

FR/NFR

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram & Arunachal Pradesh)

IMPHAL BENCH

Writ Petition (Cril) No.25 of 2009

Smt. Ningthoujam Ongbi Maimu Devi,
aged about 56 years, w/o Ningthoujam
Biramangol Singh, a resident of
Keirenphabi Mayai Leikai, PO & PS
Moirang, Bishnupur District, Manipur.

...Petitioner

Versus

1. The State of Manipur through the
Principal Secretary (Home) to the
Government of Manipur, PO & PS
Imphal, Imphal West District, Manipur.
2. The Director General of Police,
PO & PS Imphal, Imphal West District, Manipur.
3. The Superintendent of Police,
Imphal West District, PO & PS Imphal,
Imphal West District, Manipur.
4. The Superintendent of Police,
Imphal East District, PO & PS
Porompat, Imphal East District, Manipur.

...Respondents

BEFORE

THE HON'BLE MR.JUSTICE T.NK SINGH
THE HON'BLE MR.JUSTICE N.KOTISWAR SINGH

For the Petitioner :: Mr.Kh.Mani, Advocate

For the Respondents:: Mr.R.S.Reisang, Sr.GA

Date of hearing/ :: 07.02.2013
Judgment and order

JUDGMENT AND ORDER
(O R A L)

(T.N.K. Singh, J)

Heard Mr.Kh.Mani, learned counsel for the petitioner and also Mr.R.S.Reisang, learned GA appearing for the respondents.

[2] In this writ petition, the petitioner, who is the mother of late Ningthoujam Binoy @ Khaiba Singh, is seeking for a direction to pay compensation to the petitioner for the illegal and unjustified killing of her son late Ningthoujam Binoy @ Khaiba Singh. This court is flooded with this type of writ petition making claims, under the public law remedy, for compensation for the death of a person (said to have been killed by security personnel).

[3] Short fact, leading to the filling of the present writ petition is recapitulated. On 13.11.2006 at about 4.30 p.m. Ningthoujam Binoy @ Khaiba Singh was released from the Central Jail, Sajiwa and he was received from the Jail gate by his friends and co-villagers. Ningthoujam Binoy @ Khaiba Singh had boarded a Maruti Van along with his friends and co-villagers for going back to his home. Registration number of the said Maruti Van is MN 01A 6619 and is owned and driven by one Shri Ningthoujam Mohendro Singh of Uripok Kabrabam Leikai, Imphal. It is also stated that one Shri Laishram Joykumar Singh, Advocate and counsel of Ningthoujam Binoy @ Khaiba Singh was also present at the Jail gate at the time when he (Ningthoujam Binoy @ Khaiba Singh) was released from the Central Jail, Sajiwa. However, Shri Laishram Joykumar Singh, Advocate did not board the said Maruti Van, instead he had traveled by his own scooter. When the said Van bearing registration MN 01A 6619 reached N.G.Mani College, personnel of the Manipur Police Commando stopped the Maruti Van and dragged out the occupants of the Maruti Van. All the occupants of the Maruti Van were ordered to lie down on the road side except Ningthoujam Binoy @ Khaiba Singh. While the said occupants of the Maruti Van were lying on the roadside as ordered by the personnel of the Manipur Police Commando, Ningthoujam Binoy @ Khaiba Singh was shot down by the personnel of the Manipur Police Commando who stopped the Maruti Van.

[4] For the said incident a false case was filed by one Havildar namely Kh.Inaobi Singh of Manipur Police Commando, Imphal West with the Officer-in-charge, Imphal Police Station that on 13.11.2006 at about 3 p.m. he (Kh.Inaobi Singh), personnel of the Manipur Police Commando received reliable information that some underground elements are moving in a vehicle in Khurai area in order to commit prejudicial activities. On receipt of the said information he and other Police personnel conducted search of the Maruti Van bearing registration number MN 01A 6619 coming from the northern side towards Khurai Lamlong Bazar; and asked the occupants to get down from the Maruti Van for verification. Eight unknown youths got down from the said Maruti Van. While frisking the occupants of the Maruti Van, one of the youths attacked and attempted to snatch the service weapon of a Police personnel namely Constable No.0101031, Th.Herajit Singh. There was a brief fight between the said Police personnel and the unknown youth and during the course of fight some rounds were fired and hit the unknown youth, who is suspected to be an underground member. The unknown youth succumbed to his injuries at the spot; on receiving the report a regular case being FIR No.129 (11) 06 Lamlai P.S. under Section 384, 353, 511 IPC and 20 UA (P).

[5] On 18.11.2008, Smt.Ningthoujam Ongbi Thambalsana Devi, grandmother of the deceased Ningthoujam Bijoy Singh, lodged written report to the O/C Lamlai P.S. stating that her grandson namely Ningthoujam Bijoy @ Khaiba Singh was arrested in the year 2005 and he was detained under the National Security Act, 1980 and subsequently he was released on 13.11.2006 on completion of his period of detention. On his way returning from jail along with friends and co-villagers in a van, a team of Manipur Police Commando personnel stopped the said Van at Khurai Chairenthong at about 4.30 p.m. and the police personnel dragged Ningthoujam Bijoy @ Khaiba Singh from the van and shot him death on the spot. Basing on the said report a criminal case i.e. FIR being No.131 (11) 06 Lamlai P.S. under Section 302/34 IPC and 27 Arms Act was registered. On 14.11.2006 Smt Ningthoujam Yamabi Devi, Secretary, Keirenphabi Chanura Leishem Lup, Keirenphabi Mamang Leikai, had submitted a

memorandum to the Hon'ble Chief Minister, Manipur, demanding justice and punishment of the errant police commando personnel involved in killing of Ningthoujam Binoy @ Khaiba Singh.

It is stated that no tangible action had been taken up by the State respondents for punishing the Police personnel who killed Ningthoujam Binoy, on 13.11.2006. Having no alternative, the petitioner, mother of Ningthoujam Binoy @ Khaiba Singh filed the present writ petition.

[6] The State respondents filed joint affidavit in opposition wherein the State respondents is not denying the incident, i.e. 13.11.2006 in which Ningthoujam Binoy @ Khaiba Singh was killed. But the case of the State respondents is that Ningthoujam Binoy @ Khaiba Singh was shot down when he tried to snatch the service arms from one of the members of the frisking party who asked the occupants of the Maruti Van to come out for verification.

Because of the disputed fact, this Court passed order dated 12.03.2010 directing the District Judge, Manipur East to conduct an inquiry. For easy reference, the said order of this court dated 12.03.2010 is quoted hereunder:

"12.03.2010

Heard Mr.Kh.Mani Singh, the learned counsel appearing for the petitioner as well as Mr.R.S.Reisang, learned Addl.GA appearing for the State respondents.

In this writ petition, it has been pleaded that the petitioner's son, namely Ningthoujam Binoy alias Khaiba Singh, was released from the Central Jail, Sajiwa on 13.11.2006 at about 4.30 PM. From there, the petitioner's son was going in a Maruti Van to his home, on reaching Khurai Chairenthong, near N.G.Mani College (along Imphal-Ukhrul road) he was alleged to have been apprehended by the personnel of the Manipur Police Commando, Imphal West District and thereafter he was killed in a fake encounter. This fact was controverted by the State respondents by filing their affidavit in opposition. In this situation, we are of the considered view that an Inquiry is called for to find out the facts leading to the death of Mr.Ningthoujam Binoy alias Khaiba Singh. The learned counsel appearing for the parties have agreed that the learned District Judge, Manipur East may be directed to conduct an inquiry. Accordingly, the learned District Judge, Manipur East is directed to hold an inquiry to

find out the facts leading to the death of Mr.Ningthoujam Bijoy alias Khaiba Singh on 13.11.2006. It is made clear that the learned District Judge, Manipur East shall allow the respective parties to put up their respective cases and also produce the documents in support of their cases. Further, they should be allowed to produce their witnesses in support of their cases and both the parties should be allowed to cross-examine the witnesses of the opposite parties. The Inquiry shall be completed within a period of 6 (six) months from the date of receipt of the copy of this order, copy of the writ petition and the copy of the counter affidavits from the Registry of the Gauhati High Court, Imphal Bench.

The Registry is to send the copies of the writ petition, affidavit in opposition and the order of this court to the learned District Judge, Manipur East within a period of 2 (two) weeks from today. The parties are also directed to appear before the learned District Judge, Manipur East on 29.03.2010.”

[7] Pursuant to the direction of this court in the said order dated 12.03.2010, learned District and Sessions Judge, Manipur East held an inquiry and submitted report dated 30.04.2012. The learned District & Sessions Judge, Manipur East while conducting inquiry, also framed two issues; (1) What are the facts and circumstances leading to the death of Ningthoujam Binoy alias Khaiba Singh on 13.11.2006? and (2) Whether Ningthoujam Binoy alias Khaiba Singh was killed by the personnel of Manipur Police Commando on 13.11.2006 at 4.30 p.m. at Khurai Chairenthong? In support of the case petitioner also examined as many as four PWs namely, (1) Salam Kameshwar Singh, PW-1, (2) Smt Ningthoujam Ongbi Maimu Devi, PW-2, (3) Salam Rajen Singh, PW-3 and (4) Dr.Khangembam Pradipkumar Singh, PW-4 and also produced documentary evidence, viz (1) Copy of the FIR Case No.129(11) Lamlai P.S. u/s 384/353/511 IPC and 20 UA(P) Act, (2) Copy of the complaint dated 18th November, 2006 lodged by one Ningthoujam Thambalsana Devi of Keirenphabi Mamang Leikai with the Lamlai P.S in connection with the killing of Ningthoujam Binoy alias Khaiba, (3) Copy of the Memorandum dated 14.11.2006 submitted by Ningthoujam Yaimabi Devi of Keiranphabi Chanura Leishem Lup to the Hon’ble Chief Minister of Manipur in c/w the killing of Ningthoujam Binoy alias

Khaiba and (4) Copy of the Post Mortem report dated 16.11.2006 conducted on the dead body of Ningthoujam Binoy alias Khaiba.

From the side of the respondents, i.e. the State respondents produced only two witnesses, i.e. (1) A.S.I., Kh.Inaobi Singh, RW.1 and (2) Head Constable Th.Herojit Singh, RW-2.

[8] The learned District & Sessions Judge, Manipur East, after careful appreciation of the oral as well as documentary evidences decided the two issues in favour of the petitioner. In other words, the learned District & Sessions Judge, Manipur East made clear finding that Ningthoujam Binoy @ Khaiba Singh was killed by constable Th.Herojit Singh (RW-2) a personnel of the Manipur Police Commando on 13.11.2006 at about 4.30 p.m. at Khurai Chairenthong after he was dragged out from the Maruti Van bearing registration No.MN 01A-6619 while he was returning home after releasing from the Central Jail, where he was detained under the NSA along with some of his friends and relatives.

[9] We are not sitting as an appellate authority on the said finding or/report of the learned District & Sessions Judge, Manipur East. However, this court had given opportunities to the parties to submit their comment or objection to the report submitted by the learned District & Sessions Judge, in the form of affidavit. The petitioner in whose favour the said two issues had been decided by the learned District & Sessions Judge, Manipur East in its report dated 30.04.2012 had not filed any objection in the form of affidavit. However, the State respondents have filed affidavit in opposition or/objection to the said report submitted by the learned District & Sessions Judge, Manipur East. On perusal of the affidavit in opposition or/objection filed by the State respondents to the said report of the District & Sessions Judge, Manipur, it is clear that there is no plausible reason for interfering with the report submitted by the learned District & Sessions Judge, Manipur East. What are stated in the affidavit in opposition or/objection filed by the State respondents to the said inquiry report submitted by the District & Sessions Judge are only some aspersions to the Presiding Officer, i.e. District Judge, Manipur East.

[10] As stated above, it is the admitted fact of both the parties that there was an incident on 13.11.2006 in which Ningthoujam Binoy @ Khaiba Singh was shot down, the only dispute is that who is the author of the crime. Justification from the side of the State respondents is that Ningthoujam Binoy @ Khaiba Singh was killed when he tried to snatch the service weapon or arms from one of the members of the frisking party. In the course of inquiry the State respondents examined only two witnesses, i.e. RW-1, ASI, Kh.Inaobi Singh and RW-2, Head Constable Th.Herojit Singh. From the depositions made by the said RW.1 and RW.2 it is clear that Kh.Inaobi Singh was one of the members of the frisking party and RW.2, Th.Herojit Singh is the one who shot down Ningthoujam Binoy @ Khaiba Singh. In the deposition of RW.1, before the learned District & Sessions Judge, Manipur East, it is clearly stated that he had no knowledge about the incident. In other words, statement of RW.2 that there was a fight between Ningthoujam Binoy @ Khaiba Singh and himself when Ningthoujam Binoy @ Khaiba Singh tried to snatch his service arm was not corroborated by the statement of RW.1. Therefore, from the side of the State respondents, there is only solitary statement of Th.Herojit Singh, RW.2 that Ningthoujam Binoy @ Khaiba Singh was killed when he tried to snatch the service weapon from Th.Herojit Singh.

[11] As stated above, petitioner had produced as many as four witnesses. The said four witnesses supported the case of the petitioner that Ningthoujam Binoy @ Khaiba Singh was shot down by police personnel who are members of the frisking party on 13.11.2006. The relevant portion of the justification and finding of the learned District & Sessions Judge, Manipur East, in his report dated 30.04.2012 read as follows:

“ PW.No.1 in his examination-in-chief, has stated that on 13.11.2006 at about 3.30/4 p.m. he was called by Shri Laishram Joy Singh, Advocate for receiving Shri Ningthoujam Binoy alias Khaiba Singh from the Central Jail, Sajiwa and as such, he along with one Tongbram Shyam Singh s/o T.Yaima Singh of Thanga Tongbram Leikai, (2) Salam Rajen Singh, son of S.Ibopishak Singh of Khordak Ichin and (3) Oinam Nilachandra Singh, s/o O.Mutumba Singh of Keirenphabi Village went to the Central Jail, Sajiwa by a Maruti Van bearing No.MN

01A-6619 owned by one Shri Ningthoujam Mohendro Singh of Uripok Kabrabam Leikai and driven by the said N.Mohendro Singh and they received the said Bonoy alias Khaiba from the Central Jail, Sajiwa and left the said jail in that Maruti van carrying the said Binoy alias Khaiba and while their van was moving along the said road some police personnel/commandos intercepted near Khurai Chairenthong and they got down from the Maruti van as told by the said police commandos and while doing so, the said Binoy alias Khaiba was dragged out of the said Maruti van by the police commandos and taken away a few yards from the place and thereafter, the police commandos told them to lie down on the road side except the said Binoy alias Khaiba and while they were lying down on the road side, the police commandos told the said Binoy alias Khaiba "Run, Run" and then the police commandos shot dead N.Binoy alias Khaiba and the police commandos also arrested all the occupants of the said Maruti Van and falsely implicated in FIR Case No.129(11)06 LLI P.S u/s 384/353/511 IPC & 20 UA(P) A Act. PW.1 also states that the said Binoy alias Khaiba Singh never attacked to any police commando and attempted to overpower for snatching away any weapon from them. PW.No.1 is a person who accompanied the deceased in a Maruti Van while the incident was happened. In other words, PW No.1 is an eye witness in the said incident. PW.3, Shri Salam Rajen Singh is also one of the persons accompanied with the deceased in the said Maruti Van while the incident was happened and he corroborated the statements of PW No.1. PW.2 is the mother of the deceased and she also corroborated the statements of PW No.1 and 3. PW No.4 is a Doctor who conducted post mortem to the deceased and he stated that the death was due to laceration of brain and lung resulting from fire arm injuries to the head and chest which is Homicidal in nature and all the injuries were fired upon from a distant range and weapon could be low velocity rifle fire arm like pistol or revolver and this distant range means above 2 ft. from the target. PWs are well cross examined by the Id. Counsel of the respondents but the statements of the PWs could not be shaken off in the cross examination.

13. The counter pleas of the respondents, on the other hand, is that on 13th November, 2006, at about 3:00 p.m., one Head Constable, Kh.Inaobi Singh, received a credible information from his source that some underground elements are moving around in a vehicle in Khurai area in order to commit prejudicial activities. As soon as the information is received, their team led by Head Constable, Kh.Inaobi Singh rushed towards Khurai area and conducted frisking and checking at the turning point near NG Mani College, Khurai Chairenthong. At about 4:10 pm., one Maruti

Van bearing No.MN -1A-6619 was seen coming from the northern side towards Khurai Lamlong Bazar. Their team stopped the said Maruti Van and asked the occupants to get down for verification and 8 (eight) unknown youths got down from the Maruti Van. While conducting one to one bodily search and verification, suddenly one of the youths attached and attempted to overpower for snatching the service weapon of constable Th.Herojit Singh and in the course of struggle, some rounds were fired and hit the unknown youth, who is suspected to be U.G member and the unknown youth succumbed to his injuries at the spot.

Thus, the burden to prove those facts lies to the respondents. Now, let us examine whether the respondents are able to prove or establish the said facts or not.

14. RW No.1 is the informant of FIR Case No.29(11) 2006, but RW No.1 in his examination-in-chief has only deposed that two more persons, namely, (1) Thokchom Inaothoi and (2) Konthoujam Sunil Singh alias Moiranglakpa were also with N.Binoy alias Khaiba Singh and they were also arrested from the said place of incident. He did not mention about getting the alleged credible information from his source that some underground elements are moving around in a vehicle in Khurai area in order to commit prejudicial activities in his statement.

But, in the cross examination, RW No1 has deposed that he was standing at the eastern side of the main road by the time their frisking party stopped the said Maruti Van on 13.11.2006 and at the relevant time Constable Th.Lungdim and constable Th.Herojit remained standing 50 meters away from his position to the northern side. RW No.1, has also avers that he has no knowledge about the incident of shooting down of N.Binoy @ Khaiba by some Police commandos on that relevant day as he remained about 50 meters away from the position of Constable Th.Lungdim and constable, Th.Herojit, but he heard the sound of shooting of the gun and he made the report of the said incident to the O.C.Lamlai P.S. after having consulted with constable Th.Herojit Singh and his other Senior Officers.

RW No.2 in his examination-in-chief has deposed on 13th November, 2006, at about 3:00 p.m., their commander, Kh.Inaobi Singh received a credible information from his source that some underground elements are moving around in a vehicle in Khurai area in order to commit prejudicial activities. As soon as the information is received, their team led by Head Constable, Kh.Inaobi Singh rushed towards Khurai area and conducted frisking and checking at the turning point near NG Mani College, Khurai Chairenthong. At

about 4:10 p.m. one Maruti Van bearing No.MN 1A-6619 was seen coming from the southern side towards Khurai Lamlong Bazar. Their team stopped the said Maruti Van and asked the occupants to get down for verification and 8 (eight) unknown youths got down from the Maruti Van. While conducting one to one bodily search and verification, suddenly one of the youths attacked and attempted to overpower for snatching his service weapon and in the course of struggle, some rounds were fired and hit the unknown youth, who is suspected to be U.G. member and the unknown youth succumbed to his injuries at the spot. After the end of the struggle, they arrested the remaining 7(seven) youths. Later on the deceased was identified as S/S Sgt.Ningthoujam Binoy Singh @ Kennedy @ Khaiba, son of N.Biramangol Singh of Kumbi Terakhong at present Keirenphabi Mayai Leikai, a hardcore member of the banned PREPAK organization.

RW No.2 in his cross-examination has deposed that on the day i.e. 13th November, 2006 at the relevant hour only 6 Commandos personnel including himself were on duty near Khurai Chairenthong and the 6 personnel are Kh.Inaobi, Team Commander of the day, one Lungdim who is no more, one Chingkhei and two other persons and himself. He also avers that by the time he and the said Lungdim stopped the Maruti Van bearing No.MN 1A 6619 along the Imphal-Ukhrul Road towards the southern side, he and the said Lungdim were standing at the eastern side of the road and the said Maruti Van was coming along the road by the eastern side. RW No.2 has further deposed that at the relevant time he fired 5/6 rounds to the said Binoy @ Khaiba Singh.

On having a careful examination of the statements of PWs., it is evident that PWs 1, 2 and 3 are well corroborated to their assertions that on 13.11.2006 late N.Binoy @ Khaiba was released from the Central Jail, Sajiwa and he was received by his friends and relatives in a Maruti Van bearing No.MN 01 A-6619 and when then were coming on Ukhrul-Imphal Road they were stopped by some Manipur Police Commandos at Khurai Chairenthong and the deceased N.Binoy @ Khaiba was dragged out from the vehicle and the other were asked for laying down and then the said N.Binoy @ Khaiba was killed by shooting by the Manipur Police Commando. Further, PW No.4, who was the Doctor who conducted Post Mortem to the deceased N.Binoy @ Khaiba also supported the factum of the cause of death by deposing that the death was due to laceration of brain and lung resulting from fire arm injuries to the head and chest and weapon could be low velocity fire arm like pistol or revolver.

The respondent also admitted the fact that on 13.11.2006 the deceased N.Binoy @ Khaiba was

coming along with some others in a Maruti Van bearing Registration No.MN 01A-6619 and the said vehicle was stopped at Khurai Chairenthong by Manipur Police Commando led by RW No.1. According to FIR Case No.29(11)2006 which was lodged by RW No.1, and as per the statement of RW No.2, it is also an admitted that PWs No.1 and 2 were in the said Maruti Van along with deceased N.Binoy @ Khaiba and so, it is no doubt that the said incident. The said FIR Case No.29(11)2006 was lodged by RW No.1 alleging that N.Binoy @ Khaiba attacked and attempted to overpower for snatching service weapon of constable Herojit Singh and in the course of struggle, some rounds were fired and hit the unknown youth, who is suspected to be U.G. member and the unknown youth succumbed to his injuries at the spot. However, in the cross-examination he stated that he has no knowledge about the incident of shooting down of N.Binoy @ Khaiba by some Police commandos on that relevant day as he remained about 50 meters away from the position of Constable Th.Lungdim and constable, Th.Herojit, but he heard the sound of shooting of the gun. He further stated that he made the report of the said incident to the O.C. Lamlai P.S. after having consulted with Constable Th.Herojit Singh and his other senior officers. Thus, it is crystal clear from the statement of RW No.1 that he lodged the said written report of FIR Case No.29(11)2006 with Officer-in-Charge of Lamlai Police Station without any knowledge of the real fact of the incident and on the instruction of his senior officer in order to cover up the real fact of the incident. Moreover, RW No.2 has stated that there were 6 personnel on that day led by RW No.1 but no other personnel was examined in support of their case. Ld. Counsel of the respondent vehemently contended that even the PWs No.1 and 2 cannot say that who shoot the deceased and as such, the cause of death of N.Binoy @ Khaiba may not be from the shooting of the Manipur Police Commando. However, R.W.No.2 in his cross-examination clearly deposed that he fired 5/6 rounds to the said Binoy @ Khaiba. Thus, it is evident that the cause of death of N.Binoy @ Khaiba was due to fired by constable, Th.Herojit Singh, RW No.2 from his service weapon. The only defense made by the respondents is that while the Manipur Police Commando on checking the occupants of the said Maruti Van the said N.Binoy @ Khaiba attacked and attempted to overpower for snatching service weapon of constable Th.Herojit Singh and in the course of struggle, some rounds were fired and hit the deceased, who is suspected to be U.G. member and succumbed to his injuries at the spot. There is also no evidence to prove that the allegation that the deceased N.Binoy @ Khaiba was a hardcore member of the banned PREPAK organization. Over and above, there is no supporting

evidence to prove the assertions of the respondents that the said N.Binoy @ Khaiba was killed during the struggle between the deceased and constable, Th.Herojit Singh, RW No.2 when the deceased attempted or attacked to snatch the service weapon of the said constable, Th.Herojit Singh and even the informant who lodged an FIR being FIR Case No.29(11) 2006 Lamlai P.S by alleging those facts did not corroborate those assertions by deposing flatly in his cross-examination that he has no knowledge about the incident of shooting down of N.Binoy @ Khaiba by some Police commandos on that relevant day as he remained about 50 meters away from the position of Constable Th.Lungdim and Constable, Th.Herojit.

In the light of the discussion of the above evidences of both the parties, I am of the considered view that the petitioner has proved/established the fact that her son Ningthoujam Binoy alias Khaiba Singh was killed by Constable Th.Herojit Singh, a personnel of Manipur Police Commando on 13.11.2006 at 4.30 p.m. at Khurai Chairenthong, after he was dragged out of the Maruti Van bearing Registration No.MN 01A 6619 while he was returning home after releasing from the Central Jail, Sajiwa where he was detained under NSA, along with some of his friends and relatives.”

[12] As stated above, we are not sitting as appellate authority of the inquiry report. However we have given our anxious considerations to see if the said finding of the District Judge, Manipur East in the report dated 30.04.2012 is perverse; in other words, if the said finding of the District & Sessions Judge, Manipur East are based on no evidence. On such considerations we are of considered view that the findings of the learned District & Sessions Judge, Manipur East, in his report dated 30.04.2012 was based on evidence. Therefore, we have come to the finding that Ningthoujam Binoy @ Khaiba Singh was shot down by the Manipur Police personnel in the incident on 13.11.2006.

[13] Now the question is what will be the amount of compensation to be awarded in the present case. Mr.Kh.Mani, learned counsel for the petitioner by placing heavy reliance on the decisions of the Apex Court in **Rubabbuddin sheikh Vs State of Gujarat & Ors: (2009) 17 SCC 653** submitted that proper amount of compensation to be awarded in this case would be Rs.10 lakhs. The Apex Court awarded the said compensation in the case of a fake

encounter. Para 1, 2 and 3 of the SCC in **Rubabbuddin sheikh** (supra) read as follows:

"1. When the aforesaid matters came up for orders, a prayer was made by the heirs and legal representatives of the deceased, Sohrabuddin, namely, Zebunissa, the mother of the deceased and brothers, namely, (1) Rubabbuddin (2) Shahbuddin (3) Shahnawazuddin (4) Nayabuddin for grant of interim ex gratia payment. After hearing the learned Senior Counsel for the parties, we thought it fit and proper to award some ex gratia payment to the heirs and legal representatives of the deceased Sohrabuddin purely as an interim measure.

2. Mr.Mukul Rohatgi, learned Senior Counsel appearing on behalf of the State of Gujarat, had taken some time to take instructions in the matter of payment of ex gratia to the aforesaid heirs and legal representatives, for which, we adjourned the matters for today. When the matters were taken up, Mr.Rohtagi submitted that they are agreeable on an interim measure for payment of ex gratia of Rs.10 lakhs to the heirs and legal representatives of the deceased, to which Mr.Dave, learned Senior Counsel for the heirs and legal representatives of the deceased, has no objection.

3. That being the position, we direct the State of Gujarat to deposit a sum of Rs.10 lakhs with the Secretary General of this Court within two weeks from this date. After the amount is deposited, the Secretary General shall proportionately disburse the amount of Rs.10 lakhs to the heirs and legal representatives of the deceased on being satisfied about their respective identities."

[14] This Court in **K.L.Thariktha Vs State of Manipur & Ors: 2012 (2) GLT 977**, after taking into consideration of the age of the person killed in the incident had awarded a sum of Rs.5 lakhs as compensation. On careful perusal of the case of **K.L.Thariktha's** case (supra) it is clear that the person who was killed in that case was 29 years at the time of the incident. Para 3, 4, 5 and 6 of the GLT in **K.L.Thariktha's** case (supra) read as follows:

"3. Petitioner's husband late Sankhil Khunting @ Koko @ George was a contractor while he was alive. In the morning at 7.30 AM of 30.9.2003 the petitioner's husband went to Singjamei side for engaging some labourers for his contract work and on his return journey to home, he was stopped by a tem of Manipur

Police Commando personnel near Singjamei Bazar and immediately taken to Singjamei Police Station. There was also hot exchange of words between the petitioner's husband and the police party.

4. On the next day, i.e. 01.10.2003 while the petitioner was eagerly waiting for his safe release from the police custody, she had been informed that her late husband's bullet ridden dead body was lying in a pool of blood on the table of RIMS Morgue for post mortem. Immediately the petitioner rushed to the RIMS Morgue and found the lifeless body of her husband guarded by police personnel who informed the petitioner that her husband was killed in an ambush laid by underground elements while he was in the custody of police personnel.

5. In order to cover up the brutal killing of petitioner's late husband while he was in the custody of the police personnel, a false criminal case being FIR No.240 (9) 2003 under Sections 307/34 IPC and 25 (1-B) Arms Act was registered against the petitioner's husband. In the enjahir of the FIR, it is stated that petitioner's late husband was interrogated at 1.30 AM of 30.9.2003 soon after he was arrested by the police personnel and petitioner's late husband disclosed that some sophisticated arms like AK 47 Rifle with magazine and one Carbine with huge ammunition were kept concealed somewhere at Langol Games Village. On receiving such information, the petitioner's late husband was made to lead the team of police personnel led by N.Lokhon Singh, Inspector O/C CDO of Imphal West and proceeded towards Langol Games Village for recovering arms and ammunitions which were kept concealed at the langol Games Village. But the petitioner's late husband could not identify the exact house at the Langol Games Village where the arms and ammunitions were kept concealed. Then the petitioner's late husband again led the police party to the Langthabal Chingthak Kabui Village saying that the arms and ammunition were kept concealed in the hilly area. On reaching the Langthabal Chingthak Kabui village police vehicles were parked at a distance of about one furlong from the place where the arms and ammunition were kept concealed and proceeded on foot for recovery of the arms and ammunition at the instance of the petitioner's late husband. While proceeding, an ambush was laid on the police party from the top of the hill by the underground elements at 1.30 p.m. The police personnel also retaliated by firing and an encounter took place between the police party and the extremist for about 5 minutes. In the said encounter the petitioner's husband had suffered injury and succumbed to the bullet injuries at the spot.

Thereafter, the dead body was evacuated to the RIMS morgue.

6. In the writ petition, it is stated that the said facts mentioned in the O.E of the said FIR are false. It is also further stated that the police party should not have taken the petitioner's husband while in their custody to a unsafe place and the police party had to protect the life of the petitioner's late husband while he was in their custody. The custodial death of the petitioner's husband was because of failure on the part of the duties of the police personnel to protect the life of the petitioner's husband while he was in their custody."

In the present case, late Ningthoujam Binoy @ Khaiba Singh was aged about 26 years when he was killed on 13.11.2006.

[15] After taking into consideration of the earlier decision of the Apex Court in **Rubabbuddin sheikh** (supra) and also the case of **K.L.Thariktha's** case (supra), we are of the view that the amount of compensation under the public law remedy for the death of Ningthoujam Binoy @ Khaiba Singh would be Rs.5 lakhs. Respondents are jointly or severally liable to pay the compensation. However, it is made clear that this amount of compensation is in addition to the other remedies in civil and criminal proceedings against the police personnel.

[16] We also make it clear that the said amount of Rs.5 lakhs compensation should be paid by the respondents within 3 (three) months from the date of receipt of certified copy of this order. State respondents shall also pay a sum of Rs.5000/- (Rupees five thousand) as fee for the conducting counsel for the petitioner.

With the above observation and direction the writ petition is allowed.

JUDGE

JUDGE