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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : May 17, 2016

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CRL.A. 15/2014

JAHID

..... Appellant

Represented by: Ms.Manika Tripathy Pandey,
Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP
ASI Krishan Pal, PS Seelampur

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Jahid was charged for having committed an offence punishable under Section 363, 354 and 367 IPC. In view of the evidence led he has not been held guilty for the offence punishable under Section 376 IPC but has been found guilty for having committed an offence punishable under Section 354 IPC.

2. Vide order on sentence, for the offence punishable under Section 363 IPC he has been sentenced to undergo imprisonment for seven years and pay fine in sum of ₹1000/-, in default, to undergo imprisonment for one month. For the offence punishable under Section 354 IPC he has been sentenced to undergo imprisonment for two years and pay fine in sum of ₹500/-, in default, to undergo imprisonment for fifteen days. For the offence

punishable under Section 367 IPC he has been sentenced to undergo imprisonment for seven years and pay fine in sum of ₹1000/-, in default, to undergo imprisonment for one month.

3. Having perused the evidence and in particular the testimony of the tormented victim, her mother Noorjahan PW-4 and Noorjahan's sister Farjana PW-5, I am satisfied that the verdict returned by the learned Trial Judge is correct for the reason there is no reason for the prosecutrix, then aged 5 years, to cook up a false story that when she went to the market in the company of her younger brother the appellant enticed her with lure of ₹5/- and took her to his house and after removing her clothes fondled her and fiddled her private parts with his finger. Medical evidence rules out any rape or even attempt to rape for the reason if a male tries to put his penis in the vagina of an infant girl of 5 years and fails in the attempt to pierce the vagina there would be tenderness around the vulva. The learned Trial Judge has rightly concluded that charge under Section 376 IPC is not made out.

4. Since appellant took the prosecutrix to his house to satisfy his lust, offence punishable under Section 367 IPC would be made out. Since appellant lured the prosecutrix to his room offence punishable under Section 363 IPC is also made out. The acts which the appellant committed on the prosecutrix makes out the offence punishable under Section 354 IPC.

5. Noting that this is appellant's first blush with law, I reduce the sentence for the offence punishable under Section 363 and 367 IPC to the period already undergone which as of today is three years and five months. Remission earned as of today would be around two months. For all three offences, the appellant shall in addition pay fine in sum of ₹500/- for each

offence, and in default of payment of fine, would undergo simple imprisonment for a period of 15 days each. All sentences would run concurrently.

6. TCR be returned.

7. Two copies of this decision be sent to the Superintendent Central Jail Tihar for updation of his record and to be thereafter handed over to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 17, 2016
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