

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79758 of 2019

Arising Out of PS. Case No.-85 Year-2014 Thana- BARURAJ District- Muzaffarpur

SHATRUGHAN SINGH @ SHATRUDHAN SINGH Son of Late Ramashray
Singh Resident of Village- Bangri, P.S.- Baruraj, District- Mazaffarpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sumitra devi Wife of Late Birendra Singh Resident of Village- Bangari, P.S.-
Baruraj, District- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Nachiketa Jha, Adv
For the State	:	Mr. Sanjay Kr Singh, APP

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-01-2020

Heard learned counsel for the parties.

This petition has been filed under Section 482 of Cr.P.C for quashing the order dated 26.09.2019 passed by learned 9th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 896 of 2014 (arising out of Baruraj P.S. Case No. 85 of 2014) by which the learned trial court has allowed petition dated 30.04.2019 for the prosecution for examination of Alok Kumar s/o deceased Birendra Singh as witness for the prosecution.

Prosecution case is based upon fardbeyan of Sumitra Devi alleging therein that on 27.06.2014 at 4:00 pm 1. Shatrughan Singh, 2. Brajesh Kumar, 3. Sarvesh Kumar, 4. Kalawati Devi arrived at her door and assaulted with iron rod



and lathi as a result of which her husband Birendra Singh got seriously injured and during treatment died in PMCH giving rise to Baruraj P.S. Case No. 85 of 2014 dated 29.06.2014 under Section 302/34 of IPC.

After investigation, police submitted chargesheet under section 302/34 of IPC against 1. Shatrughan Singh, 2. Brajesh Kumar, 3. Sarvesh Kumar, 4. Kalawati Devi and case was committed to the court of Session and finally transferred to the court of learned 9th Additional Sessions Judge, Muzaffarpur, for trial and out of six chargesheet witnesses, three were examined and remaining three witnesses, i.e. both the I.O's and Gautam Kumar s/o deceased Birendra Singh remained to be examined.

On 30.04.2019 an application was filed before the trial court stating therein that due to inadvertence in the case diary as well as in the chargesheet, the name of witness has been wrongly recorded as Gautam Kumar s/o deceased Birendra Singh instead of Alok Kumar s/o Late. Birendra Singh, upon which a report was called for by the learned trial court from the concerned SHO who submitted its report in which he stated that there is no person named Gautam Kumar who is resident of the village and due to mistake of the I.O. the name has been recorded as Gautam Kumar s/o deceased Birendra Singh and



same was an error of record.

It is submitted on behalf of petitioner that Alok Kumar was never examined during investigation nor he is chargesheet witness, however, learned trial court allowed the application dated 30.04.2019 of Alok Kumar to be examined as witness in place of Gautam Kumar and aggrieved by which present application has been filed on behalf of accused.

The trial court in its order dated 26.09.2019 as impugned has recorded valid and sound reasons for allowing the petition of prosecution which is being reproduced as below:-

“Considering the humble submissions of the learned counsels for the parties and perusing the record, contents of Fardbeyan of informant Surmila Devi, contents of para-13 of the chargesheet, evidence of PW-3, paragraph no. 8 of the case diary and report dated 27.06.2019 submitted by SHO, Baruraj Police Station to this Court by Gayapank Sankhaya 1293 dated 27.06.2019 in compliance of letter No. 444 dated 14.06.2019 and M-9115/C sent by this court to SHO this Court finds that undoubtedly the murder of Birendra Singh is alleged to be committed by the accused persons in hand. It is also admitted that the deceased Birendra Singh has sole son namely, Alok Kumar who is the applicant of the present petition. It is also admitted that Gautam Kumar who has been inferred as witness in the present case at para 8 of case diary and at column-13 of the chargesheet no. 94/14 dated 15.09.2014 is not son of Late Birendra



Singh whose murder has been committed. Para 8 of the case diary obviously shows that the alleged Gautam Kumar son of Late Birendra Singh had stated to the I.O. u/s 161 of Cr.P.C that he was not out of station on the date of incident and when he came to home he was told about the entire incident by his uncle Rambabu Singh committing the murder by the accused persons due to land disputes causing serious injuries to deceased Birendra Singh who died during the course of treatment at Patna. The statement recorded at para 8 obviously shows that Gautam Kumar has not been examined by the I.O. as the defence in his rejoinder dated 16.05.2019 at para 6 has contended that Alok Kumar son of Late Birendra Singh was out of station on the alleged date of occurrence. This contention of the defence obviously shows and corroborates that Alok Kumar son of Late Birendra Singh is the witness of this case as the statement recorded at para 8 of case diary shows that at the time of the incident this witness examined by the I.O. was out of station. On the other hand, this Court finds that the report of the SHO Baruraj Police Station dated 27.06.2019 also shows that Alok Kumar had been examined by the IO as was stated by him during enquiry. It is true that the concerned SHO should have been interrogated to the IO of this case namely, Ram Narayan Sharma, Police Inspector of Brahamdeo Paswan, Police Inspector who have recorded the statement of witness and mentioned the statement of witness at para 8 of the case diary. On the other hand, this court finds that the applicant Alok Kumar is the son of deceased Birendra Singh who is



alleged to be murdered by the accused persons as much as there is no another son of the deceased Birendra Singh, therefore, law requires that the son of the deceased being material witness of the present case must be examined as a witness by way of adducing evidence in the court during trial.”

This Court does not find any illegality or irregularity in the order passed by the trial court requiring any interference by this Court, accordingly, the present criminal miscellaneous petition is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.03.2020
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