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

Judgment Reserved on: May 18, 2016

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Judgment Delivered on: May 31, 2016

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CRL.A. NO. 1451/2013

JAKIR MALIK

..... Appellant

Through: Mr. Vishal Raj Sehijpal with
Mr. Anwar A. Khan, Advs.

versus

STATE

..... Respondent

Through: Mr. Vinod Diwaka, APP for State.

PRATIBHA RANI, J.

1. This appeal has been preferred by the appellant impugning the judgment dated 15.10.2013 and order of sentence dated 23.10.2013 whereby he has been convicted for committing the offence punishable under Section 363/366/419/376 IPC and sentenced as under:

- (i) U/S 363 IPC : to undergo RI for seven years with fine of ₹ 4000/- and in default of payment of fine, to undergo RI for one year.
- (ii) U/S 366 IPC : to undergo RI for seven years with fine of ₹ 4000/- and in default of payment of fine, to undergo RI for one year.
- (iii) U/S 419 IPC : to undergo RI for three years with fine of ₹ 2000/- and in default of payment of fine, to undergo RI for six months.
- (iv) U/S 376 IPC : to undergo RI for ten years with

fine of ₹ 10,000/- and in default of payment of fine, to undergo RI for two years.

2. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than seven years and upto ten years).

3. The case FIR No. 34/2011 has been registered on the basis of statement made by Sh. Ram Bharose. He reached the police station Sultan Puri on 2nd February, 2011 at 7:25 PM and reported that his daughter 'P' (name withheld to conceal her identity), aged about 13 years had left home in the morning for her school. She was a student of 8th standard. At about 9:00 AM he received a call from the school that his daughter had not reached the school. He suspected that his daughter had been induced by Jakir, s/o Bundu Khan, permanent resident of Village AArthi, Distt. Hathras, Tehsil Sadabad, U.P. but at that time residing at RZ-K 2/19B, Nihal Vihar, Nangloi. He prayed for legal action against him.

4. While lodging the FIR the complainant had also given the description of his daughter as well of the school uniform she was wearing at the time of leaving home for her school.

5. After registration of case FIR No.34/2011 under Section 363 IPC investigation was handed over to SI Mukesh Meena. When SI Mukesh Meena proceeded on leave, further investigation was conducted by ASI Ravinder. On 18th February, 2011, the prosecutrix 'P' along with the appellant/accused Jakir was present at Railway Station Tehsil Sadabad, Hathras, U.P. At the pointing out of Dhyan Singh, uncle/chacha of the prosecutrix, they were apprehended. After recovery of the prosecutrix, she

was subjected to medical examination. She was produced before the Id. Magistrate for recording her statement under Section 164 Cr.P.C.

6. The accused was arrested and medically examined. After completion of investigation, appellant was sent to face trial for committing offence punishable under Sections 363/366/376/419 IPC. Section 419 IPC was added on the basis of statement made by 'P' that the accused represented himself to be Hindu boy with name Anshuman but subsequently she came to know that he was a Muslim.

7. During trial before the Court of Sessions, prosecution has examined 15 witnesses in all in support of its case. The prosecutrix was examined as PW1, other public witnesses namely Ram Bharose - father of the prosecutrix and Dhyan Singh – Uncle of the prosecutrix were examined as PW-2 and PW-9 respectively. In his statement made under Section 313 Cr.P.C. the appellant/accused pleaded innocence.

8. After conclusion of trial, the appellant has been convicted for committing the offence punishable under Section 363/366/376/419 IPC and sentenced in the manner state above.

9. On behalf of the appellant, it has been submitted that the prosecutrix was having love affair with the appellant. She left home of her own to marry and live with the appellant. Learned counsel for the appellant has submitted that in this case so far as the consent of the prosecutrix is concerned, learned Trial Court considered the same to be immaterial for the reason that as per school record she was 13 years of age at that time hence had not attained the consenting age. Another charge against the appellant being that he concealed from the prosecutrix that he was a Muslim and introduced himself as a Hindu is also not correct as the prosecutrix knew from the very

beginning that the appellant was a Muslim which is recorded in the FIR Ex.PW5/A wherein not only name of the appellant has been correctly mentioned but even his parentage and permanent address is also correctly given by father of the prosecutrix. The prosecutrix at the time of having affair with the appellant disclosed her age to be 18 years. She accompanied him and compelled him to marry her. She left home on the pretext of going to school but ran away with the appellant. Thus, it is not a case of enticing a minor girl away or committing rape on her. Rather it was a case of representation by the prosecutrix to have attained the age of majority and accompanying him to his village to marry and live with him. Hence, the appellant may be acquitted.

10. The first question comes about the misrepresentation made by the appellant introducing himself as Anshuman though infact his name was Jakir and a Muslim. The fact that in the FIR her father has mentioned the name, parentage and permanent address of the appellant, is sufficient to prove that not only the prosecutrix but even her father knew that the appellant was a Muslim with the name Jakir. So, there was no misrepresentation either about name or religion by the appellant to the prosecutrix.

11. Now it is to be considered as to whether the prosecutrix had left home to accompany the appellant of his own or she was forcibly taken away and raped by the appellant. When the statement of the prosecutrix under Section 164 CrPC was recorded, she stated that on 02.02.2011 when she was going to school, on the way she met Jakir who disclosed his name to be Anshuman. He forcibly made her to sit on motorcycle after making her smell something as a result of which she became semi-conscious. She was taken to Nihal Vihar in his room where wrong act was committed by having physical

relations forcibly. She insisted for going back to her parents but the appellant did not agree. When Jakir was taking her to his village, on the station she met her uncle who brought her to Delhi. She has also stated that Jakir introduced himself as Hindu Jaat and disclosed his name as Prince Chaudhary but later on she came to know that he was a Muslim. She stayed in Nihal Vihar for 2-3 days and during that period her condition was *behaal*. The prosecutrix was medically examined on 19.02.2011 at about 8.20 pm at Sanjay Gandhi Memorial hospital i.e. after seventeen days of her recovery.

12. The MLC of the prosecutrix records as under :-

'UB Gynae SR

On 19.02.2011 at 8.30 am the victim is giving alleged h/o kidnapping and sexual assault b/w 2nd Feb. till 18.02.2011 night by some unknown person.

M/H LMP – 28.1.11

O/H Polo (Unmarried). Victim has passed urine, motion and changed clothes, taken bath since then.

H/o physical assault or anal intercourse.

No evidence of any external injury.

L/E of perineum – no abrasion, bruise, laceration seen.

UPT – negative

No need of E pills as victim is saying that act of coitus occurred on 02.02.11 only and not thereafter.

X-bone for age determination'

13. The prosecutrix was examined as PW-1 wherein she stated as under:

'On 02.02.2011 I was going to my school. On the way a boy namely Jakhir and who was known to me since he met me previously at the house of my Bhua at Nihal Vihar. Accused Jakhir is present in the Court today (Correctly identified). He has stated his name as Anshuman. He has force me to sit on the motorcycle and he has forced me to smell me some intoxicated substance, which made me semi conscious situation and he has taken me to Nihal Vihar in a room. Where he has committed

rape upon me. I insisted him that I have to go to my parents house but he did not acceded my request and he forcefully sexually assaulted. Thereafter, he was taken me with him to his native village and when we reached at the station of native village of accused, Jakhir. Jakhir told me his name is Prince Choudhary and he was Hindu by cast and belongs to Jat Community. My uncle, Dhyan Singh met me there, who has taken me to Delhi by bus. Later on, I came to know that he is belongs to Muslim Community. My uncle directly taken me to PS Sultanpuri after returning from the native village of the accused. My uncle, Dhyan Singh reached at the station of accused native village after twelve days of the incident. I do not remember the date and also the name of the native village of the accused. Police have taken me into possession vide recovery memo Ex.PW1/A signed by me at point-A. I was got medically examined by the police at Sanjay Gandhi Hospital. My statement was also got recorded under Section 164 CrPC from the concerned Court at Rohini.

At this stage a sealed envelope with the seal of SK is open containing the statement recorded under SEction 164 CrPC and I has signed my statement Ex.PW1/B at point-A.

At the time of incident, I was studying in 8th Class at Surya Public School, Krishan Vihar, near to my residence. As per record my date of birth is 16.04.1999. My birth place is Village Surer in Rajasthan. I have mentioned the date of birth in my school record as 16.04.1999. I have taken admission in Surya Public School Kishan Vihar in 7th class. I studied upto 6th Class in my native village and on the basis of transfer certificate I took admission in Surya Public School.'

14. In her cross examination, she has stated that she was made to sit on his motorcycle by the accused near her house. At that time, many public persons were passing from there. She did not raise any alarm She has also stated that she had been knowing Jakir for about 1-2 months when she had

gone to her Bua's house in Nihal Vihar. She has also stated that it took them half-an-hour to reach Nihal Vihar and that the roads through which they passed were busy roads with traffic signals but she did not raise any alarm. She has also stated that they stayed at Nihal Vihar for a few days and thereafter left for the village of Jakir, the name of which she did not remember. Even at the railway station, many passengers were present and she did not go to buy the railway tickets and Jakir had gone to buy the railway tickets. From Nihal Vihar, they reached native place of Jakir by train and in train also she did not tell any passenger about she being forcibly taken away by Jakir. She had stated that she came to know that Jakir was a Muslim when they were returning to Delhi from the native place of Jakir.

15. PW-2 Ram Bharose – father of the prosecutrix stated that on 02.02.2011 his daughter left for School at 7.30 am. At about 8.30 am he received a phone call from the School that his daughter has not reached the school. He searched for his daughter and then reported the matter to the police suspecting Jakir Malik S/o Bundu Khan who was residing near the house of his brother-in-law. He further stated that on 18.11.2011 he received a phone call from police officials about his daughter being in Village Hathras. Since he was unwell, he sent his brother Dhyan Singh to accompany the police for Village Hathras for identification and thereafter they brought her daughter back to Delhi and informed him. After her medical examination and other proceedings, his daughter was handed over to him.

16. In his cross examination, PW-2 Ram Bharose has admitted that prior to 02.02.2011 also his daughter had left home but returned by evening and at that time she visited Aligarh. They reported the matter to the police when

she earlier went missing but his report was not lodged. He has also stated that his daughter did not tell her about any *galat kaam* being done to her nor he asked her.

17. It being a case of voluntarily accompanying the appellant to live with him, the next question to be considered in this case is the age of the prosecutrix at the time of going with the appellant for the reason that if she was a minor at that time, her consent to have physical relations becomes immaterial.

18. In the school record, the date of birth of the prosecutrix has been mentioned as 16.04.1999. On page No.425 of the Trial Court Record there is an affidavit in original by father of the prosecutrix attested by the Notary on 17.08.2010 which is to the following effect:-

'AFFIDAVIT

I, Ram Bharoshy Jarwal S/o Sh.chetram Jarwal, R/o P-2/231, Sultan Puri, New Delhi-110086, do hereby solemnly affirm and declare as under:

- 1. That I am citizen of India.*
- 2. That I am father of 'P' Kumari.*
- 3. That the correct and exact Date of Birth My Child's is 16-04-1999(Sixteen April Nineteen Hundred Ninety Nine).*
- 4. That my wife name is Smt. Niyalo Devi ('P's mother).*
- 5. That my son/daughter has not studied any Govt. School/Recognized.*
- 6. That my son/daughter has studied upto 7th class at Home/Pvt. School and fit for to get Admission in 8th class.*
- 7. That it is my true and correct statement.'*

19. Thus, it is clear that the date of birth of the prosecutrix in the school record has been recorded on the basis of information given by her father. On page No.423 of the Trial Court Record, there is copy of transfer certificate issued by Shivam Adarsh Vidya Mandir, Padli (Sikrai) Dosa which records the name of the prosecutrix, her father's name, permanent address, **date of birth as 16.04.1999 (in figures and words both) as well the fact that she had been admitted in that school in Ist Standard on 16.04.1999 (which is her date of birth) vide Admission No.209. She left the school in 6th Standard on 09.05.2009 to seek admission somewhere else.** As per the transfer certificate, she has studied there upto 6th Standard.

20. There is another birth certificate Ex.PW13/E1 in respect of prosecutrix whereby her birth has been got registered, issued under Section 12/17 of Registration of Births and Deaths Act, 1969 and Rule 8/12 of the Rajasthan Registration of Births and Deaths Rules, 2000. **As per this certificate, date of registration is 03.03.2011 i.e. after one month from 02.02.2011 when the prosecutrix left home.**

21. So far as transfer certificate is concerned, the date of birth and date of admission is same i.e. 16.04.1999 and a new born child cannot be admitted in the school immediately after birth. So far second certificate Ex.PW13/E1 issued under Section 12/17 of Registration of Births and Deaths Act, 1969 and Rule 8/12 of the Rajasthan Registration of Births and Deaths Rules, 2000 is concerned, date of birth has been registered on the basis of affidavit given by her father and in the said affidavit, he specifically states that till that date his daughter has not studied in any school and she was straightaway got admitted in 8th Standard, the date of birth being recorded on the basis of information provided by her father on affidavit and the birth registration

certificate being issued on registration being made after one month of the prosecutrix leaving home, I am of the opinion that the date of birth as mentioned in the three certificates cannot be considered to be correct to ascertain her age. In this case despite being advised on her MLC, ossification test of the prosecutrix has not been done.

22. In the case ***Devanand Vs. State of Delhi 2002 [3] JCC 1663***, the facts were identical to the extent that prosecutrix was claimed to be below 16 years of age and a school certificate was filed in support of date of birth. In para 10 and 11 of the judgment, date of birth as recorded in the school certificate was disbelieved and it was held as under :-

“10. While analysing the said evidence it has to be remembered that the school leaving certificate Ex.PW-2/A which has been strongly relied upon on behalf of the State to prove that the age of the prosecutrix was below 16 years recites that her date of birth is 14.4.1986. The prosecutrix is stated to be a student of 5th class. This is not based on any birth certificate. Obviously the date of birth has been given on certain approximate date which might have flown from the parents of the prosecutrix. The fact that the witnesses of the prosecution in this regard cannot be believed to be telling truth is obvious from the fact that though prosecutrix is stated to be in class 5, still both Sushila and her mother had the courage to state that she can neither read nor write Hindi or English. The statement so made is totally inconsistent with the school leaving certificate because it betrays common sense to believe that a student of class 5 cannot even write in Hindi. Therefore, when the prosecutrix and her mother states that she was only 13 years of age the fact cannot be believed on its face value. The school leaving certificate also loses much of its significance.

11. The said school leaving certificate is totally contradicted by the medical evidence because on Ossification test that was conducted the age was opined to be between 14-1/2 to 16.4 years with a variation to two years on either side. It is well

known that the development of the child depends on the food habits, the climate and the physical health. In that view of the matter in the absence of any other reliable evidence and unreliable testimony pertaining to the age of the prosecutrix it cannot be termed that prosecution has proved that she was below 16 years of age at the relevant time.”

23. As already noted, despite being advised by SR/Gynae Sanjay Gandhi Memorial Hospital, her ossification test has not been got conducted but the maturity level shown by the prosecutrix while leaving home on 02.02.2011 and even prior to that, this fact being well within the knowledge of her family, shows that she has attained the age of discretion. This can also be gathered from the fact that as per the transfer certificate, her date of admission in Shivam Adarsh Vidya Mandir, Padli (Sikrai) Dosa, Rajasthan is mentioned as 16.04.1999 in 1st Standard. She must be aged about five years at that time so as to be eligible to get admission in 1st Standard. Thus, the year of admission being 1999, year of birth can be assessed to be 1994/1995. If the year of her birth is taken to be 1994-1995, then in February, 2011 when she left home, she was above 16 years of age at that time and had already attained the consenting age. It may be relevant here to mention that in case of forcible sexual intercourse with a child of tender age i.e. 12-13 years by a grown person aged about 20-22 years, there can be internal or external injuries being suffered by the victim. This aspect has been considered by the Apex Court in the decision reported as ***Pratap Misra & Ors. Vs. State of Orissa*** (1977) 3 SCC 41 referring to the medical jurisprudence on this issue. The relevant text from Taylor has been extracted in the report as under :-

“8.Taylor, in the *Principles and Practice of Medical Jurisprudence*, Vol. II, dealing with the cases of rape on a grown up woman observes as follows :

Unless under the influence of drink and drugs or asleep or ill, a fully grown girl or adult woman should be able to resist a sex assault. We should expect to find evidence of a struggle to avoid sexual contact or penetration, and may well feel uncertainty about the real nature of an alleged assault in its absence.

A false accusation of rape may sometimes be exposed by marks of violence being wholly inadequate or absent.

Bruises upon the arms and the neck may be considered to constitute some evidence of a struggle; and impressions of finger nails are also significant. Bruises or scratches about the inner side of the thighs and knees may be inflicted during attempts to abduct the legs forcibly, and care must also be taken to examine the back, for the victim may have been pinned against the wall or floor. It is important to record these in detail, and to say, if possible, how fresh they are. The ageing of bruises is, as was indicated in Volume-1, a matter of some uncertainty in the absence of microscopy.

Strong corroborative evidence of a struggle might be obtained from an examination of the accused for similar marks of bruises or scratches about the arms or face, and possibly even about his penis, though this is less likely.

Though injury is most unlikely to the penis, a man may have had his face scratched or have been bitten during a sex assault. The clothing may bear some contact traces of the woman – hairs, vaginal

secretion or blood, and, though of less significance, seminal stains.

The medical evidence, therefore, clearly discloses that the prosecutrix does not appear to have put up any resistance to the alleged onslaught committed on her by the appellants. From this the only irresistible inference can be that the prosecutrix was a consenting party which would be reinforced by other circumstances to which we shall refer hereafter.'

24. When the prosecutrix was examined by SR/Gynae her examination did not reveal any injury, internal or external. This also suggest that the prosecutrix was not of tender age i.e. 12-13 years at the time of having physical relations with the appellant and also that the same was not done forcibly.

25. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

26. It is a settled principle of law that testimony of prosecutrix is sufficient enough to convict the accused if it inspires confidence. (Ref. Rajesh Patel Versus State of Jharkhand (2013) 3 SCC 791 and State of Rajasthan Versus Babu Meena 2013) 4 SCC 206).

27. The Courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of

a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character.

28. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. Prosecution case has to stand on its own legs. Unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: *Tukaram & Anr. v. The State of Maharashtra*, (1979) 2 SCC 143; and *Uday v. State of Karnataka*, (2003) 4 SCC 46).

29. The Court is duty bound to appreciate the evidence in the totality of the background of the entire case. It is also settled proposition of law that in case evidence read in its totality and the story projected by the prosecutrix is found to be improbable, her version is liable to be rejected. The apex Court in *Narender Kumar Versus State (NCT of Delhi)*, (2012) 7 SCC 171, has held as under:-

"20. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant

discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. *A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., (2003) 3 SCC 175; and Vishnu v. State of Maharashtra, (2006) 1 SCC 283.*

22. *Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220.*

23. *In Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010) 14 SCC 534, this Court while dealing with the issue held:*

"4.....the only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed."

24. *In Rajoo & Ors. v. State of Madhya Pradesh, (2008) 15 SCC 133, this Court held: (SCC p. 141, para 10)*

"10.....that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the

evidence is reliable, no corroboration is necessary."

The court however, further observed:

"11.....It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication..... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

25. In Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566, this Court held as under:

"9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."

30. From the testimony of prosecutrix 'P' PW-1 and her father Ram Bharose PW-2, following facts emerge

- (i) The prosecutrix was having love affair with Jakir who was residing in Nihal Vihar in the vicinity of house of her 'Bua'.
- (ii) The name and parentage as well as permanent address of the appellant was fully known to them.
- (iii) She had gone missing earlier also but it appears that as she returned home same day after visiting Aligarh, no case was registered despite information being given to the police.

(iv) Ordinarily unless special instructions are there from the parents, in case of absentee student, no telephone call is made by the school authorities to the parents immediately after the Roll call. In this case, there is no mention as to whether the call was made by the Principal of the school or by teacher or by any other official from the school that 'P' had not reached the school. There is nothing on record to suggest that there is a practice of the school to telephonically call the parents of all the absentee students to inform that their wards have not reached the school.

(v) Despite being advised for ossification test of the prosecutrix it has not been got done for the reasons not explained in the charge-sheet.

(vi) Statement of the prosecutrix that she was forcibly taken by making her to sit on the motorcycle after making her to smell something, is highly unbelievable for the reason that if she was semi conscious she could not have remained sitting for half-an-hour on the pillion seat of motorcycle driven by Jakir and would have fallen on the road.

(vii) If she was semi-conscious, then also her version is highly improbable that she remained sitting on the pillion seat for half-an-hour till they reached in the room of Jakir at Nihal Vihar.

(viii) If she was conscious enough to remember other details, then also her story is unbelievable for the reason that she had been taken away on motorcycle by Jakir from near her house in school uniform. Her small resistance would have attracted the attention of occupants of nearby houses or public persons passing through the street especially when it was school time and all the children of the locality and parents are out to send/drop their children to the school.

31. Thus, it was a case where the prosecutrix had accompanied Jakir to his room in Nihal Vihar of her own. She had stayed in room of Jakir at Nihal Vihar for a few days knowing fully well that her Bua's house is just nearby. It is not her case that she was kept confined in the room as she had also accompanied Jakir to his Village by train.

32. Thus, I am of the considered opinion that the prosecutrix in this case was above 16 years of age and having love affair with the appellant. She had accompanied the appellant of her own and stayed with him without making any complaint to anyone though she had ample opportunity at every stage till she reached the village of the appellant. The conviction of the appellant for the offence punishable under Sections 363/366/376/419 IPC could not have been based on the basis of testimony of the prosecutrix which has been found to be improbable.

33. Resultantly, the appeal is allowed. The appellant is acquitted of the charges framed against him. He be released forthwith if not wanted in any other case.

34. TCR be sent back alongwith copy of this order.

35. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

36. As prayed, copy of the order be given dasti to learned counsel for the parties.

Crl.M.B. No.315/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 31 2016

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