

**Mushtak Vs. State of Uttarakhand**

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**Court :** Uttaranchal

**Decided On :** Jun-14-2013

**Judge :** Alok Singh

**Appeal No. :** Criminal Appeal No. 192 of 2013

**Appellant :** Mushtak

**Respondent :** State of Uttarakhand

**Advocate for Pet/Ap. :** Mr. Manish Arora

**Judgement :**

Alok Singh, J. (Oral)

Although today, bail application is listed, however, since lower court record was available, therefore, with the consent of learned counsel for both parties, appeal was taken up for final hearing on merit.

Present appeal is directed against the judgment and order dated 05.04.2013 passed by Additional Sessions Judge, Roorkee, District Haridwar in Sessions Trial No. 71 of 2012 whereby appellant was held guilty for the offence punishable under Section 376 / 511 IPC and was sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 5,000/- and in default of making payment of fine, to undergo additional imprisonment of 6 months.

Brief facts of the present case, inter alia, are that PW4 Jawwad reported the matter to police station Kotwali Roorkee on 08.12.2011 stating therein that his niece PW1 aged about 7-year was attempted to be raped by the appellant; Imrana (PW3) could save her from the clutches of the appellant; Imrana (PW3) narrated the entire story to the informer (PW4) of the FIR, therefore, after registering the FIR, necessary action may be taken against the appellant.

PW1 was medically examined on 08.12.2011 at Government Hospital, Roorkee; her hymn was found intact, no bleeding or internal and external injury was found on her person, however, abrasion was found on the right knee, which could be of 2-day old. Investigation was handed over to PW7. Investigating Officer, after investigating the matter, submitted charge-sheet against the appellant for the offence punishable under Section 376/511 IPC. After committal of the case, appellant was charged for the offence punishable under Section 376/511 IPC. Appellant denied the charges and claimed trial.

To prove the prosecution story, PW1 prosecutrix, PW2 Jamsheeda, PW3 Imrana (mother of prosecutrix), PW4 Informer Jawwad, PW5 Dr. Kamal, PW 6 Constable Dinesh Gaur, PW7 Investigating Officer Kedar Singh Chauhan were examined. Statement of accused appellant was also recorded under Section 313 Cr.P.C.

Having considered the entire material made available on record, the trial court was pleased to hold the appellant guilty and sentenced him vide judgment and order, under appeal.

I have heard Mr. Manish Arora, Advocate for the appellant and Mr. S.S. Adhikari, Brief Holder for the State and have carefully perused the record.

As per the FIR, which was got registered by PW4 Jawwad, Imrana (PW3) could save the prosecutrix from the clutches of appellant and PW3 narrated entire incident to PW4. However, as per statement of PW3 Imrana, she neither saved the prosecutrix from the clutches of appellant nor she narrated the incident to PW4 Jawwad.

PW4 Jawwad did not support the prosecution story, as narrated in the FIR and stated that his signature was obtained on the report, however, he did not know what was written in the report. PW2, mother of the prosecutrix while appearing in the witness box, states that she does not know Imrana.

In view of the statement of PW2, mother of prosecutrix and statement of PW3 Imrana, presence of Imrana on the spot seems to be highly doubtful. If Imrana (PW3) has not narrated the incident to PW4 and PW4 does not know the content of FIR, then version of FIR becomes highly doubtful.

PW1 prosecutrix, however, in her statement on oath, stated that appellant asked her to go along with him to collect PATI (dry leaves of sugarcane), thereafter, appellant took off her SALVAR and laid upon her, meanwhile, PW3 came. Prosecutrix did not state, in her statement, that she was saved by Imrana (PW3) from the clutches of appellant nor Imrana, said so, as observed hereinbefore. Moreover, PW5 Dr. Kamal did not notice any external or internal injury on the person of prosecutrix except the two days old abrasion on the right knee.

Mr. Manish Arora, learned counsel for the appellant, has rightly contended that if prosecutrix was forced to lay down on PATI, in normal circumstances, she would have received abrasion on the backside of her thigh and on her back but there was no abrasion on her thigh on back, therefore, prosecution story, as set up by the prosecution, seems to be highly doubtful and improbable.

This Court is conscious about the fact that sole testimony of the prosecutrix, in normal circumstances, can be made basis of conviction, provided the testimony of the prosecutrix is trustworthy.

In the present case, in the absence of any abrasion on the backside of thigh and on the back of the prosecutrix as well as in view of the statements of PW3 and PW4, prosecution story seems to be highly doubtful.

In view of the above discussion, in my considered opinion, prosecution failed to prove its case beyond reasonable doubt, therefore, conviction of the appellant seems to be totally unjustified. Consequently, appeal is allowed. Impugned

judgment and order dated 05.04.2013 is hereby set aside. Appellant stands acquitted from the charge levelled against him. Appellant is in jail. Let he be released forthwith, if not wanted in any other case.

Bail application no. 519 of 2013 also stands disposed of accordingly.

Let a copy of this judgment be forwarded to the lower court for compliance along with lower court record.

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