

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1283 OF 2013
(arising out of S.L.P. (CRL) No. 6621 of 2011)

JAINAL HAQUE ... APPELLANT(S)

VERSUS

STATE OF ASSAM ...RESPONDENT(S)

O R D E R

Leave granted.

The appellant was put on trial for offence under Section 458, 506 and 376 of the Indian Penal Code ("IPC" for short). The trial court held the appellant guilty under Section 458 and 506 of the IPC and sentenced him to undergo rigorous imprisonment for three years and fine of Rs. 1,000 with default clause under Section 458 of the IPC and rigorous imprisonment for one year under Section 506 of the IPC. However, the trial court acquitted the appellant under Section 376 of the IPC. On appeal by the appellant, by the impugned judgment and order, his conviction and sentence have been maintained by the High Court.

According to the prosecution, the appellant entered into the house of Subhadra Devi and turned out her two guests by threatening them with dire consequences and committed rape on her daughter. On the basis of the report given by Subhadra Devi, a case was registered under Section 458, 376 and 506 of the IPC. The victim's statement was recorded under Section 164 of the Code of Criminal Procedure. During the trial, the victim as also the informant, Subhadra Devi, did not support the case of the prosecution. However, they were not declared hostile.

The trial court, mainly relying on the statement of the victim under Section 164 of the Code of Criminal Procedure, convicted and sentenced the appellant, as above, which has been affirmed by the High Court in appeal.

Learned counsel appearing on behalf of the appellant submits that when the informant and the victim lady having not supported the case of the prosecution, the appellant ought not to have been held guilty of the charges levelled against him.

Learned counsel appearing for the State tried to justify the conviction and sentence of the appellant.

We have considered the rival submissions.

The mother of the victim, Subhadra Devi, has not supported the case of the prosecution. In fact, she went to the extent of saying that the First Information Report was forcibly got registered from her. Similarly, the victim has also not supported the case of the prosecution. On the face of it, we are

Leave granted.

The appeal is allowed in terms of the signed order.

| (S.K. Rakheja)
| Court Master

| |(Indu Satija)
| |Court Master

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(Signed order is placed on the file)