

Mural Turi Vs. the State of Bihar

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SooperKanoon Citation : sooperkanoon.com/139003

Court : Patna

Decided On : Dec-13-2002

Judge : Anil Kumar Sinha and Bal Krishna Jha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302

Appeal No. : Criminal Appeal No. 87 of 1998

Appellant : Mural Turi

Respondent : The State of Bihar

Advocate for Def. : Bhagyanarain Gupta, Adv.

Advocate for Pet/Ap. : Rajib Ranjan Jha, Vinay Pandey and Sanjay Kumar Sinha, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Sinha and B.K. Jha, JJ.

1. This appeal has been directed against the order of conviction and sentence recorded by the IInd Additional Sessions Judge, Banka, in Sessions Trial No. 372 of 1995, whereby and whereunder the sole appellant has been found guilty and convicted for committing offences under Sections 302/201 of the Indian Penal

Code and has been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for a period of three years under Section 201 of the Indian Penal Code.

2. The fardbayan of the informant Maneshwar Das was recorded by S.I. Tripurari Singh on 23-5-1994 at 8.15 a.m. at Katoriya P.S. The prosecution story as per the fardbayan is that the informant's daughter had gone to tend she goats in the morning hours of 21-5-1994 at 7.00 a.m. alongwith other villagers but when she did not return back till 11.00 a.m., the informant made query from one Chetani Devi, who disclosed that the daughter of the informant has gone to search she-goats but the informant got suspicious on her statement because all the she goats had returned back to house. The informant made search of his daughter but could not get trace of her. On the following day he searched against for his daughter and reached the village Barkajor and noticed that something has been covered up near the hillock, so, he dug that place and found the sleeper and bangles of his daughter and some mark of blood but the dead-body was not found there. The informant came back home and informed the village chaukidar, namely, Bhikhan Turi, who did not help him in the matter, so, he went to Dafadar Nankeshwar Turi and made further investigation from cattle tenders of the village, out of whom Chetni Devi, Battu Das, Kamal Das, Rama Das, Bahadur Das and others disclosed to him that the appellant was having illicit connection with the deceased, namely, Parwatiya, who had threatened that she will disclose about the illegal acts committed with her. So, the appellant assaulted Parwatiya with lathi and committed her murder by pressing her neck. He also threatened the witnesses present there not to disclose about the occurrence to any one. As such, the witnesses did not disclose about the occurrence to any body due to fear. When the villagers made query from the appellant, he confessed his guilt and stated that he has committed murder of Parwatiya by pressing her neck. The appellant further confessed that he disclosed about the occurrence to his father and his brothers, who advised him to dis-appear the dead-body. The appellant's father also requested the villagers to help in the matter but they refused. Thereafter, the appellant alongwith Mohan Turi, Yamuna Das, Balo Das, Bhikhan Turi went to Barkajor at about 1.00 a.m. in the night of Saturday and took out the dead-body

and removed the same to Dumarghat, where the dead-body was buried in a ditch. The appellant become ready to point out the place where he had buried the dead-body.

3. On the basis of the fardbayan, a case under Sections 302, 201/34 of the Indian Penal Code was instituted against the appellant and five others. Subsequently, Section 376 of the Indian Penal Code was also added. The appellant and Chetani Devi were charged under Section 302 of the Indian Penal Code, whereas, Bhikhan Turi, Mohan Turi, Jamuna Das Balo Das and the appellant were charged under Section 201 of the Indian Penal Code. The appellant was further charged under Section 376 of the Indian Penal Code.

4. It may be stated at the out set that out of the six accused, who faced the trial, the trial Court acquitted five of them and the appellant was also acquitted of the charge under Section 376 of the Indian Penal Code.

5. In order to prove the charges, the prosecution examined altogether six witnesses, out of whom, PW 2 Aklu Das, PW 3 Surnratia Devi, PW 4 Nankeshwar Das have been tendered for cross-examination. PW 6 Shree Chand Ram is a formal witness, who has proved the post-mortem report f Exhibit-4) Dr. Amar Nath Jha, who conducted autopsy on the dead-body of the deceased has not been examined in the case. It may be stated here that there is no eye-witnesses to the alleged commission of murder by the appellant and the whole prosecution case is based on circumstantial evidence that the dead-body of the deceased was recovered on showing out by the appellant.

6. PW 1 Ramu Das is the uncle of the deceased, who has stated that the witnesses Bahadur Das, Battu Das Kamla Das and Sushila Kumari had disclosed to him that the appellant had committed the murder of Parwstiya Kumari. The aforesaid witnesses before whom the appellant made extra judicial confession have not been examined by the prosecution. The fact remains that the appellant had not made extra judicial confession before PW 1. It further appears from the statement made in the Examination-in-Chief of PW 1 that on showing of the appellant the dead-body of the deceased, which was buried under the ground, was recovered. PW 1 has not stated the details of the date, time and place from

where the dead-body was recovered. In cross-examination, PW1 has stated that the I.O. reached in his village at 10 a.m. and his statement was recorded at the police station. He recorded the statement of other cattle tenders at the house of Chetani and they disclosed to him that the appellant had committed the murder of Parwatiya. He further states that the I.O. reached near the dead-body at about 3 p.m. This statement indicates that the I.O. had reached after the recovery of the dead-body at about 3 p.m. PW 1 has stated that at the time of recovery of the dead-body, Singho Das, his mother, Nand Keshsar Das, Sakuna Devi, w/o Nand Keshar Das, w/o Jamun, w/o Balo Das, Gokul Das were present and the I.O. had recorded their statement but none of them have come forward to support the prosecution case as regards the alleged recovery of the dead-body on pointing out by the appellant, so much so, that the informant in whose presence the dead-body was recovered has also not been examined by the prosecution. No explanation, whatsoever, has been given for the non-examination of the aforesaid material witnesses or the informant before whom the recovery of the dead-body is said to have been made on pointing out by the appellant.

7. PW 5 Tripurari Singh is the I.O. of the case who has proved the fardbayan (Exhibit-1) and the FIR (Exhibit-2). The I.O. has stated that the appellant had made confession before him and had admitted about the illicit relationship which he had with the deceased and he also confessed that he committed the murder of the deceased and buried the dead-body first at village Baghari and subsequently at Dumarghat. He also stated that he recovered the dead-body from a ditch at village Dumarghat and prepared the inquest report (Exhibit-3).

8. Learned Counsel appearing for the appellant vehemently argued before me that on the basis of the sole testimony of the I.O. the prosecution cannot be said to have proved its case beyond all reasonable doubt. He pointed out that in the inquest report (Exhibit-3) nowhere it has been mentioned that the appellant had confessed his guilt and on his pointing out the dead-body was recovered. The I.O. also did not prepare any Panchnama although several witnesses were present at the time of recovery of the dead-body and these two circumstances would clearly go to show that the appellant had neither confessed his guilt nor the dead-body was recovered on his pointing out. It was further argued that the doctor, who

conducted the autopsy on the dead-body of the deceased, as also, the informant who is none else but the father of the deceased have not been examined to support the prosecution version and in absence of their examination it cannot be said that the prosecution proved its case beyond all reasonable doubt. More so, because no witness has come forward to support the prosecution version as regards the alleged confession made by the appellant or the recovery of the dead-body at the instance of the appellant. Learned Counsel has relied upon the decision in the case of Jaharlal Das v. State of Orissa, (1991 Cri LJ 1809) wherein it was held that 'where the circumstances that was relied on by the prosecution namely that the accused and the deceased were last seen together was not proved beyond doubt nor was it mentioned in the inquest report, recovery of the dead-body at the instance of accused was also not proved nor it was mentioned in the inquest as to how the body was discovered and there was no Panchnama made under Section 27 of the Evidence Act of the recovery of body, the doctor who examined the accused stated that there was no sign of recent sexual intercourse of such intercourse within one hour of his examination, the accused was entitled to acquittal on benefit of doubt.'

9. Relying upon the aforesaid decision, learned Counsel for the appellant submitted that in the present case also there is no evidence that the deceased was seen last in the company of the appellant, the inquest report also does not disclose that the body of the deceased was recovered at the instance of the appellant and no Panchnama was prepared. Hence, the appellant is atleast entitled to get the benefit of doubt.

10. Having regard to the facts and circumstances of the case and on careful consideration of the entire materials available on record, we are of the view that the prosecution had not proved its case beyond all reasonable doubts. Accordingly, we set aside the order of conviction and sentence recorded by the learned Court below and acquit the appellant of the charges. The appellant, who is in jail custody is directed to be released forthwith from the custody, if not required in any case.