

**State of Uttarakhand Vs. Ramesh and Others**

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**Court :** Uttaranchal

**Decided On :** Mar-01-2013

**Judge :** The Honourable Chief Justice Mr. Barin Ghosh & Alok Singh

**Appeal No. :** Government Appeal No. 54 of 2008

**Appellant :** State of Uttarakhand

**Respondent :** Ramesh and Others

**Judgement :**

Barin Ghosh, C. J.

Oral:

1. A First Information Report was lodged naming the respondents as accused for offences punishable under Sections 363, 366 and 376 of the Indian Penal Code. In course of investigation, victim was medically examined. The doctor, who medically examined the victim, ultimately, opined that the victim was about 19 years old and that no definite opinion about rape can be given. The doctor also recorded the fact that the vaginal smear report is not available. No effort was made to obtain the vaginal smear report and to produce the same before the court. Ramesh, Rajesh and Shiv Charan were charged for offences punishable under Sections 363 and 366 of the Indian Penal Code. Shiv Charan was charged additionally for offence punishable under Section 376 of the Indian Penal Code. By the judgment under appeal, each of the accused people has been exonerated. Hence, the present

## Government Appeal.

2. In course of tendering evidence, victim Ms. Arti deposed as PW1. Initially, she stated that she was made unconscious by the accused people and she regained her consciousness in a room at Clementown. Later, she said that the respondents took her away by cajoling her. That being the nature of evidence, the court below has not been able to come to the conclusion that the prosecution has been able to establish the charges for the offences punishable under Sections 363 and 366 of the Indian Penal Code.

3. PW1 stated that she was made to drink tea, whereupon she felt unconscious. When she regained consciousness, the mother-in-law of Shiv Charan told her that Shiv Charan has done wrong things with her and, accordingly, it will be advisable for her to get married with Shiv Charan. There is, therefore, no assertion on the part of PW1 that there was penetration and the same was committed by Shiv Charan. As aforesaid, the medical report did not suggest that PW1 was raped. In addition to that, in course of tendering evidence, PW1 accepted that she had written a letter and the same was in her handwriting. Though she stated that the said letter was obtained from her by coercion while she was in the custody of the accused people, but the fact remains and she too admitted that she did not speak about the same, i.e. about the letter or about coercion, in course of investigation when her statements were recorded under Section 161 of the Code of Criminal Procedure. This letter is Paper No. 68-C of the lower court records. In the letter, it was stated that she is in love with Shiv Charan, she wants to marry Shiv Charan, but her family is against. The said state of affair, we think, rightly convinced the court below that the prosecution has not been able to put home the charge of offence punishable under Section 376 of the Indian Penal Code.

4. Furthermore, inasmuch as PW1 held out the presence of Smt. Rajo Devi and Smt. Sheetal when PW1 was allegedly taken away and confined, the court below, upon giving notice to them, also made them accused for offence punishable under Section 366 of the Indian Penal Code. In course of trial, it came to light that Smt. Sheetal was the wife of Ramesh. It also transpired that, at the relevant time, Ramesh and Smt. Sheetal were at loggerhead and, while their divorce was

pending, the allegations made by Smt. Sheetal against Ramesh in respect of offence punishable under Section 498-A of the Indian Penal Code was also pending consideration before the court. That being the situation, the court below could not convince itself that the prosecution has been able to put home the charges as were framed against the accused people.

5. We have not been able to find any scope of interference. The appeal, accordingly, fails and the same is dismissed.

6. Let a copy of this judgment be sent to the court below along with the lower court records.

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