

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No.175 of 2021**

Yaar Mohammad @ Lalu

..... Appellant

Versus

State of Uttarakhand

....Respondent

Mr. Saurav Adhikari, learned counsel for the appellant.

Mr. Siddhartha Bisht, learned Brief Holder for the State.

**Hon'ble R.C. Khulbe, J.**

The present appeal is directed against the judgment and order dated 11.09.2019 passed by the Sessions Judge, U.S. Nagar in S.T. No.82 of 2017, State vs. Yaar Mohd. @ Lalu, whereby the learned Trial Court convicted and sentenced the appellant as under: -

Section	Sentence	Fine	Sentence in default
3(1)(xi) SC/ ST Act	Four years' R.I.	Rs.5,000/-	One month S.I.
354A IPC	Two years' R.I.	Rs.2,000/-	Fifteen days' S.I.
504 IPC	Six months' R.I.	Rs.1,000/-	Fifteen days' S.I.

2. All the sentences were directed to run concurrently.

3. In brief, case of the prosecution is that the prosecutrix moved a complaint on 20.04.2015 (Ex.ka-1) addressed to the S.P., stating therein that on 16.03.2015, at about 8.00 P.M., she was studying at her terrace for the exam, at that time accused started throwing small mud stones on the prosecutrix and her mother with wrong intention. This was objected by the prosecutrix and her mother. At this accused started abusive language

and addressed them with caste derogatory remarks and caught hold of the prosecutrix chest/breast. Appellant also told the prosecutrix that she is into prostitution and one day he will kidnap her from the school. It is also stated in the complaint by the complainant that on previous occasions also, accused had molested the prosecutrix and had been asking her to meet him at night, otherwise he will continue to humiliate her along with her family members likewise. It is also stated in the complaint that on previous occasion i.e. 17.03.2015, the prosecutrix had given a complaint at police chowki against the accused, but no action was taken by the police, then this complaint with the request to take action against accused Yaar Mohammad.

4. On the basis of said information, a chick FIR Ex.Ka-6 was lodged with the police station; on completion of investigation, charge sheet Ex.Ka-4 was submitted; after compliance of provision of Sections 207 Cr.P.C., the charges were framed on 1.6.2017. The appellant pleaded not guilty and claimed to be tried.

5. In order to prove the case, the prosecution produced PW1-prosecutrix, PW2 mother of prosecutrix, PW3 and PW4 are father and brother of prosecutrix respectively, PW5 U.S. Negi is the I.O. and PW6 H.C. Bhowan Kohli is the person who recorded the GD.

6. After completion of prosecution evidence, statement of appellant was recorded u/s 313 Cr.P.C. in which he denied all the evidence and stated that he has been falsely implicated. However, no evidence was produced in defence.

7. After hearing both the parties, the Trial Court convicted and sentenced the appellant, as mentioned in paragraph no.1 of the judgment.

8. Feeling aggrieved by the order of conviction and sentence, the present appeal is preferred before this Court.

9. Heard the learned counsel for the appellant as well as learned counsel for the State.

10. It is fairly argued by learned counsel for the appellant that the conviction awarded by the trial court is based on material evidence; the findings are based on evidence and there is no illegality therein; he fairly submitted that the matter relates to the year 2015; there is no criminal antecedent against the appellant; the trial Court convicted and sentenced him for four years' rigorous imprisonment u/s 3(1)(xi) of the SC/ST Act, wherein minimum six months' imprisonment is prescribed; the appellant has already served more than two and half years, hence the Court may kindly consider it appropriate to reduce the sentence awarded to the appellant to the period already undergone by him.

11. The learned counsel appearing for the State also submits that the informant has already been informed about the appeal; there is six months minimum imprisonment prescribed under Section 3(1)(xi) of the SC/ST Act and the appellant has already served two and a half years in jail, which is sufficient and the sentence can be reduced to the extent of period already undergone.

12. I have also gone through the entire evidence produced by the prosecution and reached to the conclusion that the trial court has rightly convicted the appellant based on proper evidence and there is no infirmity in the impugned findings. The conviction is based on sufficient material produced by the prosecution. As far as sentence is concerned, under Section 3(1)(xi) of the SC/ST Act, minimum six months' imprisonment is prescribed. Since the appellant has already served about two years and six months, accordingly, looking to the

gravity of the offence, it is considered to be just and proper to alter the sentence of the appellant from 4 years' R.I. to that of two and half years.

13. In view of the above discussion, the appeal is allowed in part. The appellant is sentenced as follows: -

A. The appellant is sentenced to undergo two years and six months' R.I. u/s 3(1)(xi) of the SC/ST Act instead of four years' R.I. as awarded by the trial court.

B. The conviction under Section 354-A and 504 IPC will remain intact, as awarded by the trial court as there is no illegality therein.

C. The fine awarded under each section is also maintained, and he shall deposit the fine as imposed by the trial court. However, in case of default in making payment of fine, he will serve out the imprisonment as held out by the trial court in the impugned judgment towards that count.

D. All the sentences shall run concurrently.

E. On completion of period of sentence, as modified by this Court, he shall be released from jail as per law and after due verification of records.

14. Let a copy of this judgment alongwith records be sent to the court concerned. The Registry is directed to send a copy of this judgment to the jail authority also for compliance.

**(R.C. Khulbe, J.)**  
**28.05.2021**