

GAHC010248142012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./242/2012

BABLU BORBARUAH
S/O MD. BHAIJAN BARBARUAH, VILL.PAHUSUNGI, DEUDHANI,
SIMALUGURI, WARD NO. 2, MOUZA DHUPABAR, P.S. SIMALUGURI, DIS.T
SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.P K MAJUMDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.07.2024

Heard Mr. R. Sarma, learned Amicus Curiae for the appellant. Also heard
Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned judgment and order of conviction dated 04.08.2012, passed by the learned Assistant Sessions Judge, Sivasagar in Sessions Case No. 11(S-S)/2010, arising out of G.R. Case No. 1068/09, corresponding to Simalguri P.S. Case No. 95/2009, under Section 376(f) of the India Penal Code, whereby the accused/appellant was sentenced to undergo Rigorous Imprisonment for 7 (seven) years and also to pay a fine of Rs. 5,000/- in default of payment of fine to undergo R.I. for another 3 (three) months for the offence under Section 376 of the Indian Penal Code.

The prosecution case in brief is that on 13.09.2009, at about 8.30 a.m., the daughter of the informant, aged about 12 years, went to attend her tuition class. But, as her teacher was absent, the victim girl went to the shop of the accused located at Simalguri where the accused committed rape on her inside the shop. On receipt of the F.I.R., the police investigated the case and accordingly filed the Charge-Sheet against the present accused/appellant.

Mr. R. Sarma, learned Amicus Curiae for the appellant, has submitted in this regard that he does not want to press the present appeal on merit and as there are materials to convict the accused/appellant under the appeal and hence, he does not want to press the merit of the case at this stage. Moreover, the accused has already been released from jail having completed his term of sentence.

In this context, Mr. Das, learned Additional Public Prosecutor, has submitted that the learned Assistant Sessions Judge rightly convicted the

accused/appellant under Section 376 of the Indian Penal Code finding sufficient materials against the appellant from the witnesses recorded during the trial of this case. However, he submitted that at present, the appeal is also become infructuous as the accused/appellant had already served the sentence imposed on him vide the judgment passed by the learned Assistant Sessions Judge.

After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the evidence adduced by the witnesses, viz-a-viz the judgment passed by the learned Court below, and accordingly I find that there is no merit in the present appeal and in the same time, it is also seen that the accused/appellant has already served the sentence imposed on him. However, from the order passed in CrI. M. C. No. 925/2012 also, it is evident that the appellant has already served the sentence of 7 (seven) years 3 (three) months and hence, the said CrI. M. C. No. 925/2012 was disposed of as become infructuous.

In view of the discussion made above, this Court is of the opinion that the present appeal has no merit and accordingly, the same stands dismissed. The judgment and order of conviction dated 04.08.2012, passed by the learned Assistant Sessions Judge, Sivasagar in Sessions Case No. 11(S-S)/2010, stands upheld. However, the jail authority may make an enquiry as to whether the appellant has already served the sentence imposed on him and also to make an enquiry as to whether the appellant has already been released from the jail hajot after serving out the sentence imposed on him vide judgment and order dated 04.08.2012.

With the above observation, the present criminal appeal stands disposed of.

JUDGE

Comparing Assistant