

Criminal Appeal (S.J.) No. 50 of 1998 (R)

Against the judgment of conviction dated 5th December, 1997 and order of sentence dated 6th December, 1997 passed by the Additional Sessions Judge, Bermo at Tenughat in Sessions Trial No.118 of 1994.

Pradeep Kujur	Appellant
--Versus--			
The State of Bihar	Respondent
For the Appellant	: Mr. A. K. Rashidi, Advocate		
For the State	: A.P.P.		

PRESENT
HON'BLE MRS. JUSTICE JAYA ROY

JUDGMENT

Jaya Roy, J. The appellant has filed this appeal against the judgment of conviction dated 5th December, 1997 and order of sentence dated 6th December, 1997 passed by the Additional Sessions Judge, Bermo at Tenughat in Sessions Trial No.118 of 1994.

2. Prosecution case as per written report of the prosecutrix in brief is that on 25th November, 1992 in the morning at about 8-9 a.m., she went to the forest with her friend namely Saroj and when they were eating plum, the appellant Pradeep Kujur and his friend arrived there and asked the prosecutrix to show the direction to which water was available, whereupon the prosecutrix shown the direction. It is further alleged that inspite of the fact that direction was shown, the appellant Pradeep Kujur and his friend did not go in that side and they had taken the prosecutrix at some distance in the forest and, at that time the friend of the appellant restrained the prosecutrix's friend with him. It is also alleged that thereafter, the appellant laid down the prosecutrix and committed rape upon her and harassed her and in the same way, they harassed the friend of the prosecutrix. Thereafter, they asked them to take money and not to disclose this fact to anybody. The prosecutrix returned to her house and disclosed the fact to her mother.

3. On the basis of aforesaid written report, the case was registered under Section 376 of the Indian Penal Code against the appellant and one unknown. The police after investigation submitted charge sheet only under Section 376 of the Indian Penal Code. The trial Court after taking evidence and considering the materials on record, convicted the appellant under Section 376 of the Indian Penal Code and sentenced him to undergo R.I. for five years as stated earlier.

4. Counsel for the appellant has submitted that the prosecution has examined altogether seven witnesses. P.W.-1 is prosecutrix; P.W.-2 is mother of the prosecutrix; P.W.-3 is friend of the prosecutrix who was with her; P.W.-4 & 5 are the witnesses of production cum seizure list; P.W.-6 is doctor and P.W.-7 is I.O. Counsel for the appellant has submitted that the P.W.-1, prosecutrix has stated in her evidence that she was raped by the appellant. P.W.-3, Saroj Kumari, who is friend of prosecutrix, who was with her, has stated that Pradeep Kujur taken her friend inside the Jungle and Pradeep Kujur restrained the prosecutrix there and she returned her house out of fear and disclosed this matter to the father of the prosecutrix. She has also stated that the prosecutrix after returning at 1 p.m. told about the sexual assault by the appellant. Counsel appearing for the appellant has further submitted that the prosecutrix is own cousin of the appellant and father of the appellant used to maintain the family of the prosecutrix as the mother of the prosecutrix is own sister of the father of the appellant and as she is having six children and her husband and she herself unemployed. Thereafter, as the father of the appellant after his dismissal from the service, stopped to maintain the family of the prosecutrix, she falsely implicated the appellant to give pressure to the father of the appellant to pay some amount or to maintain their family. D.W.-1 has very specifically stated in his defence regarding this aspect. Counsel for the appellant has further contended that the doctor who has examined the prosecutrix, has stated in his report that there is no sign of any commission of any rape even hymen of the prosecutrix was intact. Therefore, even according to the medical

evidence, the appellant has not committed any offence as alleged by the prosecutrix. It is further contended that though it is alleged by the prosecutrix that friend of the appellant committed rape and sexually harassed her friend Saroj Kumari (P.W.-3) but P.W.-3 has not uttered single word regarding this. Therefore, only on the basis of the statement of the prosecutrix whose evidence is not at all trustworthy, one person cannot be convicted. Admittedly, there is enmity between the parties as the father of the appellant refused to maintain the family of the prosecutrix whose mother is sister of the father of the appellant and they are in trouble. It is quite obvious that they can falsely implicate the appellant to put pressure on father of the appellant.

5. Counsel for the State has submitted that the prosecutrix has stated about the appellant but he has accepted that the contents of the medical report of the doctor does not support the prosecution case.

6. After scrutinizing the evidence of the witnesses and the medical report, I find that except the evidence of the prosecutrix there is no other evidence which can prove the commission of the offence by the appellant. It has also come that as mother of the prosecutrix is own sister of father of the appellant and admittedly father of the appellant used to maintain family of his sister as her husband was unemployed but the father of the appellant after dismissal from his service, did not continue to maintain her sister's family and due to this they having serious grudge against the appellant's family, implicated the appellant which is stated by the D.W.-1 in his evidence. Furthermore, I find that the doctor's evidence and the medical report do not support the prosecution case even evidence of P.W.-3&4 who are parents of the prosecutrix having number of contradictory statement cannot be relied upon. Thus, in my opinion prosecution has failed to prove the charge leveled against the appellant beyond all reasonable doubt.

7. Accordingly, giving benefit of doubt to the appellant, I acquit the appellant and set aside the the judgment of conviction dated 5th December, 1997 and the order of sentence dated 6th

December, 1997 passed by the Additional Sessions Judge, Bermo at Tenughat in Sessions Trial No.118 of 1994. As the appellant is on bail, he is discharged from his liability of the bail bond.

(Jaya Roy, J.)

Jharkhand High Court, Ranchi
Dated, 26th February, 2009
Anit/N.A.F.R.