

IN THE HIGH COURT OF JHARKHAND AT RANCHI

**Cr. Appeal (DB) No.182 of 1997(R)**

Khamakhya Singh son of Nanhku Singh, resident of village Tenta,  
P.S. Husainabad, District Palamau.

----- Appellant

Versus

The State of Bihar (now Jharkhand)

----- Respondent

PRESENT

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**  
**HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

-----

For the Appellant : Mr. V.P. Singh, Sr. Advocate  
Mrs. Ragini Kumari, Advocate  
Mrs. Bandana Kumari Sinha, Advocate  
For the Respondent : Mr. Pankaj Kumar Mishra, Advocate  
-----

**CAV on 23.10.2024**

**Pronounced on 27/11/2024**

**JUDGMENT**

**Per R. Mukhopadhyay, J.**

1. Heard Mr. V.P. Singh, learned Senior Counsel for the appellant and Mr. Pankaj Kumar Mishra, learned APP.
2. This appeal is directed against the judgment and order of conviction and sentence dated 19.07.1997 (sentence passed on 21.07.1997) passed by Sri Mandhata Singh, learned 1<sup>st</sup> Additional Sessions Judge, Palamu in S.T. No. 25/1995 whereby and where under the appellant has been convicted for the offence punishable under Section 302 IPC and has been sentenced to undergo imprisonment for life.
3. The prosecution case arises out of the Fardbeyan of Ambika Singh recorded on 11.06.1988 in which it has been stated that the informant at about 7:00-7:30 pm was going from Hatia to his village and when he reached near the boring of Lal Kunwar Singh master, his nephew Khamakhya Singh (appellant) shot at him and assaulted him with a knife on various parts of his body. After some time, Rajendra Singh, Ram Pravesh Singh and others took him on a bullock cart to the hospital. The wife of the informant Tetari Devi was also shot at by Khamakhya Singh and she died. The nephew of the informant used to pester him to

transfer his landed properties in his name and since the informant did not agree, his wife was shot dead and he was also fired upon by Khamakhya Singh.

4. Based on the aforesaid allegations, Hussainabad PS Case No. 49/1988 was instituted against Khamakhya Singh. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the court of sessions where it was registered as ST No. 95 of 2015. Charge was framed under Section 302 IPC and Section 27 of the Arms Act which was read over and explained to the accused in Hindi, to which he pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as 14 witnesses in support of its case.

6. PW 1 Shankar Singh has stated that on 11.06.1988 at 7.00 pm he was in his house when he heard a sound of firing from the courtyard of Ambika Singh. When the family members of Ambika Singh raised an alarm, he rushed to the house of Ambika Singh and saw Khamakhya Singh running away with a pistol in his hand and Tetari Devi was lying injured in the courtyard. She had an injury on her abdomen and blood was oozing out. She had disclosed that Khamakhya Singh had shot at her. She was wanting her husband Ambika Singh and so he started searching for Ambika Singh who was found lying at some distance from the house. Ambika Singh had suffered a firearm injury as well as injuries caused by knife. He and the others had brought Ambika Singh home. He thereafter brought Tetari Devi and Ambika Singh on a vehicle to Japla. The Fardbeyan of Ambika Singh was recorded by the Police in his presence and he had signed on the same. He has proved his signature in the Fardbeyan, which has been marked as Exhibit-1. He has stated that Ambika Singh had given his statement to the Circle Officer in his presence and Ambika Singh had disclosed about how he and Tetari Devi have been shot at by Khamakhya Singh. Tetari Devi died on the way to the hospital, while Ambika Singh died in

Ranchi hospital after three months.

In cross examination, he has deposed that he had disclosed about the time of the incident in his statement to the Police. He had stated of having seen Khamakhya Singh fleeing away with a pistol in his hand. When he was in his door, he had heard the sound of one firing. At that point of time, Barrister Singh and some children were with him.

7. PW 2 Kawaleshwar Ram had put his thumb impression upon the inquest report of Tetari Devi.

In cross-examination, he has deposed that he worked as a shepherd in the house of the deceased Tetari Devi.

8. PW 3 Mundrika Mistry did not support the case of the prosecution and was accordingly declared hostile by the prosecution.

9. PW 4 Dhramram Singh is the nephew of the deceased Ambika Singh, who has stated that on 11.06.1988 at 7:30 pm Ambika Singh and Tetari Devi were murdered by Khamakhya Singh. Both were taken to the hospital and on the way Tetari Devi died. The dying declaration of Ambika Singh was recorded by the Circle Officer and Dr. Sabhapati Lal. Ambika Singh died at Keshri Nursing Home on 11.09.1988.

In cross-examination, he has deposed that his statement was not recorded by the Police when the Fardbeyan of Ambika Singh was being recorded. His statement was recorded by the Police last year on the 28<sup>th</sup>. His statement was recorded in the police station. At the time of the incident, Shekhar Singh and other persons were present with him.

10. PW 5 Dhananjay Kumar Singh, PW 6 Rajendra Prasad Singh and PW 7 Bijay Singh did not support the case of the prosecution and were declared hostile by the prosecution.

11. PW 8 Dr. Shyam Bihari Mahto was posted as Civil Assistant Surgeon at Daltonganj Sadar Hospital and on 13.06.1988, he had conducted autopsy on the dead body of

Tetari Devi and had found the following:

- “(i) Lacerated inverted injury  $\frac{3}{4}$ ” x  $\frac{3}{4}$ ” x cavity deep with blackening all round in the left lower part of the chest posterior region (i.e. wound of entry).
- (ii) Lacerated inverted injury  $\frac{1}{2}$ ” x  $\frac{1}{2}$ ” x cavity deep in the right of hypochondria (wound of exit)
- (iii) Bleeding from nose.
- 2. On dissection there was huge
  - (i) Collection of blood in the left plural cavity and abdomen.
  - (ii) There was injury (lacerated  $\frac{1}{2}$ ” x  $\frac{1}{2}$ ” x cavity deep in the perantine of the left lung.
  - (iii) Spleen was punctured in the upper part.
  - (iv) There was laceration of the transverse colour with bleeding.
  - (v) The liver was punctured through & through.
  - (vi) There was fracture of 11<sup>th</sup> rib posterior rib against the wound of entry.”

12. The cause of death was opined to be due to shock and hemorrhage due to injuries on lungs, spleen and liver caused by firearms. He has proved the post-mortem report which has been marked as Exhibit-2. He has also proved the discharge certificate of Ambika Singh which has been marked as Exhibit-3. He has stated that Ambika Singh was examined by him, but he did not prepare any injury report regarding his injuries. He has proved the bed head ticket of Ambika Singh which has been marked as Exhibit-4.

In cross-examination, he has deposed that Ambika Singh had remained in his hospital for seven days.

13. PW 9 Harendra Prasad Sharma was posted as an Assistant Sub-Inspector of Police in Hussainabad P.S. and on 6.8.2014 he had arrested Khamakhya Singh and had started supplementary investigation. In course of investigation, he had recorded the statement of Dhramram Singh, who had handed over a photocopy of the death certificate of Ambika Singh. On completion of investigation, he had submitted charge sheet.

In cross-examination he has deposed that he had

recorded the statements of Dhramram Singh on 27.10.1994. His statement was never recorded earlier. He had not sent any article in connection with the case to the Forensic Science Laboratory.

14. PW 10 Dr. Sabhapati Lal was posted as a Medical Officer at Hussainabad and on 11.06.1988 one Ambika Singh, who had suffered gunshot injuries, was brought before him. The patient was serious so he was referred to Sadar Hospital, Daltonganj. The Circle Officer, Hussainabad was the Magistrate who had completed the dying declaration of Ambika Singh. He has proved the referral slip which has been marked as Exhibit-5.

In cross-examination he has deposed that he does not remember whether any injury report was prepared by him or not. He had not recorded the dying declaration, but had just started penning it down.

15. PW 11 Dr. R.P. Singh has stated that on 12.06.1988 Ambika Singh was brought to him at Sadar Hospital, Daltonganj with multiple injuries. He was referred to Dr. S.P. Mahto, a Surgeon. He has proved the referral slip, which has been marked as Exhibit-6.

In cross-examination, he has deposed that he had not prepared the injury report, as according to him, it was not needed.

16. PW 12 Bipin Bihari Prasad Srivastava was posted as a Circle Officer at Hussainabad and on 11.06.1988 at 1.00 AM he had recorded the dying declaration of Ambika Singh and the same was signed by him as well as by Dr. Sabhapati Lal.

17. PW 13 Dinanath Prasad was posted at Hussainabad P.S. and on 22.07.1988 he had taken over the investigation from Balram Tiwari. In course of investigation, he had recorded the statement of Kawaleshwar Ram. He has identified the handwriting of Balram Tiwari in para 4 of the case diary as well as para 1 to 3 and 5 to 63 which have been marked as Exhibit-7 and 7/1 respectively. He has proved the challan regarding the post-mortem of Tetari Devi which has been marked as Exhibit-

8. The inquest report, Fardbeyan of Ambika Singh and formal FIR have been marked as exhibits-9, 10 and 11 respectively.

In cross-examination, he has deposed that he had not inspected the place of occurrence.

18. PW 14 Gopal Prasad Singh is the nephew of Ambika Singh who has stated that Ambika Singh was firstly taken to Government Hospital at Hussainbad and thereafter to Daltonganj Hospital, where he was admitted on 12.06.1988. Ambika Singh was referred to R.M.C.H on 20.06.1988 but since there was a strike in RMCH, he was admitted in Keshri Nursing Home. On 19.07.1988 Ambika Singh was discharged but since his situation deteriorated, he was once again admitted to the hospital on 07.09.1988 and died on 11.09.1988. He has proved the prescription and the signature and handwriting of Dr. Ram Bali Singh, which have been marked as Exhibit 12 and 12/1 respectively. He has identified the discharge slip and the death certificate of Ambika Singh which have been marked as Exhibit 13 and 14 respectively.

In cross-examination he has deposed that his statement was never recorded by the Police.

19. The statement of the accused was recorded under Section 313 CrPC in which he has denied his complicity in the murder.

20. The defence has examined one witness.

21. DW 1 Krishna Murari Pathak had brought the sale deed register in which Kewala No. 9965 has been mentioned, which relates to sale of land by Ambika Singh to Raghav Singh and Ramnath Singh.

22. It has been submitted by Mr. V.P. Singh, learned senior counsel for the appellant that the involvement of the appellant in the murder of Ambika Singh could not be proved and he has been convicted for committing the murder of Tetari Devi. It has been submitted that PW 1, PW 4 and P W 14 are the

only material witnesses, but their evidence does not ascertain about the involvement of the appellant in the murder. The evidence of PW 4 can be discarded primarily on the ground that the Police had recorded his statement after six years from the date of the incident. So far as PW 1 is concerned, he had witnessed the appellant fleeing away with a pistol in hand and such circumstance has not been put to the appellant in his statement recorded under Section 313 CrPC, thereby making such assertion redundant. Mr. Singh has therefore submitted that the prosecution has failed to bring on record any cogent evidence which would lead to the conviction of the appellant.

23. Mr. Pankaj Kumar Mishra, learned APP has submitted that the evidence of the witnesses and the findings of the post mortem report clearly depict that it was the appellant who was instrumental in committing the murder of Tetari Devi.

24. We have heard the learned counsel for the respective sides and have also perused the trial court records.

25. The appellant was charged with committing the murder of Ambika Singh and Tetari Devi. However, the appellant has been absolved of his involvement in the murder of Ambika Singh. PW 1 and PW 4 claim themselves to be the eyewitnesses. So far as PW 4 is concerned, he in his cross-examination has stated about the presence of Shankar Singh (PW 1). None of these witnesses had seen the appellant firing at Tetari Devi, but had seen the appellant fleeing away from the place of occurrence with a pistol in his hand. It also appears that though the incident had taken place on 11.06.1988, but the statement of PW 4 was not recorded by the Police in close proximity to the incident, but as has been admitted by PW 9, his statement was recorded on 27.10.1994 which is after more than six years from the date of occurrence. Such inordinate delay in recording the statement of PW 4 by the Police would itself create a cloud of suspicion over the version of PW 4. Moreover, from what could be gathered from the evidence of PW 1 the presence of PW 4 has not been noted

when the appellant was purportedly fleeing away from the scene of crime. PW 1 has stated that he was in his house when he heard the sound of firing from the courtyard of Ambika Singh and when he rushed to the house of Ambika Singh, he saw the appellant fleeing away with a pistol in his hand. Since this was a circumstance of grave consequence which would require an explanation from the appellant, it was but natural that such circumstance would be put to the appellant at the time of recording of his statement under Section 313 CrPC, but on a perusal of the said statement, it appears that the appellant was never confronted with such question. The principles governing a statement under Section 313 CrPC has been considered in the case of **Dehal Singh v. State of H.P.** reported in **(2010) 9 SCC 85** wherein it has been held at paragraph-23 as follows:-

*“23. Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter alia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined with reference to those statements. However, when an accused appears as a witness in defence to disprove the charge, his version can be tested by his cross-examination. Therefore, in our opinion the plea of the appellant Dinesh Kumar that he had taken lift in the car is not fit to be accepted only on the basis of the statements of the appellants under Section 313 of the Code of Criminal Procedure.”*

26. The evidence of PW 1 therefore cannot also be considered to be an eyewitness version on account of the inherent flaws noted by us in the preceding paragraph.

27. The prosecution therefore has miserably failed to prove its case against the appellant and as a consequence to the discussions made here in above, we set aside the judgment and



order of conviction and sentence dated 19.07.1997 (sentence passed on 21.07.1997) passed by Sri Mandhata Singh, learned 1<sup>st</sup> Additional Sessions Judge, Palamu in S.T. No. 25/1995.

28. This appeal is allowed.

29. Since the appellant is on bail, he is discharged from the liability of his bail bond.

**(Rongon Mukhopadhyay, J.)**

**(Pradeep Kumar Srivastava, J.)**

*Shamim/-*