IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 30th OF JULY, 2024

MISCELLANEOUS CRIMINAL CASE No.25903 of 2024

CHANDRAKANT YADAV AND ANOTHER

Versus

STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri Manish Datt, Senior Advocate with Shri Ishan Tignath – Advocate for applicants.
Shri Mohan Sausarkar– Public Prosecutor for respondent no.1/State.
Shri Prakhar Naveria – Advocate for respondent no.2.

O R D E R

This application under Section 482 of Cr.P.C. has been filed against the order dated 5-6-2024 passed by C.J.M., Tikamgarh in RCT No.860 of 2024, by which the Court below has taken cognizance of offence under Sections 376(d), 294, 506, 34 of IPC.

2. The facts necessary for disposal of present application in short are that the prosecutrix lodged an FIR on 9-6-2019, that the applicants came on a white coloured vehicle and assured that since, the prosecutrix is in a troubled condition, therefore, they will get a job for her in Jhansi and thus, She should accompany them. Since, the applicants were known to her, therefore, by believing their assurance, She came to Jhansi along with them. She was taken to multiple places in market of Jhansi. At about 11 P.M., they were coming back to Mau. They stopped the vehicle in Nivadi Bhata situated between Chiklota and Poha. When She enquired from them as to why the vehicle has been stopped, then they said that they will have sexual relations with her. Firstly, Chandrakant raped her and thereafter,

Jagdish also came inside the vehicle and raped her. When she raised an alarm, then She was threatened by them and instructed her that She should not narrate the incident to anybody and thereafter, they left her in Ghughuva. She came back to her house and since, it was already late night, therefore, the FIR was lodged on the next day.

3. It appears that the applicants, made certain applications to the Senior Police Officers, alleging their false implications. It is not out of place to mention here that Chandrakant is a correspondent in TV News Channel.

4. The investigation was done by S.D.O.(P) who found that the offence was committed by the applicants and sought permission to arrest them and to file charge sheet. However, the S.P., Niwadi withdrew the investigation from him and handed over to the Addl. Superintendent of Police. The applicants provided certain video clippings to show that at the time of incident, they were not present on the spot and Chandrakant was in Datia to attend a marriage, whereas Jagdish was in BHEL, Jhansi. In the FSL report, sperms were found in the vaginal slide of the prosecutrix and accordingly, blood samples of the applicants were collected and were sent to RFSL Gwalior, who opined that Very Low Un-interpretable Male (Y) DNA profile was detected from the vaginal slide of the prosecutrix and it was opined that the conclusive result could not be obtained. The mobile locations of the applicants was collected and accordingly, the police filed the closure report.

5. The closure report was not accepted by the C.J.M., Tikamgarh and by order dated 30-8-2022 directed the police to file the charge sheet.

6. Being aggrieved by the said order, the applicants filed M.Cr.C. No. 45536 of 2023 and by order dated 26th April 2024, this Court set aside the order dated 30-8-2022 passed by the C.J.M., Tikamgarh and directed the C.J.M., Tikamgarh to proceed in accordance with law laid down by Supreme Court in the case of **Abhinandan Jha and others Vs. Dinesh**

Mishra reported in **AIR 1968 SC 117.**

7. By the impugned order, the C.J.M., Tikamagarh has taken cognizance for offence under Sections 376(d), 294, 506, 34 of IPC.

8. Challenging the order passed by the Court below, it is submitted by Counsel for the applicants that the police after conducting a detailed investigation found that the applicants were not present on the spot. Even the mobile location of the applicants suggested that they were not present. The applicants have been falsely implicated by the prosecutrix for the reasons that the applicants have enmity with Chandrashekhar, Ranjit and Mukesh. Even the DNA report rules out the possibility of rape.

9. *Per contra*, the Counsel for the respondents have supported the order passed by the C.J.M., Tikamgarh.

10. Heard the learned Counsel for the parties.

11. It appears, that the main reason for filing of closure report was the plea of alibi taken by the applicants. Thus, before considering the submissions made by the Counsel for the parties, this Court would like to consider the law governing the field of Plea of Alibi.

12. The Supreme Court in the case of **Vijay Pal v. State (Govt. of NCT of Delhi),** reported in **(2015) 4 SCC 749** has held as under :

> **25.** At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the prosecution. In this context, we may profitably reproduce a few paragraphs from *Binay Kumar Singh* v. *State of Bihar*: (SCC p. 293, paras 22-23)
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> > "*22*. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (*a*) given under the provision is worth reproducing in this context:

> '(*a*) The question is whether *A* committed a crime at Calcutta on a certain day. The fact that, on that date, *A* was at Lahore is relevant.'
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> *23*. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. *The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt*. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

(emphasis supplied)

The said principle has been reiterated in *Gurpreet Singh* v. *State of Haryana*, *Sk. Sattar* v. *State of Maharashtra* and *Jitender Kumar* v. *State of Haryana*.

13. The Supreme Court in the case of **Sk. Sattar v. State of Maharashtra,** reported in **(2010) 8 SCC 430** has held as under :

> **35.** Undoubtedly, the burden of establishing the plea of alibi lay

> upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in *Gurpreet Singh* v. *State of Haryana* as follows: (SCC p. 27, para 20)
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> > "*20*. … This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."

14. The Supreme Court in the case of **Jitender Kumar v. State of Haryana,** reported in **(2012) 6 SCC 204** has held as under :

> **71.** Once PW 10 and PW 11 are believed and their statements are found to be trustworthy, as rightly dealt with by the courts below, then the plea of abili raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. (Ref. *Sk. Sattar* v. *State of Maharashtra*.)

15. If the facts of the present case in relation to plea of alibi are considered, then it is clear that the police had filed the closure report, without considering the law as well as the factual aspects. All the videos of different functions were provided by applicant Chandrakant or other persons. The videos were also provided much after the date of incident. A chart pointing out the videos which were provided by different persons on different dates is as under :

क्रमांक	जप्तशुदा प्रदर्शों का विवरण	जप्ती दिनांक	किसके आधिपत्य से किसके द्वारा जप्त	प्रदर्श
1.	एक सील बंद पैकेट में दो – अदद सी.डी. जिसमें एक सी.डी. 10 से 12.29 व दूसरी सी.डी. 1 से 5.00 बजे तक की, पहली सी.डी.पर 1–JHS-10.12.29 दूसरी पर 2– JHS-1–5 होना लेख है।	24.06.19	राहुल दीक्षित के द्वारा पेश करने पर एम.डी.ओ.पी. अशोक कुमार घनघोरिया द्वारा जप्त	प्रदर्श– A
2.	एक सील बंद पैकेट में बुन्देला क्लब बी. एच.ई.एल. झांसी के दिनांक 08.06.19 के सीसीटीव्ही कैमरे की फुटेज एक पेन–ड्राइव में होना लेख है।	30.08.19	हरिओम सोनी के द्वारा पेश करने पर एस.डी.ओ.पी. अशोक कुमार घनघोरिया द्वारा जप्त	प्रदर्श– B
3.	एक सील बंद पैकेट में राजा यादव निवासी झांसी के घर में लगे सीसीटीव्ही कैमरे की फुटेज एक पेनड्राइव व एक सी.डी में होना लेख है।	20.11.19	राजा यादव के द्वारा पेश करने पर अतिरिक्त पुलिस अधीक्षक सुरेन्द्र कुमार जैन द्वारा जप्त	प्रदर्श– C
4.	एक सील बंद पैकेट में दिनांक 20.11.19 के दतिया मैरिज के बीडियो कैमरे की क्लिपिंग जिसमे आरोपी चन्द्रकांत यादव की उपस्थिति दिख रही है जो कि एक पेनड्राइव व एक सी.डी. में होना लेख है।	20.11.19	बीडियो ग्राफर निसार खांन के द्वारा पेश करने पर अतिरिक्त पुलिस अधीक्षक सुरेन्द्र कुमार जैन द्वारा जप्त	प्रदर्श– D
5.	एक सील बंद पैकेट में आरोपी चन्द्रकांत यादव के घर में लगे सीसीटीव्ही फुटेज की बीडियो क्लिपिंग एक पेनड्राइव व एक सी.डी. में होना लेख है।	28.11.19	चन्द्रकांत यादव के द्वारा पेश करने पर अतिरिक्त पुलिस अधीक्षक सुरेन्द्र कुमार जैन द्वारा जप्त	प्रदर्श– E
6.	एक सील बंद पैकेट में पंखुडी कलैक्शन स्थान रानीपुर की दुकान में लगे सीसीटीव्ही कैमरे की दिनांक 08.06.19 की बीडियो फुटेज जो कि एक पेनड्राइव व एक सी.डी. में होना लेख है।	06.12.19	पंकज गुप्ता के द्वारा पेश करने पर अतिरिक्त पुलिस अधीक्षक सुरेन्द्र कुमार जैन द्वारा जप्त	प्रदर्श– F
7.	एक सील बंद पैकेट में पंखुडी कलैक्शन दुकान में लगे सीसीटीव्ही कैमरे की डीव्हीआर मय हार्ड–डिस्क के होना लेख है।	07.01.2020	पंकज गुप्ता के द्वारा पेश करने पर उप–निरीक्षक शिवम सिंह राजावत द्वारा जप्त	प्रदर्श– G
8.	एक सील बंद पैकेट में बुन्देला क्लब बी.एच.ई.एल. झांसी में लगे डीव्हीआर मय हार्ड–डिस्क के होना लेख है।	10.01.2020	पंकज शुक्ला के द्वारा पेश करने पर उप– निरीक्षक शिवम सिंह राजावत द्वारा जप्त	प्रदर्श– H
9.	एक सील बंद पैकेट में राजा यादव निवासी झांसी के घर में लगे सीसीटीव्ही कैमरे का डीव्हीआर मय हार्ड–डिस्क के होना लेख है।	13.01.2020	राजा यादव के द्वारा पेश करने पर उप–निरीक्षक शिवम सिंह राजावत द्वारा जप्त	प्रदर्श– I
10.	एक सील बंद पैकेट में आरोपी चन्द्रकांत यादव के घर पर लगे सीसीटीव्ही कैमरे का डीव्हीआर होना लेख है।	05.01.2020	आरोपी चन्द्रकांत यादव के द्वारा पेश करने पर उप–निरीक्षक शिवम सिंह राजावत द्वारा जप्त	प्रदर्श– J
11.	एक सील बंद पैकेट में एक सोनी कम्पनी की डी.व्ही. (जिसमे दतिया शादी की बीडियो क्लिपिंग है।)	13.01.2020	निसार खांन के द्वारा पेश करने पर उप–निरीक्षक शिवम सिंह राजावत द्वारा जप्त	प्रदर्श– K

16. The incident had taken place on 8-6-2019 and it is clear from the above mentioned chart which is the reproduction of relevant part of letter written by S.P., Niwadi to Director, Central Forensic Science Laboratory, Bhopal, that the videos were seized after considerably long period. No report was obtained by the police from the lab that the videos were not doctored or tampered. The case diary also contains the legal opinion of the District Prosecution Officer, Tikamgarh, who had also doubted the authenticity of the videos. Be that as it may be.

17. In order to prove plea of alibi, the accused must prove that it was humanly impossible for him to remain present on the spot. However, the police did not collect the material to show the distance between BHEL, Jhansi and Marriage Hall, Datia from the place of incident. It is submitted by the Counsel for the prosecutrix that the distance of BHEL Jhansi as well as marriage hall in Datia is approximately 30 Kms. from the place of incident. The incident is alleged to have taken place at around 11 P.M. and according to the videos, the applicants were seen in the video at around 11:23 P.M. Therefore, even if the videos are presumed to be true, then still it was possible for the applicants to reach to the place of functions. Furthermore, the date and time in the DVR is fed manually. Therefore, the date and time seen in the video cannot be a conclusive proof of presence of the applicants in the function. Even otherwise, the burden is on the accused to prove the plea of alibi beyond reasonable doubt. Thus, the C.J.M., Tikamgarh has rightly rejected the opinion of the police with regard to plea of alibi.

18. Furthermore**,** the mobile location cannot be a conclusive proof. The mobile location merely shows the location of mobile and this can be manipulated very easily. By sending a mobile along with some other person to a distant place, an accused can succeed in obtaining the location

of his mobile at different place, but that by itself cannot be a conclusive proof that the owner of the mobile was also at the same place, where the mobile location was found.

19. Even the District Prosecution Officer, has also doubted the mobile locations by assigning reasons.

20. Thus, *prima facie*, the plea of alibi of the applicants is doubtful.

21. It is next contended by the Counsel for the applicants, that the DNA report does not show the involvement of applicants.

22. The Supreme Court in the case of **Sunil Vs. State of M.P.** reported in **(2017) 4 SCC 393** has held as under :

> **4.** From the provisions of Section 53-A of the Code and the decision of this Court in *Krishan Kumar* it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in *Krishan Kumar* (para 44), Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to.

23. The DNA report submitted along with the final report, does not rule out the possibility of rape. As per the DNA test report, Very Low Un-interpretable Male (Y) DNA profiles were found in the vaginal slide of the prosecutrix. It is really surprising that in number of cases, this Court is observing that Very Low Un-Interpretable Male (Y) DNA Profile are being reported in DNA report. <u>It is for the Director General of Police to see as to whether correct DNA reports are being prepared and whether authentic DNA kits are being used or not?</u>

24. Be that whatsoever it may be.

25. The fact is that the DNA test report does not say that the DNA

profile of the applicants was not found. Furthermore, if the evidence of the prosecutrix is found to be reliable, then negative DNA report by itself is not sufficient to discard the evidence of the prosecutrix. Therefore, it cannot be said that the DNA report rules out the involvement of applicants in the rape case.

26. It is next contended by the Counsel for the applicants that since, the applicants are on inimical terms with other persons, therefore, at the instance of others, the prosecutrix has falsely implicated them.

27. Considered the submissions made by the Counsel for the applicants.

28. The Supreme Court in the case of **State of M.P. Vs. Madanlal** reported in **(2015)7 SCC 681** has held as under :

> **18.** The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.
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> **19.** We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the *élan vital*, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *ShyamNarain* v. *State (NCT of Delhi)*that: (SCC pp. 88-89, para 27)

"*27.* Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. 'physical morality'. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

20. At this juncture, we are obliged to refer to two authorities, namely, *Baldev Singh* v. *State of Punjab* and *Ravindra* v. *State of M.P.Baldev Singh* was considered by the three-Judge Bench in *Shimbhu* and in that case it has been stated that: (*Shimbhu case*, SCC pp. 327-28, para 18)

"*18.1*. In *Baldev Singh* v. *State of Punjab*, though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs 1000 to Rs 50,000. In the light of a series of decisions, taking contrary view, we hold that the said decision in *Baldev Singh* v. *State of Punjab* cannot be cited as a precedent and it should be confined to that case."

21. Recently, in *Ravindra*, a two-Judge Bench taking note of the fact that there was a compromise has opined thus: (SCC p. 497, paras 17-18)

"*17.* This Court has in *Baldev Singh* v. *State of Punjab*, invoked the proviso to Section 376(2) IPC on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.

29. The Supreme Court in the case of **XYZVs. State of M.P.** reported in **(2021) 16 SCC 179** has held as under:

44.5. The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction.

44.6. Sensitivity should be displayed at all times by Judges, who should ensure that there is no traumatisation of the prosecutrix, during the proceedings, or anything said during the arguments.

44.7. Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

45. Further, the courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that

(*i*) women are physically weak and need protection;

(*ii*) women are incapable of or cannot take decisions on their own;

(*iii*) men are the "head" of the household and should take all the decisions relating to family;

(*iv*) women should be submissive and obedient according to our culture;

(*v*) "good" women are sexually chaste;

(*vi*) motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother;

(*vii*) women should be the ones in charge of their children, their upbringing and care;

(*viii*) being alone at night or wearing certain clothes make women responsible for being attacked;

(*ix*) a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or "has asked for it";

(*x*) women are emotional and often overreact or dramatise events, hence it is necessary to corroborate their testimony;

(*xi*) testimonial evidence provided by women who are sexually active may be suspected when assessing "consent" in sexual offence cases; and

(*xii*) lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman.

46. As far as the training and sensitisation of Judges and lawyers, including Public Prosecutors goes, this Court hereby mandates that a module on gender sensitisation be included, as part of the foundational training of every Judge. This module must aim at

> imparting techniques for Judges to be more sensitive in hearing and deciding cases of sexual assault, and eliminating entrenched social bias, especially misogyny. The module should also emphasise the prominent role that Judges are expected to play in society, as role models and thought leaders, in promoting equality and ensuring fairness, safety and security to all women who allege the perpetration of sexual offences against them. Equally, the use of language and appropriate words and phrases should be emphasised as part of this training.

30. The submission made by Counsel for the applicants that they have been falsely implicated by the complainant at the instance of others cannot be accepted for the reason that at present there is nothing on record to accept the said submission and further, no woman would put her self-respect at stake merely at the instigation of someone else.

31. Accordingly, this Court is of the considered opinion, that the closure report filed by the police has rightly been rejected by the C.J.M., Tikamgarh and has rightly taken cognizance of the offence.

32. However, before parting with this order, this Court would like to point out that Supreme Court in the case of **High Court Bar Association Vs. State of U.P.** decided on **29-2-2024** in **Cr.A. No. 3589 of 2023,** has held that the Constitutional Court should not direct the Trial Courts to expedite the trial at the cost of other pending cases, but such a direction can be given in an exceptional circumstance. In the present case, the offence was allegedly committed on 8-6-2019 and more than 5 years have passed, therefore, an exceptional circumstance has arisen warranting a direction to the Trial Court to decide the Trial at the earliest. **Accordingly, it is directed that the Trial Court must decide the Trial within a period of one year from today.** The Trial Court shall ensure, that the time gap between two dates should not be more than 7 days. The Committal Court should also commit the case immediately.

33. A copy of this order be immediately send to the Court of C.J.M.,

Tikamgarh and S.P., Tikamgarh for necessary information and compliance. If the applicants do not surrender before the C.J.M., Tikamgarh or abscond at any stage, then it shall be the personal duty of the Superintendent of Police, Tikamgarh to execute the warrant of arrest, if any, is issued by the Court.

34. With aforesaid observations, the application is **dismissed.**

(G.S. AHLUWALIA)
JUDGE

Arun*