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**(2012) 03 UK CK 0040**

**Uttarakhand High Court**

**Case No:** Government Appeal No. 1868 of 2001 (Old No. 1335 of 1999)

State

APPELLANT

Vs

Jhagru @ Surendra

RESPONDENT

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**Date of Decision:** March 19, 2012

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 376

**Hon'ble Judges:** Barin Ghosh, C.J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Hon"ble Barin Ghosh, C.J.

A First Information Report was lodged by the husband of the victim, who deposed in course of trial as P.W. - 2. In that, he had stated that the respondent, at around 11:00 a.m. of 30th June, 1996, picked up the victim, when she was cleaning the courtyard of their house and took the victim to the house of respondent and there he raped the victim. It was also stated that when the victim was being raped, hearing the cry of the victim, Babu, Sukhbir and Phool went inside the house of the respondent and rescued the victim from the clutches of the respondent. An investigation into the First Information Report led to filing of a chargesheet and on the basis thereof, charge was framed u/s 376 of the Indian Penal Code. The victim, who deposed in course of trial, as P.W. - 1 repeated the story, as was made out in the First Information Report and stated that Babu, Sukhbir, Phool and P.W. - 3 Birham Singh rescued her. P.W. - 2 stated that he was not at home at the time of incident, later when he came back, he came to know about the incident and, accordingly, lodged the First Information Report. P.W. - 4 is a lady doctor, who checked up the victim on 1st July, 1996 and found no injury in her private parts. P.W. - 5 is a pathologist, who examined the vaginal swab of the victim and found a few dead spermatozoa. P.W. - 7 is a doctor, who found several injuries on the body of the victim. All of them were abrasions. According to him, one of such injuries was on

the cheek of the victim, which was opined to have been created by teeth. The others were injuries on the neck, shoulder, arm, back of forearm, elbow etc. He stated that some of them may have been caused by force. He stated that remaining may have had been caused when the victim was forced on the ground to commit rape. The court below found that according to medical jurisprudence, an injury caused by biting will not cause an abrasion, but will cause a contusion. P.W. - 3 in his evidence deposed that he saw the victim coming out from the house of the respondent in her blouse and petticoat. The court below has refused to accept the prosecution story, principally, on three grounds, namely, while according to the First Information Report, Babu, Sukhbir and Phool rescued the victim from being raped by the respondent; according to the victim, in addition to them, P.W. 3 was also the rescuer; and at the same time, according to P.W. - 3, he saw the victim coming out from the house of the respondent in blouse and petticoat. Therefore, P.W. - 3 was not one of the rescuers, as was alleged by the victim. The next aspect of the matter was that the lady doctor found no injury on the victim. There was no just reason for the lady doctor to refer the injuries to another doctor and that too a male one. Even the injuries, which were otherwise visible, namely, which were on the cheek, neck and shoulder were not noticed by the lady doctor. Thirdly the incident took place at 11:00 a.m., i.e. in broad day light in a village, where many people were residing, when the respondent lifted the victim, who was mother of three children, took her to his home, which was 44 paces away, and all the while she was crying loud, but rape was accomplished.

2. I have not been persuaded by the learned Assistant Government Advocate to take a contrary view. The appeal fails and the same is dismissed.