

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.929 of 2012

Arising Out of PS. Case No.-490 Year-2011 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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Dharmendra Kumar , S/o Ram Chandra Rai, Resident Of Village- Jitwarpur
Chouth P.S.- Muffasil (Samastipur), District- Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Miss Anujashree Roy, Amicus Curiae
For the Respondent/s : Shri Shiwesh Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 21-11-2017

The present Appeal was preferred against the judgment of conviction dated 24.07.2012 passed by Sri Triloki Nath Tripathi , learned Adhoc Additional Sessions Judge IInd, Samastipur (hereinafter referred to as “trial judge”) in Sessions Trial No. 458 of 2011 / 212 of 2012 (arising out of Samastipur Sadar Muffassil P.S. Case No. 490 of 2011). By the said judgment the learned trial judge has convicted the sole appellant for offence under Section 302 of the Indian Penal Code , 1860 (hereinafter referred to as “I.P.C.”) and section 27 (1) of the Arms Act, 1959 (hereinafter referred to as the “Arms Act”). The appellant by order dated 25.07.2012 was sentenced to undergo rigorous imprisonment for



life and pay fine of Rs. 5,000/- under section 302 of the I.P.C. and in default of payment of fine he was directed to further undergo rigorous imprisonment for six months. The appellant was sentenced to undergo rigorous imprisonment for three years and pay fine of Rs. 5,000/- under section 27(1) of the Arms Act and in default of payment of fine he was directed to to undergo rigorous imprisonment for further six months. The appellant is in custody and it is evident from order dated 17.10.2016 that learned counsel for the appellant had prayed for granting time for filing petition for early hearing of the matter, however, when the Appeal was taken up for hearing , none appeared on behalf of the appellant. Since the appellant was in custody for such a long time, the Court preferred not to defer hearing and requested Miss Anujashree Roy, learned counsel to assist the Court as amicus curiae and she agreed for the same.

Short fact of the case is that on 11.8.2011 at about 11.00 Hours (11.00 P.M.) the Sub Inspector of Police -cum- S.H.O. Muffasil, Samastipur Police Station, namely Sri Ajit Kumar Singh /P.W. 10 recorded fardbyan of Smt. Archana Mishra /P.W. 8 (mother of the deceased)/ informant. The fardbyan was recorded near the post- mortem house in Sadar Hospital , Samastipur . The informant in her fardbyan disclosed that on



11.8.2011 in the morning at about 8.00 A.M. she got information that her daughter/ Prerana Kumari , who was married with Dharmendra Kumar / appellant about two years back was killed by her husband by fire arm injury. She disclosed that her daughter had solemnized love marriage with the appellant against wishes of her family. She stated that, as per information, her daughter was killed by fire arm injury. After getting such information she along with Sunil Kumar Singh /P.W. 5, who was Sarpanch of her village went to the Sadar Hospital, Samastipur and saw that her daughter /Prerana Kumari was having injury on right temporal region and it appeared that the said injury was due to fire arm and she was killed by her husband /Dharmendra Kumar. The informant disclosed that her daughter was blessed with a female child about 1 ½ years back. After marriage they were not on visiting term. The informant stated that she had heard that Dharmendra Kumar and his brothers and others were criminal minded. There was some dispute in between the husband and her daughter. The informant stated that occurrence had taken place on last 10.08.2011 at about 4.00 Hours (4.00 P.M.) . She disclosed that her husband had gone out of station and she claimed that her daughter was killed by Dharmendra Kumar/ appellant by fire arm . The fardbyan was read over to her and thereafter, she put her



signature. The fardbyan was also got signed by Sunil Kumar Singh / P.W. 5 . After recording fardbyan, Police drew formal F.I.R. on the same date i.e. 11.08.2011 at 12.45 Hours vide Samastipur Sadar Muffassil P.S. Case No. 490 of 2011 under section 302 of the I.P.C. and section 27 of the Arms Act only against appellant /Dharmendra Kumar. In the case, inquest report regarding dead body of deceased was prepared near the post-mortem house in Sadar Hospital, Samastipur. It is a peculiar case in which though formal F.I.R. was lodged on 11.08.2011 at 12.45 Hours (P.M.), only on the next date i.e. 12.08.2011 police submitted charge -sheet and on the same date cognizance order was passed. After cognizance and supply of police papers, the case was committed to the court of Sessions on 26.08.2011 and charge in the case was framed on 26.09.2011. Since charge was framed under section 302 of the I.P.C. and section 27 of the Arms Act against the appellant and the appellant denied charge and claimed to be tried, the prosecution to establish its case examined altogether ten witnesses.

Miss Anujashree Roy , learned amicus curiae, after placing entire evidence i.e. oral and documentary evidence, has argued that from the very inception of registration of the case, the prosecution case appears to be doubtful. She further submits that the



investigating officer has conducted completely perfunctory investigation and to the reasons best known to the supervisory officer, without any cogent material, in haste, charge -sheet was submitted on the next date of registration of the F.I.R. By way of referring to the evidence of informant / mother- in- law of the appellant and mother of the deceased i.e. P.W. 8 /Archana Mishra , learned amicus curiae , has argued that this witness has stated that on 11.8.2011 at about 8.00 A.M. (morning) she got information that her daughter who had solemnized love marriage with the appellant against their wishes was done to death. Thereafter, she along with P.W. 5 / Sunil Kumar Singh who was Sarpanch of the village, who had got telephonic information, rushed to the house of the deceased where information was given that dead body of her daughter was carried to police station and then she reached to police station where information was provided that dead body was carried to Sadar Hospital, Samastipur and thereafter, she arrived near post -mortem house in Sadar Hospital, Samastipur where police arrived and recorded her fardbyan. The fardbyan was shown to be recorded at 11.00 A.M. on 11.08.2011 and on the same date at 11.30 Hours inquest report of the deceased was prepared at the same place near the post -mortem house in the Sadar Hospital, Samastipur. She highlights that the investigating officer in his



deposition has stated that he visited the place of occurrence i.e. house of the father of the appellant and police officer noticed that the bed room of the deceased was locked which was opened on being asked by the police by the father of the appellant. She has specifically drawn our attention to evidence of the investigating officer / P.W. 10 wherein the investigating officer has stated that he had seen the bed room of the deceased. In the said room dead body of deceased was lying on a '*chauki*' (cot) and on her temporal region there was fire arm injury and blood had sprinkled on the southern wall of the room. On the western wall of the room also there was spot of blood and beneath the cot, which was earthen floor, huge quantity of blood was found. He also noticed that there was whole on the southern wall and outer portion of the cartridge was lying on the '*farsh*'. She submits that in paragraph no. 3 of his cross- examination the investigating officer has stated that he had visited the place of occurrence at about 1-1.15 Hours (P.M.). By way of referring to the aforesaid evidence it has been argued by Miss Roy, that the investigating officer though had stated that he had seen the dead body of deceased on the cot in the bed room of the deceased, inquest report on the dead body was got prepared near the post -mortem house in the Sadar Hospital, Samastipur, however no explanation has been given by



the prosecution as to why immediately after noticing the dead body inquest report was not prepared at the same place. She further submits that prosecution is silent on the point as to how the dead body was brought to the post-mortem house from the bed room of the deceased, whereas, the investigating officer in paragraph no. 3 of his cross-examination has stated that when he visited the place of occurrence it was about 1-1.15 P.M. and door of bed room of the deceased was locked and on being asked by the investigating officer the father of the appellant had opened the lock. It has been argued by learned amicus curiae that if for the time being it is assumed that the deceased was done to death by the appellant, it is difficult to perceive as to how after locking the bed room in which dead body was lying, the appellant fled away. If he had gone from the place of occurrence, again there is a big question as to how the key was in possession of the father of the appellant who opened the lock of the bed room of the deceased. By way of referring to the statement of the appellant recorded under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") it has been argued that the appellant had made categorical statement that while he was returning to his house he was arrested by the police; however the investigating officer in his deposition has stated that the appellant



was arrested in 'Baswari' (bamboo orchard). She further submits that it is not the case of the prosecution that any of the witnesses had seen the occurrence and only on presumption the appellant has been held guilty. She further submits that the appellant in his statement under section 313 of the Cr.P.C. has suggested that his wife was done to death by some other persons who were inimical to him. It has been argued that it is case of the informant herself that the appellant who was of other cast than the informant had solemnized marriage with her daughter without her consent or rather against her wishes. The informant has also accepted that they were not on visiting term. It is also not the case of the prosecution that the deceased was ever tortured by the appellant, rather according to learned amicus curiae, the appellant was living happily with informant's daughter with whom he had solemnized love marriage and as such, there was no occasion for him to kill her, nor there is any evidence to suggest that the deceased was ever tortured or any demand of dowry was made. Learned amicus curiae submits that it appears that the investigating officer with a view to screen the main culprit, in a haste manner, within one day from the date of recording of the F.I.R., has submitted charge -sheet and forwarded the appellant as accused and he was illegally arrested by the police. In sum and



substance, by way of referring to the entire evidence, it has been argued that it is a clear cut case of false implication and appellant deserves to be acquitted.

Shri Shiwesh Chandra Mishra, learned Additional Public Prosecutor has tried to oppose the appeal, but he was not in a position to defend the prosecution case, particularly the action of the investigating officer.

Besides hearing learned counsel for the parties, we have minutely examined the entire evidence available on record. Prima facie after going through the same, we are satisfied that the investigating officer of the present case or even the supervisory officer, had committed serious error in collecting evidence. It is unfortunate that the investigating officer though had stated that he recorded fardbyan of the informant at 11.00 Hours near the post-mortem house of Sadar Hospital, Samastipur, he took about half an hour in preparing inquest report and inquest report was prepared at 11.30 Hours on the same date. The investigating officer had not bothered to collect any material as to how the dead body was carried from bed room of the deceased to Sadar Hospital, Samastipur, whereas, the informant / P.W. 8 in categorical term had stated that immediately after getting information regarding death of her daughter, she visited the house



of his son-in-law as well as her daughter, where she was informed that her daughter was carried to police station and then she visited the police station, where she was informed that dead body was carried to Sadar Hospital, Samastipur; however the investigating officer in the present case had not bothered to indicate as to how dead body was carried from the house of the deceased to the mortuary place . This creates serious doubt on the prosecution case, rather inaction on the part of the investigating officer. In this case formal F.I.R. was shown to be recorded at 12.45 P.M. on 11.08.2011, however in his deposition in paragraph no. 3 he (investigating officer) has stated that he visited the place of occurrence at about 1-1.15 P.M. In his examination -in- chief he had stated that dead body was lying on a bed in the bed room of the deceased having fire arm injury on temporal region and had stated that he had seen blood mark on southern wall as well as western wall of the room and he also noticed blood beneath the cot / bed of the deceased. Once the investigating officer had visited the place of occurrence where dead body was lying, it was mandatory on the part of the investigating officer to prepare inquest report at the place of occurrence itself. However, no explanation has been given by the investigating officer or any of the witnesses as to how the dead body of deceased was firstly



carried to police station and thereafter, it was carried to Sadar Hospital, Samastipur. It is again surprising that though inquest report was shown to be prepared at 11.30 Hours near the post-mortem house in Sadar Hospital, Samastipur, the post-mortem examination report which has been got exhibited as Exhibit - '1' categorically shows that dead body was shown received in the post-mortem house at 1.45 P.M. on 11.08.2011. The doctor who conducted post-mortem examination i.e. P.W. 1 / Dr. Pawan Kumar has proved the post-mortem examination report, which was marked as Exhibit - '1' and he had stated that dead body was brought by two chaukidars. Of course in the post-mortem examination report only two injuries were found on the person of the deceased i.e. entry wound on the right temporal region as well as exit wound on left temporal region, however since there is no evidence on record as to how death occurred, whether the deceased was done to death by the appellant, whether she committed suicide or whether she was done to death by another person, as suggested by the appellant in his statement recorded under section 313 of the Cr.P.C., the court is of the opinion that certainly appellant has incorrectly been held guilty and convicted. The inquest report, which has been proved by the investigating officer i.e. P.W. 10 and marked as Exhibit - '5' was signed by P.W.



2 /Jeetendra Rai and P.W. 3/Pramod Kumar, who had proved their signature, which were marked as Exhibit - '2' and '2/2' . The investigating officer has also prepared the seizure list in respect of blood soaked soil as well as used cartridge, which was proved by the investigating officer and marked as Exhibit -'6' and seizure list was also signed by P.W. 2 /Jeetendra Rai and P.W. 3 /Pramod Kumar and their signature were exhibited as Exhibit- 2/1 and 2/3. In this case formal F.I.R. has not been got exhibited. In the present case only one witness i.e. informant /P.W. 8 has raised suspicion against the appellant. P.W. 4/ Shailendra Kumar Singh though was subsequently declared hostile, he stated that he had heard that Prerana Kumari was murdered at his house and she was murdered by Dharmendra/ appellant , however nothing has been indicated as to from which source he got such information. P.W. 4 / Shailendra Kumar Singh had turned hostile. However, he stated that he heard that deceased was done to death, but nothing was indicated as to whether in the said death, in any manner, the appellant was involved or not, P.W. 7 /Ram Sevak Singh had turned hostile and P.W. 6/ Umesh Ram is also a formal witness and nothing can be extracted from his evidence. So far P.W. 9/ Dr. Rakesh Chandra Sahay Verma is concerned , he had deposed as if he observed the doctor who conducted post -mortem examination



on the dead body of the deceased and he proved his signature on the post -mortem examination report, which was marked as Exhibit - '3/2'. The inquest report which has been got exhibited as Exhibit - '5' shows that it was prepared on 11.08.2011 at 11.30 Hours in the post -mortem house, Sadar Hospital , Samastipur whereas, the investigating officer namely: Sri Ajit Kumar Singh who has been examined as P.W. 10 in his deposition has stated that he visited the bed room of the deceased, which was locked, at 1- 1.15 P.M. on same date i.e. on 11.08.2011 and he stated as if dead body was lying on the cot in the bed room with fire arm injury, however, to the reasons best known to the investigating officer, no step was taken to prepare inquest report at the place where dead body was first found, nor the investigating officer had bothered to collect evidence or record statement of the father of the appellant regarding whom it was stated that he handed over the key to open the lock which was put on the door of the bed room of the deceased. Even the father of the appellant was not arrayed as accused, but without collecting any cogent evidence or without ascertaining as to how the death occurred, in a perfunctory manner within twenty four hours the investigating officer had filed charge -sheet against the appellant. The court is also surprised as to how the supervisory authority without any cogent material had



approved filing of the charge- sheet. The inaction of the investigating officer as well as supervisory officer is required to be examined.

Though the room in question was locked, which was opened by providing key by the father of the appellant, during entire evidence no step was taken to search for the weapon used in the occurrence, neither during investigation any weapon was recovered nor it was produced during the trial.

The deceased and the appellant were from two different cast and admittedly their marriage was solemnized against the wishes of informant's family and as such, in view of the facts and circumstances, it also appears that it may be a case of honor killing.

In view of the facts and circumstances, we are of the considered opinion that there was no cogent material to held the appellant guilty. Accordingly, the judgment of conviction and sentence dated: 24.07.2012 and 25.07.2012 respectively in Sessions Trial No. 458 of 2011 / 212 of 2012 passed by Sri Triloki Nath Tripathi, Adhoc Additional Sessions Judge IInd, Samastipur is hereby set aside. The appeal is allowed. It is directed to release the appellant forthwith, if not required in any other case.



Before parting with the order, it is necessary to observe that the Director General of Police, Bihar may examine as to under what circumstances without sufficient material in a haste manner in the present case charge- sheet was submitted within twenty fours hours.

Let a copy of this judgment be sent to the Director General of Police , Bihar for needful.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
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