

Certified copy of State v/s Nemo in F.I.R.N
157/2011 u/s 302 RPC.

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS BANIHAL.

Present: - Manmohan Kumar.

JO CODE: - JK00286.

In the case of: -

State through P/S Banihal

Vs

Nemo

In the matter of: - Ikthitami (Final Report)

FIR NO: - 157/2011.

Offence u/s 302 RPC.

Present: - Ld. APP for the State (Now UT).

ORDER

[Signature]
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J/s 76 of Evidence Act

Judicial Magistrate

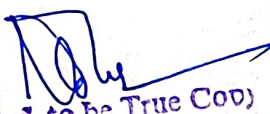
1st Class

BANIHAL

1. This Closure report (Ikthitami) has been presented before this Court on 18-09-2021, by SHO P/S Banihal, Nayeem-ul-Haq in presence of Ld. APP.
2. Statement of IO's in the case, were recorded from time to time and have stated that all of them have conducted part of the investigation in the case and despite the efforts being made by the police, any clue of the accused could not be made.
3. Perusal of Closure Report transpires that on 19-05-2006, at about 03:00 AM, Adjutant of 17 RR, informed P/S Banihal, telephonically that Sepoy Yuvraj Uttam Rao No 27972238-A, of 17 RR Camp Gund Tethar Tehsil Banihal was on duty and has sustained bullet injuries on his chest and has died, accordingly Inquest Proceedings was initiated at P/S Banihal. The Inquest was entrusted to HC Lal Chand No.106/Rbn, who visited the place of occurrence and prepared site plan, seized one AK-56 Rifle along with Magazine containing 16 live rounds and 04 empty cartridges and also recorded statement of Army personnel. He collected the blood-stained clay, simple clay and dead body was taken into custody and autopsy was got conducted. Inquest was concluded with a report that on 19-05-2006 at 02:00 Am some unknown official/officials has fired and caused the death of Sepoy Yuvraj Uttam Rao. Accordingly, FIR was registered for the commission of offence under section 302 RPC. Weapon of offence was sent to FSL and expert opinion obtained thereof has revealed that fire went off from the service weapon of the deceased.
4. Perusal of Closure Report further reveals that there were no marks of blood in the sentry post and 04 bullet holes were detected in the roof of the sentry post which seem to have been fired from inside the sentry post instead of outside as the tin shed were opened towards outside. 04 bullet injuries were found on the chest of the deceased Sepoy Yuvraj Uttam Rao which had exit wounds at the back of the deceased. Some blood stains were found at a distance of about 06 feet from the sentry post and the dead body was lying in a Guest House consisting of two rooms.

I.O found the dead body kept in one room and weapon of offence in another. Interestingly Kot NCO Asgar Ali of 17 RR stated that it was first time deceased was deployed in sentry duty because prior to it he was performing duties of runner with senior officers of the said unit. Perusal of the statement of witnesses/officials transpires that only 3-4 Army personnel admitted that they had heard the gun shots and rest have expressed their ignorance. Investigating officer has also observed in the closure report that in the year 2006, militancy was at peak in Banihal area and there is possibility that the killing of Sepoy Yuvraj Uttam Rao could be an act of terrorists. IO of the case finally concluded that identification of the accused is not possible at this time as the more than ten years has passed since this incident.

5. There are discrepancies in the investigation as at one point Investigating Officer observed that some unknown officials have killed the deceased and simultaneously IO himself has concluded that death might be an act of terrorists. However, IO has not collected any evidence that there was any transgression or attack in the army camp on the fateful night. The role of terrorists in the killing is also ruled out as the holes were detected in the roof of the sentry post which seem to have been fired from inside the sentry post instead of outside as the tin shed were opened towards outside. Moreover, perusal of FSL report also transpires that four spent cartridges which were seized from the spot were fired from the service weapon of the deceased Sepoy Yuvraj Uttam Rao. In the case in hand an army Jawan was killed inside the camp with his service weapon but the Investigating officers are unable to trace the accused.
6. The investigation in the case has reached a dead end without identification of the offenders. It came to light during the course of investigation that deceased was on sentry duty for the very first time, prior to that he was performing duty with the senior officials. The excuse of the Investigating Officer that it is not possible to trace or identify the accused is preposterous, as the deceased Sepoy Yuvraj Uttam Rao was not alone in the camp, there were number of Army personnels along with officers on the duty then and there. This is very unfortunate that an army Jawan was killed inside the Army Camp with his service weapon but the Investigating officers are unable to trace the accused. There is no evidence collected by the police officers which explain how the deceased has died neither the finger prints from the weapon was taken by the IO of the case.
7. Investigation conducted by the IO's show total reluctance on their part to unravel the truth or lack of modicum knowledge of law needed to investigate an offence like murder. The casualness and callousness of the police is reflected from the fact that they are not able to identify the accused within the four walls of a camp. The entire investigation and the closure report therefore lack bonafide. The court is dissatisfied with the manner in which the police were dragging its feet in failing to make proper investigation, raising serious doubts that efforts were being made to protect someone.
8. The prime concern and the endeavor of the court of the law is to see justice on the basis of true facts, which ought to be unearthed through committed, resolved and a competent


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investigation agency. Certain cases may cry out for further investigation, so that an innocent person is not wrongly arraigned as an accused or that prima facie guilty is not left out.

9. In *Hassanbhai Valibhai Quarashi vs State of Gujarat* 2004 AIR SC 2078, it has been held by Hon'ble Apex Court, that the Court is not helpless and should not remain as mute spectator by swallowing all what was done by the Investigating Officer. Where the court finds that the matter requires further investigation in view of the partisan attitude of the Police or that the Investigating Agency had committed mistakes on account of ignorance or otherwise, the court can direct the Investigating Agency to conduct further investigation in the case under section 173(8) Cr PC.
10. In the case in hand the investigation remained inconclusive for nearly 17 years and the Investigating agency observed that someone from inside the camp has committed the offence but they were unable to find out the accused. Therefore, the case in hand demands further investigation in order to do justice. Much time has passed and there is undoubtedly an urgency in the matter now therefore, this court direct that further investigation must be concluded within a period of three months from today and the police report be filed before the court concerned where after the matter shall proceed in accordance with law.
11. Keeping in view the above facts and circumstances, it appears that effective investigation has not been made out in the case, and this court being competent to order further investigation, deems it fit and proper to direct further investigation. Closure report in hand is returned to Ld APP with the direction to return the same to SHO P/S Banihal, for further investigation in the matter and submission of report before the competent court for disposal under law within time period prescribed.
12. Criminal Clerk is directed to detach all the interim orders passed in the case and the statement of Investigating Officer, and consign them to records under rules. Criminal Clerk is also directed to prepare true copy of the entire file and consign it to records under rules.
13. This court is also astonished to note that the closure report kept at Police Station Banihal for 6 years after the completion of the investigation, as the closure report was prepared in the year 2016, but presented before the Court in the year 2021.
14. Copy of the order is also forwarded to SP Ramban with a direction to monitor the investigation of the case.

Announced: 09-06-2023.



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