

Toro Murmu Vs. State of Bihar

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Court : Patna

Decided On : Nov-11-1998

Judge : Bharat Prasad Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 376

Appeal No. : Cr. Appeal No. 430 of 1987

Appellant : Toro Murmu

Respondent : State of Bihar

Advocate for Def. : Siwesh Chandra Mishra, A.P.P.

Advocate for Pet/Ap. : Pramod Kumar Sinha, Adv.

Disposition : Appeal dismissed

Judgement :

Bharat Prasad Sharma, J.

1. This appeal has been filed against the judgment and order of 5th Addl. Sessions Judge, Dumkain Sessions Trial No. 378 of 1985/5 of 1985. By the impugned judgment dated 19th September, 1987 the learned Addl. Sessions Judge convicted the appellant under Section 376 of the Indian Penal Code and also under Section 323 of the Indian Penal Code and by a subsequent order of the

same day the learned trial court sentenced him to undergo R.I. for ten years under Section 376 of the Indian Penal Code and to undergo R.I. for three months under Section 323 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. The facts of the case, in brief, are as follows.

On 27th of June, 1985 at 8.30 P.M. one Suko Devi, wife of Fulchan Maraiya of village Rajhan within the P.S. Borio in the district of Sahebganj turned up at the Police Station, Borio and gave her statement. She was also accompanied by some of her family members including her brother-in-law Rasik Maraiya (P.W. 2). She stated that on the same day she had gone to deliver a Sama to the place of the appellant Toto Murmu. The Sama was prepared by her husband, who happened to be a Blacksmith. When the informant arrived at the place of Toro Murmu she saw him sitting in his house along with his brother Ter Murmu consuming liquor. As soon as the informant arrive there the appellant Toro Murmu caught her hand and dragged her inside his house and his brother Ter Murmu went away. Thereafter the appellant felled her on the ground and after removing her underclothes started committing rape. The informant-victim tried to rescue herself, but she could not succeed. When the appellant committed rape, he left her. She, however, raised alarm at the time of rape, but no one arrived there. She came to her house and narrated the story to her husband, Fulchand Maraiya (P. W. 3), thereupon her husband took his brother Rasik Maraiya (P.W. 2) alongwith him and went to the place of the appellant, Toro Murmu, and on their complain Toro Murmu assaulted them with lathi. Thereafter the informant went to the Police Station and lodged information on which F.I.R. (Ext. 2) was drawn up and a case under Sections 376 and 323 IPC was registered. The victim was sent to the local hospital for her examination and the Investigating Officer on the following day visited the P.O. and inspected the same and he recorded the statements of the witnesses and subsequently, after completing investigation he submitted charge-sheet in this case. Accordingly, cognizance was taken and the case was committed to the Court of Sessions and the trial commenced before the 5th Addl. Sessions Judge, Dumka, who concluded the trial and delivered the judgment and passed the judgment and order, as stated above.

3. The defence of the accused in this case was denial of the allegation and it was also asserted that he was falsely implicated in this case out of enmity, but the trial court was not satisfied with the defence plea and on being satisfied with the evidence adduced on behalf of the prosecution, the learned trial Court held the appellant guilty and convicted and sentenced him, as stated above.

4. It appears that in this case altogether five witnesses were examined by the prosecution to support the charge framed against the appellant. Out of these five witnesses, P.W. 4 Sadhusaran Singh happens to be the I.O. of the case. He was A.S.I, of Police in Borio P.S. on 27-6-1985 and in his presence the informant reported the matter on the basis of which F.I.R. was drawn up under the orders of the Officer In-charge of the Police Station and the investigation was entrusted to him. Accordingly, he took up the investigation and recorded the further statement of the prosecutrix and the statements of the other witnesses, who had come along with her and on the following day he went to the P.O. and inspected the same and recorded the statement of P.W. 3, Fulchand Maraiya, the husband of the prosecutrix. The prosecutrix was also sent to the local doctor for her examination and under-cloth worn by the victim at the alleged time of offence was also seized by him and he prepared a seizure list (Ext. 3) and according to the I.O. he had also sent the seized cloth for chemical examination to Forensic Science Laboratory, Bihar, Patna but the report of the chemical examination of the cloth could not be received. However, on completing investigation he had submitted charge sheet in this case.

5. P.W. 5 Dr. Braj Bhusan Bajpayee is the doctor, who is said to have examined the victim on 28th of June, 1985 at 11.30 A.M., From the statement as well as from the injury report (Ext. 4. It appears that the doctor has been very casual in his conduct. Neither in the injury report (Ext. 4) nor in his evidence the doctor has stated as to in what manner he examined the injured and he has not also furnished any details or data collected by him in course of examination either to ascertain the age of the victim or to ascertain whether there was any sign of rape present or not and simply he has stated in casual manner that there was no sign of rape found by him. The learned trial court, therefore, has rightly remarked against this doctor (P.W. 5) that his report and the evidence appear to be quite

perfunctory. First of all, it has to be noted that the victim woman is not to be examined by a male doctor. It appears that this doctor P.W. 5 also, did not closely and in proper manner examine the victim as he could not have done it and if at all he did it he was required to do with the help of some lady attendant or Assistant which he has not done. The vaginal swab was not collected by him for chemical examination in order to ascertain as to whether was any spermatozoa either alive or dead found in the vaginal swab. On the basis of the evidence of the doctor (P.W. 5) it was contended that the medical evidence is negative and it shows that there was no basis for the allegation. The learned trial court has also rightly observed in this connection that the medical evidence of this kind cannot be taken into consideration as it is quite perfunctory and the examination of the doctor appears to be most casual and it shows his complete callousness. Therefore, the medical evidence has rightly not been taken into consideration by the trial court.

6. So far as the occurrence is concerned, the prosecutrix herself has been examined as P.W. 1 and she has given the details of the incident. She has stated that she had gone to deliver the Sama at the place of the appellant. However, she has stated that she did not know the appellant from before and she had gone there on being asked by her husband who had prepared the Sama and when she approached the house of the accused she met the wife of the appellant and when she wanted to deliver it to her she said that she will not go near her husband because he was in drunken condition and he will start quarrel with her. Therefore, she asked the prosecutrix to deliver the same herself and after keeping water in her house she went away. The prosecutrix found the appellant sitting and taking liquor along with his brother, but as soon as the prosecutrix was caught by the appellant his brother also slipped away. Thus the victim was left there alone at the mercy of the appellant and thereafter he committed rape on her. She has stated that she also raised alarm but no one arrived. In this connection, it has been rightly observed by the learned trial court that from the evidence of the I.O. (P.W. 4) it appears that there is only one house near the P.O. house, which is intervened by a lane. The I.O., however, has not recorded the statement of that person, but the very fact that he did not come to the P.O. on hulla being raised by the victim shows that he was not present and, in the circumstance, if he has not been examined it does not make any evidence. According to the prosecutrix (P.W. 1)

after she was raped when she returned to her house she narrated the incident to her husband and then her husband along with his brother (P.W. 2) took the victim lady to the place and the victim pointed out the house where the rape was committed on her. However, the husband had reasons to know that she was raped by the appellant because he had sent his wife, the victim, to the place of the appellant to deliver Sama prepared by him on the order of the appellant. The husband of the prosecutrix met the appellant and when he complained to him, instead of apologising for the act, he attacked two brothers (P.Ws. 2 and 3) and assaulted them and they sustained some injuries. Therefore, they had no option but to return to their house and they decided to file a case before the police and thereafter the prosecutrix went to the police station along with her brother-in-law and there the case was registered. The prosecutrix (P.W. 1) has also stated in her evidence in Court that she had narrated the incident to the Pradhan and Chaukidar also but they did not take care and they took liquor at the cost of the accused and forgot about it. If such is the conduct of the responsible functionaries, helpless victim had no option but to approach the police and accordingly, she reported the matter to the police. Thereafter the case was registered and the investigation started. The evidence of P. W. 1, the prosecutrix, has been fully supported by her husband (P.W. 3). He has stated that he had sent his wife (P.W. 1) to deliver Sama to the appellant and she returned thereafter and told him that the appellant had committed rape on her and then he went to the place of the appellant and confronted him, but instead of being ashamed and apologising he attacked and assaulted this witness, (P.W. 3) and his brother (P.W. 2) and thereafter they returned and the case was filed in the Police Station.

7. So far as the P.O. is concerned, the I.O. has also clearly stated that the P.O. which was pointed to him happened to be the house of the accused in which there was one room and in front of the room there was a Varandah and in front of the Varandah there was a courtyard. It was submitted before the learned trial Court that because the victim has stated that she was taken inside the house by the accused and was raped there and as she has stated in her evidence in Court that the rape was committed in the Varandah, there was discrepancy in the evidence, but the learned trial Court has rightly observed that the village people term the entire unit as house whether it is varandah or room. Therefore, what is material is

the house where the rape was committed. It is immaterial whether the rape was committed in the Varandah or inside the room. It has also been contended that since the doctor did not find any injury on the person of the victim and since the victim had stated that she has subjected to the commission of rape on her, the allegation appears to be correct, but this contention has rightly not been accepted by the learned trial Court and the contention is actually not fit to be accepted. It is obvious that so far as the doctor is concerned, he was most callous and casual in his conduct and therefore, nothing positive was expected from his report. Moreover, if the ground was not rough there was no question of any injury being caused on the person of the victim when she was put on the ground for the purpose of commission of rape. The resistance is natural and there does not appear to be any reason to believe that the victim was a party to sexual intercourse, because has it been so, there was no reason for her to complain to her husband against the conduct of the appellant. Therefore, considering from all aspects there does not appear to be any reason to disbelieve the prosecution version as presented in court by the prosecutrix (P.W.1) and supported by her husband (P.W. 3). There was no possibility of an independent witness having any knowledge of the occurrence and therefore, non-examination of the independent witness is also not material. The husband of the prosecutrix has also clearly stated in his evidence that he did not tell about it to any other person. In this connection, the trial Court has also rightly observed that the matter was such that any person having any sense of self respect could not go on propagating it that his wife has been raped. Therefore, there does not appear to be any reason to disagree with the findings of the trial Court.

8. So far as non-availability of the report of the Forensic Science Laboratory is concerned, it is a matter of common experience that these days many matters are sent in the Forensic Science Laboratory and the examinations are not done in time and the reports are naturally not submitted, but what was within the rights and power of the I.O. He did it by sending the cloths seized from the prosecutrix to the Forensic Science Laboratory for test, so if the report was not received in the disposal of the case the prosecution cannot be held responsible for it and it cannot be treated as a factor to doubt the correctness of the allegation in the prosecution story.

9. Considering from all points there does not appear to be any reason to interfere with the findings of the trial Court in this case. Accordingly, I find that there is no merit in this appeal and the appeal is accordingly dismissed. The judgment and order of the trial Court are hereby upheld.

However, it appears that the appellant in this case was never granted bail and he continued to serve his sentence. Therefore, there is every likelihood that he must have been released in due course. If he has not been released, the trial Court will ascertain it and will take step for release on the basis of computation of remittance to which he is legally entitled.

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