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**In The Court of Sessions Judge, Kannauj**

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553  
Session Trial Number-575 of 2021

State of Uttar Pradesh ... Prosecution

Versus

1. Arjun Kumar, son of Ramababu Balmiki, resident of village Signi, PS Kishni, District Manपुरi, presently residing at village Bahbalpur, PS Chhibramau, District Kannauj.
2. Smt. Neha Chaubey, wife of Rahul Upadhyay, resident of Surohal, House No. 570, Police Station Sector-18, District Gurugram, Haryana, with permanent address at Village Ratnauly, Police Station Maniyar, District Ballia.
- ... Accused.

Crime Number-705/2020  
Under Sections 363, 366, 120B, 368 IPC  
Police Station- Chhibramau,  
Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),  
Defence Counsel: Shri Ramesh Chandra Pandey, Advocate.

**JUDGMENT**

**Introduction**

1. **Case Details:** This judgment pertains to Session Trial No. 575 of 2021, State of Uttar Pradesh vs. Arjun Kumar & Smt. Neha Chaubey, arising out of Crime No. 705/2020, Police Station Chhibramau, District Kannauj. Accused Arjun Kumar was charged under Sections 363 and 366 of the Indian Penal Code (IPC) (kidnapping a minor and abducting a woman to compel marriage or illicit intercourse), while accused Smt. Neha Chaubey was charged under Sections 120B and 368 IPC (criminal conspiracy and wrongful confinement of a kidnapped person). Both accused pleaded not guilty and claimed to be falsely implicated. The trial was conducted to determine whether the prosecution had proven its case against the accused beyond a reasonable doubt.
2. **Charges and Law:** Section 363 IPC punishes kidnapping from lawful guardianship - i.e. taking or enticing a minor (under 18 if female) out of the keeping of the lawful guardian without the guardian's consent. Section 366 IPC applies to anyone who kidnaps or abducts a woman with the intent that she may be compelled to marry against her will or forced to illicit

intercourse. Section 368 IPC punishes anyone who, knowing a person has been kidnapped or abducted, wrongfully conceals or confines that person. Section 120B IPC penalises parties to a criminal conspiracy – an agreement between two or more persons to do an unlawful act. The Court will assess the evidence against these legal standards.

### **Prosecution Case**

3. **Factual Matrix:** According to the prosecution, on the evening of 10.10.2020 at about 6:30 PM, the victim “X” (aged around 15 years, daughter of complainant Mahipal) went missing from her home. Her father (PW1, Mahipal Saini) alleged that one boy had enticed away his minor daughter. In the First Information Report (FIR) lodged on 14.10.2020, the suspect was initially named as “Ayush”. The FIR was registered under Sections 363/366 IPC for kidnapping and abduction.

4. The prosecution's story further is that, acting on surveillance inputs, police traced the girl after a few months to Gurugram, Haryana. On 04.02.2021, a police team recovered the victim from a house in Sector-18, Gurugram, allegedly from the custody of a woman, Neha Chaubey. It is alleged that the accused Arjun Kumar, a neighbour of the victim's family, had conspired with Neha to abduct the girl. Arjun purportedly lured the victim on the pretext of marriage, took her by bus to Delhi, and handed her over to Neha. Accused Neha Chaubey then allegedly kept the girl confined in a room, did not allow her to contact anyone or leave, and tried to force the minor into prostitution. According to the victim's initial statement under Section 164 of the Cr.P.C. (recorded during investigation), Neha herself engaged in sexual activities with men and wanted the victim to do the same; when the victim resisted, Neha threatened to send her abroad so that she could never return home. The victim was ultimately recovered when police raided the location with her father, and both accused were arrested.

5. **Investigation:** The victim was medically examined on 05.02.2021. The medical report noted no external injuries and an old healed tear of the hymen, with no conclusive opinion on sexual assault in the absence of the forensic science lab (FSL) report. During the investigation, the police procured the victim's school documents to establish her age and recorded statements of witnesses. A charge-sheet was filed on 02.04.2021, initially also invoking provisions of the POCSO Act (for sexual assault on a minor) based on the victim's statement, though those charges were later dropped upon finding discrepancies in age proof. Ultimately, the charge-sheet arraigned Arjun under IPC Sections 363, 366 and Neha under IPC Sections 120B, 368. The case was committed to the Court of Session since the offences are triable by a Sessions Court.

### **Defence Version**

6. In their examination under Section 313 Cr.P.C., both accused denied the allegations. Accused Arjun Kumar stated that he was a neighbour of the complainant and had been “falsely implicated due to neighbourhood/village enmity”. He asserted that he never kidnapped the

girl and that the case is a result of baseless suspicion. Accused Smt. Neha Chaubey, similarly, denied any involvement, claiming she had no knowledge of the victim or any conspiracy – effectively pleading innocence. Each accused stated that the prosecution's story was untrue and that they never committed the alleged acts. No defence witnesses were produced on behalf of the accused. The defence primarily challenged the credibility of the prosecution's evidence, pointing out material contradictions, the absence of any direct evidence, and the fact that the victim herself had not supported the prosecution's case.

### **Evidence adduced by Prosecution**

7. The prosecution examined seven witnesses in support of the charges:

PW1: Mahipal Saini – the complainant and father of the victim.

PW2: Smt. Manisha Saini – mother of the victim.

PW3: Dr. Jyoti Singh – who conducted the medical examination of the victim.

PW4: "X" Saini – the victim (prosecutrix).

PW5: SI Mangal Das – the Head Constable who registered the FIR and GD entry.

PW6: SI Sanjesh Kumar – the initial Investigating Officer (IO) who prepared the site plan and conducted part of the investigation.

PW7: Inspector Vinod Kumar Mishra – the subsequent IO who recovered the victim (through his team), completed the investigation, and submitted the charge-sheet.

8. **Documentary evidence included:** the written complaint (tahrir) (Ex. Ka-1), the victim's medical examination report (Ex. Ka-2) and supplementary report (Ka-3), the victim's statement recorded under Section 164 Cr.P.C. (Ex. Ka-4), the FIR (Ex. Ka-5) and corresponding GD entry (Ka-6), the site plan of the place from where the victim had left (Ex. Ka-7), and the charge-sheet (Ex. Ka-8).

### **Salient aspects of the oral evidence are as follows:**

9. **PW1 (Father – Mahipal Saini):** In his examination-in-chief, PW1 stated that he has been living in village Bahbalpur (Kannauj) and is a street-food vendor. His youngest daughter, "X" (victim), was around 15 years old at the time and studied up to Class VIII. On 10.10.2020 at about 6:30 PM, "X" left home with Arjun (accused), who lived two houses away in the same village. When "X" did not return by late at night, the family searched for her. After 3-4 days of fruitless search, PW1 lodged a written report at the police station. He identified the FIR (Ex. Ka-5) in court. He further deposed that about 10-12 days after the incident, acting on information, police recovered his daughter from Delhi from the possession of Neha (accused) and arrested both Neha and Arjun. He stated the police recorded the

victim's statement and conducted her medical examination. Thereafter, on Court orders, the girl was restored to the parents' custody. PW1 then added a startling fact: some time after returning home, the victim again left home one night and has been missing ever since (at the time of his testimony). He claimed that when she disappeared the second time, he tried to lodge a report with the S.P., but the police did not register it; he has not seen his daughter in the last two years.

10. **Cross-examination of PW1:** The complainant's cross-examination exposed significant contradictions and uncertainties in his account. He admitted that he did not personally witness his daughter leaving with anyone – at that time, he was asleep, and only learned she was gone after waking up. He acknowledged that the FIR he lodged was initially against an “unknown” person and was filed almost immediately after she went missing, not after a long delay. In fact, PW1 confirmed that the written tahrir he gave named one “Ayush” (a boy from Chhibramau) as the suspect, and it did not mention Arjun's name at all. (PW5's testimony and the FIR corroborate that the case was first registered against Ayush, not the present accused.) PW1 also conceded that “I never mentioned Arjun and Neha's names in any report or to the police”, and that he had not accused Arjun or Neha until the police investigation later implicated them. He further testified that about 10–12 days after the first incident, his daughter “returned home” on her own (which contradicts his claim in chief that police recovered her – suggesting confusion about whether the girl was found by police or came back voluntarily). Regarding the second disappearance, PW1 revealed that he did not search for her or pursue it vigorously, believing she likely went with Arjun again. He quoted the police as dismissively telling him, “Your daughter is so wayward, where will you find her?”, due to which he “sat quietly” and did not follow up. Notably, PW1 gave conflicting information about the victim's age. While initially describing her as 15 in 2020, he later (under probing about his family) calculated her age to be around 26 years at present, casting serious doubt on the claim that she was a minor at the time of the occurrence. He admitted that if he married at 20 and “X” was born about 6 years thereafter, her age would indeed be in the mid-twenties now. This discrepancy on a crucial fact (minor or major) remained unexplained by the prosecution. Finally, PW1 stated he does not know accused Neha at all – “I have never met or seen Neha Chaubey” – despite earlier asserting that the girl was recovered from Neha's custody. His testimony, thus, was riddled with hearsay and self-contradiction on key points (identity of culprit, age of victim, mode of recovery).

11. PW2 (Mother – Smt. Manisha Saini): PW2 corroborated that “X” is her youngest daughter and was about 16 years old in 2020. She stated that on 10.10.2020 her minor daughter went missing and “someone enticed her away”. After searching, they got to know that the neighbouring boy, Arjun, had “lured her with bad intentions and hidden her somewhere in Haryana”. (It appears this “knowledge” was based on rumours or what “X”'s friends told her – PW2 said some local girls informed her that “X” used to talk with Arjun on the phone.) Her husband (PW1) lodged the report. PW2 testified

that the police recovered "X" from near Delhi (Gurugram) from Neha Chaubey's custody and brought her to the police station. She was not personally present at the recovery; her husband accompanied the police. PW2 said the girl stayed at the police station for 6-7 days before being handed back to the family, after which "X" lived with them for 4-5 months. PW2 then added that after the accused Arjun was released from jail, "he again eloped with my daughter", since which time (around mid-2021) "X" has been missing and not found. PW2 also mentioned that about a year after recovery, they arranged "X"'s marriage to one Rahul in Aligarh, but the marriage lasted only 15 days before "X" left her matrimonial home.

12. **Cross-examination of PW2:** The mother's testimony too unravelled under cross-examination. She admitted she never actually saw "X" leave with anyone on the first occasion – "I did not see "X" being taken away by Arjun or any person". In fact, at 6 PM on 10.10.2020, she only realised "X" was missing; she did not witness how or with whom her daughter left. She even said she does not know who 'Ayush' is (despite the FIR naming Ayush), indicating that the initial suspicion was uncertain. PW2 could not recall the exact date, month or time of the incident when asked, suggesting a lack of clarity about the events. She accompanied her husband to the police station, but did not know that the FIR was lodged against one Ayush of Chhibramau (as it actually was). Importantly, PW2 stated that no police officer ever recorded her statement during the investigation, and that she never named Arjun or Neha to the Investigating Officer at any point. She conceded, "I have no knowledge of the facts of this case", and that her court deposition is based only on what little she knows now, claiming it to be true. PW2 also made the extraordinary statement that after these incidents, she has "no relation with my daughter now" and no interest in her whereabouts, effectively disowning the victim. She testified that for the past year and a half, she has had no contact or information about and does not care where she is. This reflects the breakdown in the family relationship, but also means the mother had very limited knowledge to offer the court. In summary, PW2's evidence is almost entirely hearsay. She did not witness the alleged kidnapping or confinement; she only reiterated what she had heard from others. Her testimony also fails to link the accused to the crime concretely, and she candidly admitted to knowing almost nothing of the case facts.

13. **PW3 (Dr. Jyoti Singh – Medical Officer):** PW3 conducted the medical examination of the victim "X" on 05.02.2021, the day after her recovery. She proved the Medical Report (Ex. Ka-2) and the supplemental report (Ex. Ka-3). Her findings were as follows: The girl's general health parameters were normal; no external injuries were found on her body. On internal examination of the genital area, no fresh injuries were noted; the hymen was old, torn and healed. PW3 took the victim's samples (blood, vaginal swabs, pubic hair, nail clippings, etc.) for forensic testing (DNA, drugs/alcohol, pregnancy test) and referred her for an X-ray to estimate age and an ultrasound. Crucially, Dr. Singh opined that there were no signs of recent force or violence on the victim's body, and in the absence of the FSL report, no definitive conclusion about sexual intercourse/assault could be given. In

her cross-examination, PW3 stated that she did not herself determine the victim's age and that she received no report of age estimation from the referred radiologist or district hospital. Thus, medically, there is no evidence of physical coercion or injury to the victim. The prosecution also did not produce any conclusive age determination results – the doctor's testimony confirms that no age certificate or bone test result was made available to her or placed on record. This is significant because the age of the victim (minor or major) is fundamental to the charge of kidnapping under Section 363 IPC. The medical evidence, in sum, neither corroborates any sexual exploitation nor firmly establishes a minority; it is neutral in effect, indicating at most that the girl was not a virgin (old healed hymen tear) but giving no indication when or how that occurred.

14. **PW4 (Victim – "X" Saini):** The testimony of the victim is the most crucial piece of evidence, and notably, she turned hostile to the prosecution's case. PW4, aged about 20 at the time of trial (by her own account), began by clarifying her date of birth: she stated her DOB is 03.01.2002, though her school certificate records it as 03.01.2005. (This discrepancy of three years suggests she might have been an adult, 18 years old, at the time of the incident in October 2020, contrary to the prosecution's claim that she was 15. The prosecution did not reconcile this issue.)

15. **Victim's account in Court:** PW4 testified on oath that on the evening of 10.10.2020 (she actually said 10.11.2020, which appears to be a minor date confusion), around 6:30 PM, she was at home with her mother, and her father was out working. She stated that her family was pressuring her to marry someone against her will, which upset her. Out of frustration and dissent, she decided to leave home on her own. She explicitly said no one took her – rather, she left home alone, without informing her family, because she did not want the forced marriage. She took a bus to Gurugram (near Delhi) by herself. After reaching Gurugram, she rented a room on her own and started living there alone, securing a job in a private company to support herself. She lived independently in that rented room for about four months until February 2021. Then, her parents, along with the police, arrived at that room (acting on some information) and took her back home. The police made inquiries (recorded her statement) and conducted her medical examination, and also got her statement recorded before a Magistrate under Section 164 Cr.P.C..

16. At this juncture, in court, the sealed envelope containing her prior statement (164 Cr.P.C.) was opened and shown to her. PW4 admitted that the statement bore her signature and photograph (it was exhibited as Ex. Ka-4). However, she immediately disowned the contents of that statement, giving an explanation that is pivotal to this case: She testified that her family members and the police had threatened and coerced her at the police station before she was taken to the Magistrate, and that she was tutored to give a false statement incriminating the accused. She said, "I was scared and I stated in court (before the Magistrate) whatever the police told me to say".

In other words, PW4 claimed that her Section 164 statement was not voluntary or true, but given under duress from her parents and police.

17. PW4 completely exonerated both accused in her sworn testimony at trial. She categorically stated: Arjun Kumar did NOT entice or abduct her, did NOT promise to marry her, and in fact, she “did not even know Arjun at that time” (except as a fellow villager). She asserted that “Arjun never had any relationship with me, never took me anywhere, never did anything wrong with me”. She further confirmed that accused Neha Chaubey never met her or had any contact with her at all – “I do not know any woman named Neha Chaubey” – and that neither Arjun nor Neha ever kept her confined or hostage at any point. According to PW4, her initial disappearance was entirely of her own doing, due to her anger at her family, and no one helped or induced her to run away.

18. After being brought back home by her parents in 2021, PW4 stayed with them for about one year. She testified that although her parents did not mistreat her during that time, they again started pressuring her to marry someone of their choice. Feeling suffocated by this, in late 2021, she left home a second time, again on her own accord (this aligns with what PW1 and PW2 mentioned). She said this time she went to Jaipur, where she has since been living independently, working a job and residing in a rented room by herself. She emphasised that Arjun had no role in her second departure either – she did not meet or communicate with Arjun after leaving home; “Arjun never called me or met me after I left”. She admitted knowing Arjun as he is from the same village, but firmly denied any romantic or illicit relations with him, and denied that they ever eloped or married. She also refuted a suggestion that caste differences (she being from the Saini caste and Arjun from the Valmiki caste) had anything to do with the matter; she said she never had any intent to marry Arjun in the first place.

19. The court record shows that the prosecutor, taken aback by her hostile stance, cross-examined PW4 with her earlier statements. When confronted with her police statement under Section 161 Cr.P.C., PW4 said she never told the police the things written in it and could not explain why the police wrote such allegations. She repeated that her Magistrate statement (164 Cr.P.C.) was given under pressure from her parents and the police who were waiting outside during its recording. She clarified that in the Magistrate’s chamber, she was alone with the judge (no police inside), but outside the room, her parents and some police personnel had threatened her beforehand, instructing her on what to depose. Out of fear and being a young girl, she obliged at that time. She insisted that now, in the trial, she was speaking the truth of her own free will. PW4 refuted every prosecution suggestion that she might be currently under anyone’s influence or fear, or that she was lying in court to protect the accused. She also refuted the insinuation that she was with Arjun as his wife – she maintained that it was false. Finally, she reiterated in no uncertain terms: “Arjun did not lure me or abduct me; I left home because I was unhappy with my family. Arjun has nothing to do with this case. My parents wrongly gave Arjun’s name in the case. Neha

Chaubey, I do not know at all. Neither Arjun nor Neha ever kept me hostage nor did they do anything wrong to me. What I am stating now is the true and voluntary account.”.

20. The victim’s testimony thus demolishes the prosecution’s factual theory. She has fully retracted her prior accusations against the accused and instead given an exculpatory version that attributes no crime at all to Arjun or Neha. Essentially, as per her, this was a case of a teenage girl fleeing parental authority, and the accused were dragooned into the case without cause. Her evidence is of critical importance and will be examined in detail in the analysis section, especially in light of settled law on hostile witnesses.

21. **PW5 (SI Mangal Das - Head Constable/ Duty Officer):** PW5 testified about the lodging of the FIR. He stated that on 14.10.2020, while he was the head moharir (clerk) at PS Chhibramau, complainant Mahipal (PW1) came to the police station and handed him a written tahrir. As per the SHO’s directions, PW5 prepared the formal FIR (Crime No. 705/2020) by dictating the contents of the tahrir to the computer operator. The FIR was registered at 23:12 hrs on 14.10.2020 under Sections 363, 366 IPC, with the accused named as “Ayush” in the columns. PW5 proved the FIR (Ex. Ka-5) and the corresponding General Diary entry No. 62 (Ex. Ka-6) dated 14.10.2020. He affirmed that the FIR bore the signatures and seal of the SHO and was a true copy of what he entered.

22. **Cross-examination of PW5:** The defence elicited a crucial admission: PW5 confirmed that the case was initially registered “against unknown” – i.e., there was no certainty of the culprit’s identity at the time of FIR. Specifically, he said: “The FIR was not against Arjun; the tahrir given was against one Ayush (no father’s name given).”. This matches the FIR document, which shows the accused as Ayush, a resident of Chhibramau. PW5 also said he has no knowledge of how or when the victim was recovered, nor does he know the accused Arjun or Neha – his role was limited to registering the case as per the complaint. This testimony firmly establishes that Arjun and Neha were not named by the informant initially, highlighting a significant investigative shift that occurred later (when the focus moved from the unknown “Ayush” to Arjun/Neha). This calls into question the reliability of the subsequent implication of the present accused, absent strong corroboration.

23. **PW6 (SI Sanjesh Kumar - initial Investigating Officer):** PW6 was the Sub-Inspector who first investigated the case. He deposed that the FIR (Crime 705/2020 under 363, 366 IPC) came to him for investigation on 14.10.2020. On 15.10.2020, he prepared the Case Diary no.1, in which he recorded the statements of the complainant (PW1 Mahipal) and copied the FIR/GD details. PW6 then visited the scene (the victim’s house/locality) and prepared a site plan map (Ex. Ka-7) on the pointing out of the complainant. He identified the site plan in court. He stated that he made inquiries in the neighbourhood and recorded statements of two local witnesses (one Brijesh Kumar Valmiki and one Jang Bahadur). PW6 further deposed that on 22.10.2020, he continued the investigation (prepared CD No. 2 to 6) to trace



the “abducted girl and the named accused”. (Notably, at that stage, the only “named” accused was Ayush as per the FIR.) He then said on 23.01.2021, he prepared CD No.7, in which he obtained from the victim’s father a birth certificate/school certificate of the victim and recorded the statement of one Smt. Sushma Gupta, the school principal (presumably to attest the victim’s date of birth). Before he could recover the victim, PW6’s tenure ended: he testified that thereafter the investigation was transferred from him to Inspector Vinod Mishra (PW7) on 01.02.2021.

**24. Cross-examination of PW6:** He revealed several important points that underscore investigative gaps: PW6 confirmed that the tahrir given by PW1 named a boy, “Ayush, resident of Chhibramau”, as the suspect, and that the complainant did not mention Arjun or Neha at all in his statement. He tried but never found any person named Ayush during his part of the investigation. He also failed to locate the victim before the case was handed over (the girl remained missing in his tenure). He admitted that the complainant (PW1) was not an eyewitness to any abduction (he only reported what he had heard). The site plan he made was solely based on what PW1 described, and no independent resident or neighbour confirmed witnessing the girl being taken. Essentially, no direct evidence of any forcible or illicit taking emerged in the locality inquiries. PW6’s candid admission was “I searched for the girl but she was not found; I did not find the accused either; the informant never mentioned Arjun or Neha to me.”. He also said he got the victim’s birth certificate from the father and recorded the school principal’s statement, but notably, the prosecution did not produce the principal as a witness or formally exhibit the birth certificate in court (it is only mentioned in the case diary). Thus, proof of age was left incomplete. PW6, having done the initial legwork, played no role in the actual recovery or arrests, and his evidence emphasises that up to January 2021, there was no evidence directly pointing to Arjun or Neha – the case was against an unknown perpetrator.

**25. PW7 (Inspector Vinod Kumar Mishra – subsequent IO):** This witness took over the investigation on 01.02.2021, as the Station House Officer (SHO). He testified that he went through the prior case diaries and then proceeded with further investigation. PW7 stated that on 04.02.2021, acting on information, SI Ram Singh of his police station and a team (including constables Shiva Chaudhary, Vikas Saini and WPC Komal Masand) located and recovered the victim “X” from Gurugram, Haryana, from the custody of accused Neha Chaubey. (He noted that the recovery was entered in the case diary – Excerpts of CD No.9 dated 05.02.2021 – though PW7 himself did not physically accompany the team to Gurugram.) After the recovery, PW7 formally arrested both accused, Arjun and Neha (their arrest is shown at Chhibramau bypass on 05.02.2021). He recorded the statements of the victim (PW4), the complainant and his wife (PW1 and PW2), and SI Ram Singh (the recovery officer). PW7 also collected the victim’s medical reports, X-ray and ultrasound reports and added them to the case file. He stated that after reading the victim’s statement given under Section 164 Cr.P.C. (which by then had been recorded on 09.02.2021), he initially added charges under the

POCSO Act (Section 7/8 against Arjun for sexual assault, and Section 16/17 against Neha for abetment) and Section 342 IPC (wrongful confinement) against Neha, since the 164 statement alleged sexual exploitation and confinement. However, subsequently, upon reviewing documentary evidence (presumably the age proof showing the victim could be a major), he dropped the POCSO charges (and Section 342). Finally, on completing the investigation, PW7 submitted the charge-sheet (Ex. Ka-8) against Arjun under Sections 363, 366 IPC and against Neha under Sections 120B, 368 IPC, finding these offences “well established”.

26. **Cross-examination of PW7:** Inspector Mishra’s cross-exam raises serious questions on the reliability of the prosecution's case. He admitted outright that the FIR did not name Arjun or Neha – the only named suspect was Ayush of Chhibramau. In fact, he stated: “Originally, the FIR was not against Arjun and Neha. I made Arjun and Neha accused during my investigation. The name Ayush (from FIR) was not carried forward in the charge-sheet.”. He conceded that he himself was not present when the victim was recovered from Gurugram – that was done by SI Ram Singh’s team. (Tellingly, the prosecution did not examine SI Ram Singh or any member of the recovery team as a witness to describe the circumstances of recovery or to testify that the victim was indeed found with the accused, Neha. This is a glaring omission, since the fact of recovery from Neha’s custody is a cornerstone of the case against her under Section 368 IPC.) PW7 confirmed that he did not prepare any fresh site plan of the Gurugram location or any recovery memo beyond noting it in the diary. He was also unaware of the contents of the victim’s birth certificate collected by PW6 (implying he did not personally verify the age with the school). When pressed on the added then dropped POCSO charges, he explained: “Yes, I initially added POCSO sections after seeing the 164 statement, later I dropped them upon seeing documentary evidence.”. This indicates that either the victim’s age was found to be above 18 (making POCSO inapplicable) or that her retraction made the sexual allegations untenable. He agreed that the original suspect, “Ayush”, was never made an accused in the final report. The defence suggested that he filed a false charge-sheet without evidence or without properly recording the victim’s true version; PW7, of course, denied this, insisting he had evidence (chiefly the 164 statement). However, it is evident that PW7’s entire case rested on the victim’s statements given during the investigation, which the victim has now renounced in court. PW7 did not present any independent corroborative evidence of a conspiracy between Arjun and Neha (for example, no call records, no witness who saw them together, etc.). His testimony underscores that the implication of Arjun and Neha was solely based on what the victim had alleged in her pre-trial statements, absent direct evidence. With the victim retracting those allegations, PW7’s evidence provides the procedural narrative but little substantive support for the prosecution’s claims.

27. In summary, the prosecution's evidence reveals the following picture:

1- There is no eyewitness to the actual act of kidnapping/abduction on 10.10.2020. The parents only inferred Arjun's involvement from hearsay and suspicion; even that initial suspicion was vague/misdirected (naming "Ayush"). No neighbour or independent witness saw Arjun take the girl.

2- The victim herself, in court, has flatly denied that any kidnapping or confinement occurred. Instead of supporting the prosecution, she supports the defence by saying she left willingly and that the accused are innocent.

3- Serious inconsistencies exist in the prosecution's narrative: The person named in the FIR (Ayush) is altogether different from Arjun; the victim's age is disputed (with evidence suggesting she may have been an adult, which would nullify the kidnapping charge); and the parents' testimonies conflict with each other and with their prior statements on key facts (like whether the girl returned on her own or was found by police, whether they suspected Arjun from the start or not, etc.).

4- Lack of material evidence: No forensic evidence (e.g., DNA or FSL report) was produced to support any allegation of sexual exploitation (the FSL report was never placed on record). No documentary proof of the victim's exact age was properly exhibited to show she was under 18 conclusively. The police did not produce the officer who actually recovered the victim and allegedly found her with Neha – thereby failing to prove that Neha wrongfully confined the girl directly. The entire case against Neha rests on the victim's now-withdrawn statement and second-hand accounts. Similarly, the case against Arjun rests almost solely on the victim's prior statement (since the parents only had hearsay and the initial investigation pointed elsewhere).

28. Thus, the evidence on record is largely unfavourable to the prosecution. The star witness (victim) has not supported the charges; the other key witnesses (parents) provided only circumstantial or contradictory information; and there is a conspicuous absence of any solid corroboration (such as recovery of the victim from the accused's exclusive custody proved in court, or any confession, etc.). These evidentiary aspects will be analysed in detail in the next section.

### **Analysis of Evidence and Discussion**

29. After careful scrutiny of the entire record and arguments advanced, this Court finds that the prosecution has failed to establish the charges beyond a reasonable doubt. The reasons for this conclusion are set out below, organised by the main points of contention:

#### **1. Credibility of the Victim's Testimony vs. Her Prior Statement**

The victim's testimony is the linchpin of this case. In her Section 164 Cr.P.C. statement (Ex. Ka-4) recorded during investigation, she had incriminated the accused with grave allegations of kidnapping, confinement and attempted sexual exploitation. However, in her sworn deposition before this Court (as PW4), she entirely resiled from that version and gave an opposite account, absolving the accused of all wrongdoing. She explained that her earlier statement was given under parental and police pressure, not out of her own free will. As a result, the prosecution's case has been gutted by its own prime witness.

It is a well-settled legal principle that a previous statement under Section 164 Cr.P.C. is not substantive evidence. It can be used only to corroborate or contradict the witness's court testimony, but if the witness turns hostile and retracts the statement, the contents of the 164 statement have no independent evidentiary value to convict. The statement under Section 164 of Cr.P.C. is not evidence, much less substantive evidence and in the absence of any other corroboration, a retracted Section 164 statement cannot form the sole basis of conviction. This principle is on all fours applicable here. PW4 has retracted her inculpatory statement. The prosecution, therefore, cannot legally secure a conviction by relying on what she told the Magistrate, since in court she has disowned it.

The Court had the opportunity to observe the demeanour of PW4. Her testimony appeared cogent and unwavering in denying the prosecution's story. She withstood cross-examination by the prosecution. Despite suggestions that she might be under the influence or lying to protect the accused, she firmly denied them. Importantly, her version that she left due to family pressure is plausible and finds some support in surrounding circumstances (e.g., the fact that she indeed left her home again later to avoid a forced marriage suggests a pattern). In contrast, the prosecution's theory rests on the assumption that PW4 was telling the truth in her earlier statement and lying now. But there is no evidence of any inducement or threat by the accused that could explain why she would falsely exonerate them now. She no longer lives with her parents (having severed ties), so the likelihood of her being coerced by them at this stage is minimal. In fact, it appears PW4 is now speaking with a sense of agency, free from the immediate influence of her family or police. Given this scenario, the Court finds no reason to discard PW4's sworn testimony. On the contrary, it creates a strong doubt about the prosecution's case.

Even if one were to be sceptical and consider that the victim might have changed her story to help the accused, the law is clear that no conviction can be based on a statement that the witness herself says is untrue. The Court cannot speculate which of the two versions might be true; the benefit of such doubt must go to the accused. The Supreme Court has repeatedly held that when a crucial witness turns hostile and no other reliable evidence is available, the prosecution's case fails. Here, apart from PW4's retracted statement, there is no other direct evidence of the alleged crimes. Thus, PW4's hostility is fatal to the prosecution.

In summary, the victim's in-court testimony wholly undermines the charges. The prosecution is essentially left with a confession of the victim's earlier allegations being false. Therefore, the primary evidence necessary to prove kidnapping, conspiracy or confinement is absent.

## **2. Whether the Victim was a Minor & Implications**

The age of the victim is a critical factor for the charges under Sections 363/366 IPC (kidnapping requires the person to be under 18 in the case of a female). The prosecution asserted she was about 15-16 years old at the time of the incident. However, the evidence on age is inconclusive and tilts toward the defence:

PW4 stated her date of birth is January 2002 (which would make her 18 in Oct 2020, hence not a minor). She explained that the date on her school record (2005) was incorrect.

PW1 (father) gave inconsistent age evidence – under cross-exam, he effectively placed her age in mid-twenties by his own timeline, though this might have been inadvertent, it raises doubt.

The Investigating Officer obtained a school certificate, but neither that document nor the school principal was produced at trial. So, there is no certified proof of age before the Court.

The medical examination did not yield any bone age determination; PW3 explicitly said she did not receive any age report.

In this scenario, the Court is left with a reasonable doubt whether the victim was a minor in October 2020. The prosecution, which bears the burden, did not definitively prove that she was under 18. This doubt must benefit the accused, especially Arjun, who is charged with kidnapping a minor. If she was in fact 18 or above, Section 363 IPC would not even be applicable.

Even assuming (for argument's sake) that she was a minor, the manner in which she left home (as per her testimony) still does not fulfil the legal ingredients of “kidnapping” or “abduction” by Arjun. The offence of kidnapping from guardianship (Section 361/363 IPC) requires that the accused must have taken or enticed the minor out of the keeping of her lawful guardian ([S. Varadarajan vs State Of Madras on 9 September, 1964: 1965 AIR 942](#)). Here, by the victim's account, there was no taking or enticement by Arjun at all – she left of her own volition. The distinction between a minor voluntarily accompanying someone and an active “taking” by that person has been recognised in law. The Supreme Court's landmark decision *S. Varadarajan vs. State of Madras* illustrates that if a minor of sufficient maturity willingly goes with a person without any inducement or compulsion, then that person cannot be held guilty of “taking” under kidnapping laws. In *Varadarajan*, a 18-year-old girl (just under the age of majority) left home to marry the accused; the Court acquitted the accused, observing that “every essential step was taken by the girl herself... the accused by merely facilitating or acceding to her wishes cannot be said to

have taken her out of the keeping of her parents". The Supreme Court warned that something more than mere passive companionship or acceding to the minor's request is required to constitute "taking"; there must be an active role or inducement by the accused. In the present case, according to the victim's testimony, Arjun played no role at all in her leaving home – he neither persuaded her nor accompanied her, nor even communicated with her around that time. By her account, Arjun did not even know she was going or where she went. If that is true, then legally Arjun cannot be said to have "kidnapped" or "abducted" her. And since the prosecution has brought no other evidence to contradict her on this point (no eyewitness, no proof of enticement like love letters or phone calls around the event, etc.), her version stands firm. Thus, whether she was a minor or not, the prosecution failed to prove the actus reus of kidnapping/abduction by Arjun.

### **3. Inconsistencies and Unreliable Testimony of Parents (PW1 & PW2)**

The complainant parents were the ones who implicated Arjun (eventually) and Neha (based on what they were told). However, their testimonies suffer from serious credibility issues:

**Initial Misidentification:** The father (PW1) admittedly named the wrong person (Ayush) in the FIR. This indicates that at the time of reporting, he was not certain who was involved. The subsequent naming of Arjun appears to have been based on rumour or assumption (PW2 said neighbours told them Arjun might be involved). Such shifting suspicion erodes the reliability of their allegations. If Arjun truly had taken the girl, one would expect the parents to name him at first instance (given he was their neighbour). The fact that they did not, and in fact mentioned someone else, raises the possibility that Arjun was roped in later without a solid basis.

**Hearsay and Lack of Personal Knowledge:** Both PW1 and PW2 conceded they did not see the alleged abduction. Their belief that Arjun took the girl is purely derived from hearsay (friends' gossip) or after-the-fact conjecture. PW1 admitted as much: "I was sleeping; I didn't see her go". PW2 likewise said she only came to know of Arjun's involvement through others, not by witnessing it. This greatly diminishes the weight of their accusations. Courts have consistently treated hearsay evidence as inadmissible for proving the truth of the matter (Section 60 of the Indian Evidence Act). The parents' testimony on the accused's involvement is essentially hearsay and cannot be given credence absent corroboration.

**Contradictions and Omissions:** There are material contradictions between PW1 and PW2. For instance, PW1 claimed the victim was recovered in "10–12 days" by police and that he himself then took her home, whereas PW2 said it took four months and that the girl was kept in the police station for days before being handed over. PW1 initially implied the girl had recovered around late October 2020, but the records show she was found only in February 2021. PW2 was not even present at recovery, so her claim that "Neha's custody" was the source is second-hand. PW1 in cross said the

daughter “returned home” on her own after 10–12 days, which contradicts both his chief and PW2’s version that police brought her. Such discrepancies cast doubt on the factual narrative offered by the parents. Furthermore, both parents testified that after the first recovery, the girl went missing again and is still missing – yet no fresh case was seriously pursued, which is puzzling if they truly believed she was abducted the first time. PW1’s fatalistic reaction (“police said she’s not worth finding, so I didn’t search”) suggests even he lost faith in the process, or perhaps realised her departures were voluntary. All this reduces the credibility of their testimony regarding the first incident as well.

**Lack of cooperation/information:** PW2 openly said the police never took her statement, and she never provided any information about the accused to the IO. Thus, whatever she stated in court about Arjun or Neha was effectively new information that did not figure in the initial investigation. Such afterthoughts are generally suspect. PW1 also confirmed he never mentioned Arjun/Neha to the police. This means the case against Arjun/Neha was not built on the complainant’s own knowledge, but on the victim’s since-discredited statements.

Given these issues, the testimonies of PW1 and PW2 do not inspire confidence. They do not provide solid, direct evidence of the accused’s guilt. At best, they establish that the girl went missing and was later found – facts which are not in dispute. But they fail to reliably connect the dots to show that Arjun or Neha orchestrated that disappearance.

#### **4. Alleged Recovery from Neha’s Custody – Not Proved**

A cornerstone of the prosecution's case against Smt. Neha Chaubey (accused no.2) is the claim that the victim was recovered from Neha’s custody in Gurugram on 04.02.2021, implying that Neha had wrongfully concealed/confined the girl (offence under Section 368 IPC). However, upon scrutiny, the Court finds that this critical fact has not been proved beyond a reasonable doubt, due to the following:

**No direct witness of recovery testified:** The police officer who actually conducted the raid and recovery (SI Ram Singh) was not examined in court. PW7 (IO) spoke about the recovery second-hand – he was not physically present. His knowledge is derived from the case diary entry and what his subordinates told him. That is essentially hearsay insofar as proving the fact of where and with whom the victim was found. The prosecution ought to have produced SI Ram Singh or any member of the raiding team to provide an eye-witness account that “we found the girl in Neha’s house/room,” etc. In the absence of such testimony, the assertion that Neha was keeping the victim confined remains unsubstantiated by primary evidence. The only direct witness to her whereabouts in that period is the victim herself – and she categorically says she was not with Neha at all, but living by herself. This creates a stark evidentiary gap.

**Victim’s denial:** PW4’s testimony directly contradicts the prosecution’s claim. She said she had never met Neha Chaubey in her life and that Neha

certainly did not confine or conceal her. If this is true, Neha's very presence in the case is unfounded. The prosecution has provided no concrete evidence to counter the victim's denial. There is no recovery memo, no independent witness (like a local police officer or magistrate in Gurgaon) who could confirm Neha's involvement at the recovery scene.

**No circumstantial corroboration:** One might expect, for example, that if Neha was involved in holding the girl, perhaps the girl's mobile phone records would show frequent contact with Neha, or that Neha had rented the room or lived nearby, etc. No such evidence was presented. There is also no evidence of any motive on Neha's part (aside from the now-discredited prostitution allegation). Neha is a woman from Ballia/Haryana with no known prior connection to the victim or Arjun. The prosecution did not elucidate how Arjun and Neha came into contact or agreed to commit this crime – an essential element for the conspiracy charge. This lack of background or context further weakens the case against Neha.

Given these points, the offence under Section 368 IPC remains unproven. To secure a conviction under Section 368, the prosecution must show: (a) the main act of kidnapping/abduction happened, and (b) the accused knowingly concealed or confined the kidnapped person. Here, both (a) and (b) are in doubt – the kidnapping itself is unproven, and Neha's alleged concealment is not demonstrated by credible evidence. The only proof that marginally implicated Neha was the victim's statement (now retracted) and PW1's hearsay claim. With the victim retracting and PW1 admitting he never even saw or met Neha, there remains no reliable evidence against her. Therefore, the charge against Neha Chaubey under Sections 368/120B IPC is entirely unsustainable in the face of the evidentiary record.

## **5. Alleged Criminal Conspiracy (Section 120B IPC)**

The prosecution charged both accused with criminal conspiracy, implying that Arjun and Neha had a prior agreement to kidnap the girl and perhaps exploit her. In law, a charge of conspiracy requires proof of an agreement to commit an illegal act (which can be proven through direct evidence of planning or through circumstantial evidence of coordinated acts). Here, there is zero direct evidence of any conspiracy. The prosecution did not produce any communication between Arjun and Neha, nor any witness who saw them together or interacting.

Circumstantially, the only basis to infer conspiracy would have been the scenario painted in the 164 statement – that Arjun delivered the girl to Neha and both played their part. But with the 164 statement not being accepted as truth (due to the victim's retraction), there is no foundation on which to build a conspiracy theory. In fact, as per the trial evidence, Arjun and Neha's names appeared together for the first time in the charge-sheet because the IO clubbed them based on the victim's earlier claims. PW7 admitted "I made Arjun and Neha accused" and that prior to that, neither the FIR nor the initial investigation connected them.



Moreover, a conspiracy usually involves some meeting of minds. Arjun and Neha come from very different locales (Kannauj and Ballia/Gurugram, respectively). No explanation was provided as to how they supposedly got in touch to plot this crime. The prosecution did not establish any nexus between the two accused aside from the alleged incident. Indeed, Neha, in her statement, denied knowing Arjun, and PW4's testimony implies that if Arjun never took the girl, he would have had nothing to do with Neha either. There is not a shred of independent evidence that Neha even knew of the victim's existence before the recovery date. In sum, the charge of conspiracy is entirely unproven – it fails both on factual and legal grounds.

## **6. Procedural Lapses and Gaps in Investigation**

It is pertinent to note certain lapses in the investigation which further deepen the doubts in this case:

The IO (PW7) added POCSO charges and then dropped them within a span of weeks. This flip-flop suggests a lack of clarity and perhaps a realisation that the initial portrayal of the victim as a minor subjected to sexual assault was not supported by reliable evidence (indeed, the medical examiner found no proof of assault, and age was doubtful). Such an oscillation in applying charges indicates that the case was not straightforward and that the investigators themselves had uncertainties about the facts.

**Failure to gather technical evidence:** In cases of elopement or abduction, police often gather Call Detail Records (CDRs) of phones to see who the victim/accused was in contact with, locations, etc. Here, though a "Surveillance Cell" tip was mentioned for finding the victim, the prosecution did not bring any technical evidence to light. For example, if Arjun had been in touch with the victim or Neha, that could have been shown via phone records – but nothing of that sort was presented. This either means such evidence did not exist or was not considered, neither of which helps the prosecution's cause.

**Not producing material witnesses/documents:** As discussed, the non-production of the recovery officer (Ram Singh) and the non-production of the victim's birth certificate or the school principal are significant omissions. These were material to proving crucial facts (recovery circumstances and age), and the failure to present them means those facts remain unproven (Sections 91 and 165 of the Evidence Act allow/expect important documents to be produced). The Court can only conclude that perhaps the prosecution refrained from producing them because they might not have supported the prosecution's case strongly (for instance, if the birth certificate showed 2005 DOB, it would support minority, but then dropping POCSO is contradictory – if the birth year was 2002, she's not minor, which supports defence).

**Delay in FIR:** Although a few days' delay in FIR lodging (4 days here) was explained as the family searching initially, it is notable that if the family truly suspected an abduction by a particular person, waiting several days is questionable. The FIR content also shows uncertainty (filed against an unknown person). While not a major lapse, this does reflect the lack of

immediacy in accusing Arjun, which ties back into the consistency issues noted.

No rescue statement of the victim recorded under Section 164 at recovery time: Actually, the victim's 164 was recorded only on 09.02.2021 (some days after recovery). It might have been prudent to have a magistrate record her statement immediately when she was found, perhaps to ensure voluntariness. The defence implied that by the time she was produced for 164, the police/parents had influenced her, which she herself claims. This could have been mitigated had the statement been recorded in a more insulated manner (though it was in the presence of a magistrate, but she says she was under prior duress). While the Court cannot fault procedure here (recording 164 a few days later is not illegal), it highlights how that statement's credibility got compromised.

**Parents' conduct:** After getting their daughter back, the parents arranged her marriage and then disowned her when she left again. This personal conduct, while not directly determinative of the case, sheds light on the family dynamics. It appears the parents were more concerned about societal notions (they quickly married her off) than about punishing the accused – notably, PW1 did not actively pursue any legal action after she left the second time, even though he suspected Arjun again. This paradoxical behaviour (filing a case for the first time, but doing nothing the second time despite claiming the same boy eloped again) suggests that even they might have realised the futility – perhaps they knew it was the girl's own choice. In any case, it is an additional circumstance that makes the prosecution's abduction theory less convincing.

## 7. Motive

The prosecution alleged a lurid motive – that Arjun wanted to marry the girl and Neha wanted to push her into prostitution. However, with the evidence now on record, these motives appear imaginary. Arjun, by the victim's account, had no romantic involvement with her. Neha had no known motive unless one believes the uncorroborated prostitution ring theory, which has no evidence (no prior or subsequent behaviour of Neha was shown to suggest she runs such a racket). In criminal cases, while motive is not essential to prove if the evidence is strong, the absence of any credible motive when the evidence is weak adds to the doubt. Here, ex facie, it seems more plausible that the girl left due to familial discord (as she says) rather than a cinematic conspiracy of kidnapping for prostitution.

**In summary of the analysis:** The prosecution's case has collapsed under the weight of its inconsistencies and lack of proof. The evidentiary standard in criminal law is proof beyond a reasonable doubt, which was far from attained here. On the contrary, multiple reasonable doubts arise – about the victim's age, about whether any kidnapping happened at all, about whether the accused were involved, and whether the initial accusations were truthfully made or the product of pressure.

## Findings

From the above discussion, the Court arrives at the following findings on the points for determination:

**Failure to Prove Kidnapping/Abduction (Sections 363, 366 IPC):** The prosecution failed to prove that the accused, Arjun Kumar, took or induced the victim to leave her guardian's custody. The evidence suggests the victim left home voluntarily, and no credible evidence of force, fraud or enticement by Arjun was presented. The victim herself denies any such act by Arjun. Moreover, the status of the victim as a minor at that time was not conclusively established, introducing doubt on the very applicability of kidnapping charges. Therefore, the ingredients of Section 363 IPC (kidnapping from lawful guardianship) and Section 366 IPC (abduction to compel marriage/illicit intercourse) are not proved beyond a reasonable doubt.

**Failure to Prove Conspiracy and Wrongful Confinement (Sections 120B, 368 IPC):** The allegation that Arjun and Neha conspired to abduct the victim and that Neha knowingly confined the kidnapped girl is unsupported by reliable evidence. There is no proof of any agreement or meeting of minds between the two accused – in fact, no evidence even placing them in contact with each other. The victim's purported confinement at Neha's place was not proven by any direct testimony; conversely, the victim denies being confined by Neha at all. Without proof of the underlying kidnapping, the charge under Section 368 IPC automatically falls. And without any evidence of planning or coordination, the charge under Section 120B IPC falls. Thus, both accused must be given the benefit of the doubt on these charges as well.

**Hostile Star Witness:** The prosecutrix (PW4) turning hostile effectively eviscerated the prosecution's case. Her sworn testimony absolving the accused creates a reasonable doubt that cannot be overcome, since no other evidence corroborates the original allegations. It is a fundamental tenet that if the prime witness upon whose testimony the case hinges does not support the prosecution, and if there is no other compelling evidence, the accused must be acquitted.

**Inconsistencies and Doubts:** The Court finds that the prosecution's evidence is fraught with inconsistencies (notably in the testimony of PW1 and PW2 regarding key facts) and significant investigative lapses (non-production of material evidence). These further entitle the accused to the benefit of the doubt. As the Supreme Court has emphasised, "if two views are possible on the evidence – one pointing to the guilt of the accused, and the other to his innocence – the view favourable to the accused must be adopted" ([Kali Ram Vs. State of Himachal Pradesh: \(1973\) 2 SCC 808](#)). In this case, the evidence not only permits but strongly points to a view consistent with innocence (i.e., that the girl left of her own will and the accused did not commit the crimes alleged).

**Burden of Proof Not Discharged:** Ultimately, the prosecution has not discharged its burden to prove every element of the offences beyond a

reasonable doubt. The defence, on the other hand, didn't need to prove anything but successfully highlighted many doubts and contradictions in the prosecution's case. The golden thread of criminal jurisprudence is the presumption of innocence – an accused can be convicted only if the prosecution's evidence is of such quality and quantity that it leaves no reasonable doubt about guilt. Here, the doubts are numerous and substantive.

**No Evidence of Force or Exploitation:** Ancillary findings include that there is no medical or other evidence that the victim was subjected to sexual intercourse during the period in question (hymen was old torn, could be from earlier consensual activity or natural, but no sign of recent injury). No marks of physical restraint or violence were found. This aligns with the victim's testimony that she was not harmed by the accused. While the absence of injury is not conclusive, combined with her testimony, it reinforces her version.

**Suspicion vs Proof:** The circumstances may raise a suspicion that something untoward happened (for instance, one may subjectively wonder if the victim might be protecting the accused now). However, it is a settled rule that suspicion, however strong, cannot replace proof in a court of law. Here, the prosecution's theory remains in the realm of suspicion/speculation after the evidence has been tested, and never elevates to the level of proven fact. The benefit of every such doubt must go in favour of the accused.

Accordingly, the Court finds both accused Not Guilty of the offences charged.

### **Legal Position and Precedents**

It would be useful to briefly elucidate the legal principles that underpin the above analysis, to ensure the judgment aligns with established law:

**Presumption of Innocence and Burden of Proof:** Every accused person is presumed innocent until proven guilty. The burden lies on the prosecution to establish guilt beyond a reasonable doubt. This burden never shifts to the accused. The standard of "beyond a reasonable doubt" is a high one – if the court, after considering the evidence, feels doubt about the accused's guilt, the accused must be acquitted. This was famously stated in the case of *Woolmington v. DPP* and consistently affirmed by Indian courts. The Supreme Court of India in *Kali Ram (Supra)* observed: "Another golden thread running through the web of criminal jurisprudence is that if two views are possible on the evidence – one pointing to the guilt of the accused and the other to his innocence – the view favourable to the accused should be adopted.". In the present case, not only are two views possible, but indeed the view of innocence (that the accused did not commit the crime) is much more convincingly supported by the evidence on record. Therefore, in conformity with this principle, the Court must lean in favour of acquittal.

**Hostile Witness and Value of Prior Statement:** When a witness (especially the complainant/victim) turns hostile, the prosecution is permitted to cross-

examine them, and any previous statements (to police or magistrate) can be used to confront them (Sections 145 and 155 of the Evidence Act). However, such previous statements do not become substantive evidence of the truth of their contents. The Supreme Court held in multiple cases that the testimony of a hostile witness can be accepted in part if it is corroborated by other evidence, but a conviction cannot be based solely on the earlier statement of a hostile witness. The retracted 164 Cr.P.C. statement is not substantive evidence and in the absence of corroboration, cannot form the sole basis of conviction. In our case, the victim's 164 statement has zero corroboration – rather, it is contradicted by her own trial testimony and other circumstances (no injuries, etc.). Therefore, it would be wholly impermissible to treat that statement as evidence of guilt. The correct approach is to see if anything in her trial testimony or other evidence still supports the prosecution. Finding none, the Court cannot conjure a conviction out of a statement that has been rescinded. The benefit of doubt must follow.

**Ingredients of Kidnapping/Abduction:** As discussed earlier, for kidnapping from lawful guardianship (Section 361/363 IPC), the prosecution must prove: (1) the victim was a minor, and (2) the accused took or enticed the minor out of the guardian's keeping without consent. In this case, both these elements are unproven – the age is doubtful and no taking/enticing by Arjun is proved. Similarly, for abduction under Section 366 IPC, it must be shown that the accused, by deceit or force, compelled or induced the woman to go from any place for the object of marriage or illicit intercourse. Here, the evidence suggests no deceit or force by Arjun; the leaving of the place was by the girl's free will. The Supreme Court's ruling in *S. Varadarajan v. State of Madras* (AIR 1965 SC 942) is directly relevant: the Court held that where a minor (almost major) leaves home voluntarily and the accused merely accompanies her without any active inducement, the accused cannot be held guilty of kidnapping. The minor's own intention and action in leaving breaks the chain needed to establish "taking". In the present case, by all accounts, the victim's decision to run away was self-conceived. Even if Arjun later met her (which is not even proven), it would at most amount to "allowing her to accompany him," not "taking" her – which is insufficient for kidnapping as per Varadarajan. Thus, on legal principle too, the charge under Section 363/366 collapses.

**Section 368 IPC (wrongful confinement of kidnapped person):** The law requires knowledge on the part of the accused that the person has been kidnapped, and then intentional concealment or confinement. If kidnapping itself isn't proved, Section 368 fails automatically. Moreover, mere presence of the victim with someone is not enough; it must be shown that the accused wrongfully restrained her liberty, knowing she was a kidnap victim. In our case, we lack proof of both knowledge and act – there's no evidence Neha even knew of the victim's situation, let alone that she confined her. The victim says Neha was a stranger to her. Thus, legally, no offence under Section 368 IPC can be made out.

**Section 120B IPC (criminal conspiracy):** To prove conspiracy, there must be an agreement between two or more persons to commit an offence. Direct proof is seldom available; prosecution often relies on circumstantial evidence showing a concert of action. But such circumstances must unerringly point to a meeting of minds. In this case, there are no circumstances at all linking Arjun and Neha in a common design. They were arrested separately, not together; no conversations or meetings between them are evidenced. The mere fact that two people are co-accused does not establish conspiracy without evidence of a plan. The Hon'ble Supreme Court in [Kehar Singh vs. Delhi Administration: 1988 AIR 1883](#) stressed that conspiracies are secret, but the prosecution must still present facts that form a chain linking the accused in a conspiracy. Here, the chain is entirely missing. Therefore, the conspiracy charge fails on legal grounds due to a lack of proof of any agreement or participation by the accused in a shared unlawful plot.

**Benefit of Doubt:** The concept of benefit of doubt is not a fanciful or charitable gesture to the accused; it is a logical corollary of the requirement of proof beyond a reasonable doubt. If the prosecution's evidence does not eliminate all reasonable doubts, the accused is acquitted. The Hon'ble [Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra: 1984 AIR 1622](#) famously held that if a plausible alternative explanation of facts is available that is consistent with innocence, the accused is entitled to acquittal. In the present matter, the alternative explanation offered by the defence (and indeed by the victim herself at trial) is that no crime occurred – the girl left on her own due to personal reasons. This hypothesis is not just plausible; it finds substantial support in the evidence (or lack thereof) – e.g., no signs of force, the girl leaving again under similar circumstances, etc. It cannot be safely excluded or disproven by the prosecution. Hence, per the Sharad Sarda principle, the accused must be given the benefit of that doubt, resulting in acquittal.

**“Suspicion, however strong, cannot take place of proof”:** This maxim has been reiterated by the Hon'ble Supreme Court, including in [State of Odisha vs. Banabihari Mohapatra: AIR 2021 SUPREME COURT 1375](#), where the Court upheld an acquittal, stating a plethora of judgments well settles it that suspicion, however strong, cannot take the place of proof. An accused is presumed innocent unless proven guilty beyond a reasonable doubt. In our case, the prosecution's theory at best raises a suspicion that Arjun might have had a role or that Neha might have sheltered the girl, but it falls far short of proof. The legal standard protects individuals from conviction based on conjecture or unsubstantiated suspicion. Therefore, adhering to this norm, the Court refuses to treat suspicion or the initial allegations (deprived of evidentiary support) as proof of guilt.

In light of the above legal position, it becomes evident that the prosecution's case cannot stand judicial scrutiny. The accused's constitutional right to be presumed innocent remains intact due to the prosecution's failure to dispel the doubts. Our criminal justice system would prefer to err on the side of

letting a possible wrongdoer go free rather than risk convicting an innocent on flimsy evidence. As observed in Kali Ram (supra): “Where reasonable doubt exists, the accused is entitled to the benefit of doubt”. This case presents more than just a reasonable doubt – it presents a scenario where the prosecution's story is practically disbelieved by its own witnesses.

### **Conclusion-**

After an anxious consideration of all evidence and the applicable law, this Court is driven to the conclusion that the prosecution has miserably failed to prove the charges against either of the accused. The evidence on record not only falls short of the “beyond a reasonable doubt” standard but also suggests an alternate narrative inconsistent with the prosecution’s allegations. Important witnesses have not supported the prosecution, and no convincing material has been offered to substantiate the alleged crime independently. The myriad contradictions and omissions have fatally damaged the prosecution’s case. Consequently, the only just outcome is to acquit the accused.

### **ORDER**

For the foregoing reasons, accused Arjun Kumar and accused Smt. Neha Choubey are hereby acquitted of all charges levelled against them (Sections 363, 366 IPC against Arjun; Sections 120B, 368 IPC against Neha). They are found not guilty.

Accused Neha Choubey is in custody on these charges (as per record). They shall be released forthwith, if not required to be detained in any other case. Arjun Kumar is on bail; his bail bonds are cancelled and sureties are discharged.

In compliance with Section 437-A of the Cr.P.C., each accused shall furnish a personal bond in the sum of ₹20,000/- with one surety each, to the satisfaction of the trial Court, binding them to appear before the High Court if the State appeals against this judgment, such bond to remain in force for six months.

Let a copy of this judgment be immediately sent to the District Magistrate, Kannauj, for information (as per Section 365 Cr.P.C.). The case record shall be consigned to the Record Room.

Pronounced in open court on this 22<sup>nd</sup> day of August, 2025.

(Chandroday Kumar)

Sessions Judge, Kannauj