



2025 INSC 206

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(arising out of SLP(Crl.) No. 9244 of 2024)

SIBA NIAL @ TRILOCHAN APPELLANT(S)

VERSUS

STATE OF ODISHA RESPONDENT(S)

O R D E R

Leave granted.

This appeal by Siba Nial @ Trilochan challenges the judgment of affirmation by the High Court confirming his conviction under Sections 302 and 109 of the Indian Penal Code, 1860¹, for the murder of Dhaneswar Kata and his wife, Nirupama Kata, during the intervening night of 31.05.2013 and 01.06.2013.

The case of the prosecution, as reflected in First Information Report² No. 72/2013 dated 01.06.2013 registered with Police Station - IIC, Boden, District - Nuapada, Odisha, is that Dhaneswar Kata and Nirupama Kata were found dead on the terrace of the house on the morning of 01.06.2013, having suffered gunshot injuries. They had gone to sleep on the previous night on the terrace of the house along with other family members, namely, Dhananjaya Kata, who was examined as PW-4, and Kishor Bachha, who

¹For short, "IPC."

²For short, "FIR."

was not examined.

Dhananjaya Kata (PW-4), in his Court deposition, did not claim having seen the person(s) who had shot dead Dhaneswar Kata and Nirupama Kata. This was also confirmed by the informant, Hrushikesh Kata (PW-1), who did not name any particular person as a culprit in the FIR (Exhibit 1). Dalimba Kata (PW-2), the wife of the informant, Hrushikesh Kata (PW-1), deposed on similar lines and did not name the culprit. None of these witnesses deposed about how the offence was committed and why they did not hear any gunshots.

The appellant, Siba Nial @ Trilochan, and the co-accused, Prabhulal, who is the son-in-law of Hrushikesh Kata (PW-1), were arrested on 09.06.2013, that is, nearly 9 days after the occurrence. The appellant, Siba Nial @ Trilochan, is the nephew of Prabhulal, the co-accused. Prabhulal, it is stated, absconded after being released on bail and has not been arrested till date.

To prove its case against the appellant, Siba Nial @ Trilochan, the prosecution primarily relied upon the testimonies of Manoranjan Behera (PW-4) and Krutibash Chhatria (PW-7), who were neighbours residing in the vicinity. They deposed that, during the intervening night of 31.05.2023 and 01.06.2023, they had seen the appellant, Siba Nial @ Trilochan, and the co-accused, Prabhulal, on a motorcycle near the house where the deceased people were staying. While the appellant, Siba Nial @ Trilochan, remained near the motorcycle, Prabhulal had gone up and thereupon, Manoranjan Behera (PW-4) and Krutibash Chhatria (PW-7) heard the sound of two bullets being fired. Later on, the appellant, Siba Nial @ Trilochan, and the co-accused, Prabhulal, drove away on the motorcycle.

What is intriguing and makes the versions of Manoranjan Behera (PW-5) and Krutibash Chhatria (PW-7) doubtful and debatable is their silence from 01.06.2013 till 09.06.2013. This is significant given the fact that the locality must have been shaken on coming to know that Dhaneswar Kata and his wife, Nirupama Kata, had been shot dead. As noticed above, the FIR (Exhibit 1) does not name any culprit or perpetrator. We have already referred to the depositions of Hrushikesh Kata (PW-1) and Dalimba Kata (PW-2), who had deposed on similar lines. Dhananjaya Kata (PW-4), who was sleeping with both the deceased persons on the terrace of the house, has also not named the perpetrators, though he is the person who would have seen the persons committing the crime given the fact that both Manoranjan Behera (PW-5) and Krutibash Chhatria (PW-7) have deposed that there was the sound of gunshots being fired, not once but twice.

The prosecution also relied upon the disclosure statement of the appellant, Siba Nial @ Trilochan, which led to the recovery of the pistol marked as Exhibit M.O.I along with the Magazine marked as Exhibit M.O.II which were seized *vide* seizure memo, Exhibit 4. These recoveries were made on 09.06.2013. The postmortem report, marked as Exhibit 10, and the deposition of Dr. Jitender Kumar Soren (PW-16) as well as the ballistic report (Exhibit 17), however, are ambiguous and do not support the prosecution's version. In fact, the postmortem report (Exhibit 10) and the deposition of Dr. Jitendra Kumar Soren (PW-16) indicate that the external injury on the head could have been due to a rifle firearm bullet that was not fired from close range. However, as per the

depositions of Manoranjan Behera (PW-5) and Krutibash Chhatria (PW-7), the bullets were fired from a close range after Prabhulal had climbed onto the terrace to commit the offence.

The ballistic report (Exhibit 17) records that a country-made semi-automatic pistol, four rounds of cartridges and two magazines were sent for examination on 22.07.2013. As recorded above, the pistol along with cartridges, etc., as per the police version and the testimony of Salya Naik (PW-17), the investigating officer, were recovered on 09.06.2013. Thereafter, another sealed packet was received by the forensic laboratory from the Biology and Serology Division on 13.11.2014. The result of the examination, as per the ballistic report (Exhibit 17), was that the body wall of the cases were found bulged indicating that they were fired from a country-made firearm. However, the percussion caps of both the cartridge cases were missing. Thus, it was not possible to compare the firing pin marks on the cartridge cases found at the spot with the test-fired cartridge cases. With reference to the deformed, jacketed bullets, on examination, the report opined that individual characteristics of striation marks on the two bullets found in the bodies were not sufficient for comparison with the test-fired bullets.

Dhananjaya Kata (PW-4), in his deposition, did refer to motive, as there was statedly a property dispute between the deceased, Dhaneswar Kata, and the co-convict, Prabhulal. However, he also deposed that his brother, Dhaneswar Kata, had gotten married to Nirupama, who was from a different caste, being a Brahmin, and there was opposition to their marriage from both

sides, that is, from the families of Dhaneswar Kata as well as Nirupama Kata.

In view of the aforesaid discussion highlighting the deficiencies and discrepancies in the prosecution's case, the guilt of the appellant, Siba Nial @ Trilochan, does not stand proved and established beyond reasonable doubt. The impugned judgment, confirming the conviction of the appellant, Siba Nial @ Trilochan, is accordingly set aside. The appeal is allowed.

The appellant, Siba Nial @ Trilochan, shall be released from jail forthwith, unless he is required to be detained in connection with any other case.

Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
FEBRUARY 11, 2025.