victim and her family.

In the words of Hon'ble Apex Court (**Ref.: *T.K. Gopal Vs. State of Karnataka*** reported in ***AIR 2000 SC 1669***) sexual offences constitute an altogether different kind of crime which is the result of a perverse mind and those who are psychologically sadistic persons. The convicts before this Court are local hoodlums as reflected from the previous involvements of the convict Mukesh @ Bittoo and Prabhans Yadav @ Ramjane which show that they have scant respect for law. They had picked up a young girl suffering from neurological problem (seizures) in broad day light and held her captive in the house (occupied by convict Mukesh @ Bittoo and Ravinder @ Raju) for virtually three days where she was repeatedly subjected to the ghastly, abominable, inhuman and barbaric act of rape and thereafter publicly abandoned her perhaps being confident that none could lay their hands on them. Even during the trial of the case the convicts were hostile to the proceedings and exhibited a belligerent and aggressive behaviour showing little respect for the process of law thereby compelling the court to step in and direct their further appearance through Video Linkage. It is indeed commendable that the prosecutrix was able to withstand this hostility and

testify in the Court and also identify the offenders.

This being the background, no mercy can be shown to the convicts and the ghastly, inhuman act of the convicts cannot be condoned and a substantively, stern sentence is required to be imposed upon the convicts so that it is not only in commensuration with the gravity of the crime but also serves as an example for the others who might also venture on the same forbidden path. Therefore, I hereby hold that the convicts Mukesh @ Bittoo; Prabhans Yadav @ Ramjane; Deepak @ Deepu; Ravinder @ Raju and Rajeev @ Bunti deserve no leniency.

I award the following sentences to the convict **Mukesh @ Bittoo:**

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **Seven (7) years** and fine to the tune of Rs.2,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of **15 days**.
2. For the offence under **Section 342 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **one year**.
3. For the offence under **Section 376 (2) (g) Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment for Life** and fine to the tune of **Rs.25,000/-**. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of **three months**. The entire fine amount of Rs.25,000/-, if recovered, shall be paid to the prosecutrix 'R' as compensation in terms of the provisions of **Section 357 Cr.P.C.**

All the sentences shall run concurrently.

In so far as the convict **Prabhans Yadav @ Ramjane** is

concerned, I award the following sentences to him:

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **Seven (7) years** and fine to the tune of Rs.2,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of **15 days**.
2. For the offence under **Section 342 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **one year**.
3. For the offence under Section 376 (2) (g) Indian Penal Code the convict is sentenced to Rigorous Imprisonment for Life and fine to the tune of Rs.25,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of three months. The entire fine amount of Rs.25,000/-, if recovered, shall be paid to the prosecutrix 'R' as compensation in terms of the provisions of Section 357 Cr.P.C.

All the sentences shall run concurrently.

Further, I award the following sentences to the convict **Deepak**

@ Deepu:

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **Seven (7) years** and fine to the tune of Rs.2,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of **15 days**.
2. For the offence under **Section 342 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **one year**.
3. For the offence under Section 376 (2) (g) Indian Penal Code the convict is sentenced to Rigorous Imprisonment for Life and fine to the tune of Rs.25,000/-. In default of payment of fine the convict

shall undergo Simple Imprisonment for a period of three months. The entire fine amount of Rs.25,000/-, if recovered, shall be paid to the prosecutrix 'R' as compensation in terms of the provisions of Section 357 Cr.P.C.

All the sentences shall run concurrently.

I hereby award the following sentences to the convict **Ravinder @ Raju**:

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **Seven (7) years** and fine to the tune of Rs.2,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of **15 days**.
2. For the offence under **Section 342 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **one year**.
3. For the offence under Section 376 (2) (g) Indian Penal Code the convict is sentenced to Rigorous Imprisonment for Life and fine to the tune of Rs.25,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of three months. The entire fine amount of Rs.25,000/-, if recovered, shall be paid to the prosecutrix 'R' as compensation in terms of the provisions of Section 357 Cr.P.C.

All the sentences shall run concurrently.

Further, I award the following sentences to the convict **Rajeev @ Bunti**:

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **Seven (7) years** and fine to the tune of Rs.2,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a

period of **15 days**.

2. For the offence under **Section 342 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **one year**.
3. For the offence under Section 376 (2) (g) Indian Penal Code the convict is sentenced to Rigorous Imprisonment for Life and fine to the tune of Rs.25,000/-. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of three months. The entire fine amount of Rs.25,000/-, if recovered, shall be paid to the prosecutrix 'R' as compensation in terms of the provisions of Section 357 Cr.P.C.

All the sentences shall run concurrently.

Benefit of Section 428 Cr.P.C. shall be given to all the convicts for the period already undergone by them as per rules.

The convicts have been informed that they have a right to prefer an appeal against this judgment. They have been apprised that in case they cannot afford to engage an advocate, they can approach the Legal Aid Cell, functioning in Tihar Jail or write to the Secretary, Delhi High Court Legal Services Committee, 34-37, Lawyers Chamber Block, High Court of Delhi, New Delhi.

Coming now to the victim/ prosecutrix 'R', I may observe that the General Assembly of United Nations has recommended payment of compensation to the victims of crime by the State, when compensation is not fully available either from the offender or from other sources which includes the compensation to the victims of rape. It is laudable that the Government of NCT of Delhi has taken a lead and in terms of the the directions being issued by the Hon'ble Apex Court from time to time regarding compensation to the victims of rape, has now formulated a scheme for Restorative and Compensatory Justice to rape victims in respect

of which I am informed that a draft notification has already been approved by the Lt. Governor, Delhi which scheme is likely to come into effect shortly. Till such time the scheme actually comes into effect the Courts of law are not helpless. The Hon'ble Supreme Court has time and again observed that the subordinate Courts trying the offences of rape have the jurisdiction to award the compensation to the victims of sexual abuse being an offence against the basic human right and violative of **Article 21** of the **Constitution of India**. It has been so observed by Hon'ble Mr. Justice S. Saghir Ahmed and Justice Kuldeep Singh (Ref: *Bodhisattwa Gautam Vs. Subhra Chakraborty* reported in *AIR 1996 SC 922*) that the jurisdiction to pay compensation (interim and final) has to be treated to be a part of the over all jurisdiction of the Courts trying the offences of rape which is an offence against basic human rights as also the Fundamental Rights of Personal Liberty and Life.

The victim before this Court was hardly aged about 16-17 years at the time of incident when she was raped by the five convicts. She has a long standing history of neurological disorder and is still receiving treatment for the same from Kalawati Hospital as evident from her medical record placed before the Court. Rape of a minor not only affects her alone but such an incident has also a devastated impact on her entire family who equally suffers in silence. In an attempt to provide *Restorative and Compensatory Justice* to the victim who after the incident has discontinued her education and thereby requires State attention and rehabilitation. I hereby direct the GNCT of Delhi through Principal Secretary (Home) to grant an compensation to the tune of Rs.1,00,000/- (Rs. One lac) to the prosecutrix 'R' D/o Shakeel Ahmed, R/o House No. 1335, Gali Karkhane Wali, Tilak Bazar, Delhi-110006 [Ref.: *Hari Kishan & State of Haryana Vs. Sukhbir Singh & Ors.* reported in *AIR 1988 SC 2127* and *Bodhisattwa*

Gautam Vs. Subhra Chakraborty reported in ***AIR 1996 SC 922***].

Before ending I may observe that scientific evidence in the form of the Forensic reports play very important and key role, not only in punishment of accused but also in release of innocent kept in judicial custody for long time. A large number of exhibits relating to the offence of rape are being referred to forensic laboratory for blood/ semen examination being important evidence which are being examined by following the traditional blood grouping system as A,B,O and AB Type. This is not a full proof technique because even if blood groups are matching they may be of any other person also because more than 25% of population may have the same group of blood and semen. Here, I may observe that DNA profiling/ matching technology has emerged over the last two decades which is a full proof technique as no two persons in this world can share the same DNA profile. Further, DNA is also more resistant to decomposition, while the blood groups antigens are very much prone to disintegration due to microbial attack. Also, in a routine A,B,O type of grouping more material for blood stains/ semen stains is required than those required for DNA profiling test whereas for DNA profiling, DNA can be amplified million times in lab which is not possible in case of routine blood grouping. The DNA profiling can easily establish the liability of the individual accused. It has therefore become necessary for the Investigating Agencies and also for the State to ensure that in cases of sexual assault particularly in cases involving gang-rape or cases where the identity of the accused is not known to the victim or where victim is a child, that the DNA profiling is made mandatory for effective dispensation of Justice. I am hopeful that with due intervention of the senior officers of State and the Police, the existing scientific technology (DNA Profiling/ Matching) shall be put to its best utilization so as to ensure that the guilty are not let off and the innocent do

not suffer. I hereby direct that a copy of this order be sent to the Chief Secretary, GNCT of Delhi; Principal Secretary (Home), GNCT of Delhi and Commissioner of Police, Delhi for information and necessary action.

One copy of the judgment and order on sentence be given to the convicts free of costs and one copy of order on sentence be attached with their jail warrants.

File be consigned to Record Room.

Announced in the open court
Dated: 28.01.2012

(Dr. KAMINI LAU)
ASJ (NW)-II: ROHINI