

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1162 of 2024**

Arising Out of PS. Case No.-331 Year-2008 Thana- KHAJAULI District- Madhubani

Pappu Kumar Rai @ Pappu Rai @ Pappu Ray, Son of Bauku Rai @ Bauku Ray, R/O Vill.- Dhatta Tole, Maharajpur, P.S.- Khajauli, Dist.- Madhubani.
... .. Appellant

Versus

1. The State of Bihar
 2. Subodh Kumar Shrivastava @ Subodh Shrivastava, Son of Surendra Kumar Shrivastava, R/O Vill.- Maharajpur, Dhatta Tole, P.S.- Khajauli, Dist.- Madhubani.
 3. Raman Kumar Shrivastava, Son of Surendra Kumar Shrivastava, R/O Vill.- Maharajpur, Dhatta Tole, P.S.- Khajauli, Dist.- Madhubani.
 4. Bhawan Kumar Shrivastava, Son of Surendra Kumar Shrivastava, R/O Vill.- Maharajpur, Dhatta Tole, P.S.- Khajauli, Dist.- Madhubani.
- Respondents

Appearance :

For the Appellant	:	Mr. Murari Narain Chaudhary, Advocate Mr. Vijay Kumar, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP
For the Resp Nos. 2 to 4	:	Mr. Ugranath Mallik, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 15-04-2026

Heard learned counsel for the appellant, learned counsel
for the Respondent Nos. 2 to 4 and learned Additional Public
Prosecutor for the State.

2. The present appeal arises out of judgment of acquittal dated 27.02.2024 (hereinafter referred to as the ‘impugned judgment’) passed by learned 5th Additional Sessions Judge, Madhubani (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 49 of 2012 (CIS No. 2657 of 2013) arising out of



Khajauli P.S. Case No. 331 of 2008 whereby and whereunder Respondent Nos. 2, 3 and 4 were acquitted of the charges levelled against them under Sections 447, 427, 379 and 302 of the Indian Penal Code (in short 'IPC')

Prosecution Case

3. The prosecution case is based on the *fardbeyan* of Somni Devi (since deceased) recorded on 05.11.2008 at 19:45 Hours at Khajauli PHC by Umesh Singh, ASI of Khajauli Police Station. She alleged that on 05.11.2008 at 07:00 AM, when she was at her home, (1) Subodh Kumar Shrivastava came at her house and told her to vacate the house because Subodh Shrivastava had purchased the house. She told him that there was no one at home, how she can vacate the house. In the meantime, (2) Raman Shrivastava and (3) Bhawan Shrivastava also came there. All of them started to uproot the *tat*. She again told the accused persons that when her son, namely, Pappu Rai come, she will vacate the house but all of them broke the *tat* of the house and took away rice, wheat, moong etc. She further alleged that Subodh Shrivastava caught hold of her hair and tried to assault her. She tried to run but in the paddy field adjacent to her house, Subodh Shrivastava dragged her down as a result of which her left hand and both the legs became senseless. The quarrel took place due to vacating of the house. She stated that Sunaina Devi, Pappu Rai and other villagers were witnesses to the incident.



4. Later on, one another *fardbeyan* of Pappu Kumar Rai, son of Somni Devi (since deceased) was recorded by ASI, Jagdish Oraon, Benta OP, Dharbhanga on 09.11.2008 at 10:00 Hours at DMCH in the Unit of Dr. Nand Kumar Unit. This was recorded after the death of Somni Devi and he stated that on 05.11.2008 at 05:00 AM, he had gone to Kamlakaat Ghat on the occasion of Chhath Puja and after the Puja when he returned home then on the disputed land, (1) Subodh Kumar Shrivastava, (2) Raman Kumar Shrivastava and (3) Bhawan Kumar Shrivastava were assaulting his mother and wife. When he went to rescue them, they tried to assault him whereafter he fled towards village and hid himself. After some time, when he came back, he saw that his mother was lying senseless in the cattle house and was in pain. On asking, her mother told him that (1) Subodh Kumar Shrivastava, (2) Raman Kumar Shrivastava and (3) Bhawan Kumar Shrivastava had abused her, broke the *tat* of the house and had come to set fire to which she protested, then they assaulted her causing grievous injuries and her daughter-in-law as well. He took her mother to Khajauli Hospital for treatment and in Khajauli Hospital, she had given her *fardbeyan* to the police. After the treatment the doctor referred her to DMCH for proper treatment and during the course of treatment at DMCH, his mother died.

5. On the basis of the *fardbeyan* of the informant Somni Devi, Khajauli P.S. Case No. 331 of 2008 dated 05.11.2008 was



registered against Respondent Nos. 2, 3 and 4 under Sections 447, 341, 323, 427, 379, 354/34 IPC, later on after the death of Somni Devi, Section 302 was also added.

6. After investigation, police submitted chargesheet bearing Chargesheet No. 34 of 2010 dated 18.09.2010 against Subodh Kumar Shrivastava under Section 302 IPC keeping investigation pending against Raman Shrivastava and Bhawan Shrivastava. Later on, a supplementary chargesheet bearing Chargesheet No. 27 of 2011 dated 10.06.2011 was submitted against Raman Shrivastava and Bhawan Shrivastava under Section 302/34 IPC.

7. On the basis of these chargesheets, learned Chief Judicial Magistrate, Madhubani vide order dated 03.12.2010 took cognizance for the offences punishable under Section 302 IPC and committed the records to the court of Sessions.

8. Charges were explained to Respondent Nos. 2, 3 and 4 to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 06.12.2012 charges were framed under Sections 447, 427, 379 and 302/34 IPC against Respondent Nos. 2, 3 and 4.

9. In course of trial, the prosecution examined as many as five witnesses and got exhibited various documentary evidence. The description of the prosecution witnesses and the list of documents



exhibited on behalf of prosecution are provided hereunder for ready reference in a tabular form:-

List of Prosecution Witnesses

Prosecution Witness No.	Name of Witness	Description
1	Sunaina	Daughter-in-law of deceased
2	Reshma Devi	Mother-in-law of deceased
3	Bablu Rai	Son of deceased
4	Bauku Rai	Husband of deceased
5	Pappu Rai	Son of deceased

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
1	Signature of Pappu Rai on <i>fardbeyan</i> recorded at PHC Khajauli	PW-5
1/a	Signature of Pappu Rai on <i>fardbeyan</i> recorded at DMCH, Darbhanga.	PW-5
1/b	Signature of Pappu Rai on the Inquest Report	PW-5

10. Thereafter, the statements of Respondent Nos. 2, 3 and 4 were recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’). The Respondent Nos. 2, 3 and 4 in their 313 CrPC statement denied the allegations and pleaded innocence.

Findings of the Learned Trial Court

11. Learned trial court after analysing the evidences available on the record found that there are many contradictions in the evidences. Learned trial court found that no independent witness



has been examined by the prosecution though it has come in evidence that there were many villagers at the place of occurrence. Learned trial court found that PW-4 stated that his wife told him about the occurrence and PW-5 fled away from the place of occurrence, hence, neither PW-4 nor PW-5 are eye witnesses.

12. Learned trial court further found that the *fardbeyan* of Sunaina Devi cannot be said to be a dying declaration. Learned trial court found that there is no certificate from the Doctor that the victim was in a fit condition to give statement as also the ASI Khajauli Police Station who recorded her *fardbeyan* or even the doctor who was treating her have not be examined.

13. Learned trial court found that the Investigating Officer has not been examined and his non-examination has proved fatal to the prosecution. Learned trial court observed that *fardbeyan* cannot be the sole basis for conviction.

14. Learned trial court further found that the Doctor who conducted post-mortem has not been examined and the post-mortem report has not been proved, hence, the prosecution failed to establish the cause of death of the deceased.

15. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has failed to prove the charges levelled against Respondent Nos. 2, 3 and 4 beyond all reasonable doubts, hence, Respondent Nos. 2, 3 and 4



have been acquitted of the charges under Sections 447, 427, 379 and 302 IPC.

Submissions on behalf of the Appellant

16. Learned counsel for the informant-appellant has assailed the impugned judgment of acquittal on the ground that the learned trial court has completely overlooked the materials available on the record. The trial court has not taken into consideration that the deceased had expired after recording her statement and such statement was recorded when she was fully conscious and was capable of giving her statement.

17. Learned counsel submits that the learned trial court has also failed to appreciate that Sunaina Devi (PW-1) was an eyewitness to the alleged occurrence, who in her deposition fully narrated the manner of incident. It is submitted that the learned trial court has wrongly disbelieved the deposition of Reshma Devi (PW-2) who happens to be the mother-in-law of the deceased and had witnessed the whole incident with her naked eyes.

18. Learned counsel submits that the learned trial court has overlooked the fact that the second informant of this case, namely, Pappu Rai (PW-5) was although not an eyewitness to the alleged occurrence but he was narrated the whole incident by his deceased mother and has reproduced the same.



19. Learned counsel further submits that the learned trial court could not appreciate that it was for the prosecution to make appear all the witnesses who could have deposed the truth and for this purpose, the learned trial court could have taken efforts.

Submissions on behalf of the Respondents

20. On the other hand, learned Additional Public Prosecutor for the State as well as learned counsel for the Respondent Nos. 2 to 4 would submit that the learned trial court has duly appreciated the evidences available on the record. The prosecution examined five witnesses who are all closely related to the deceased. The learned trial court has found that the charge against the accused persons are in furtherance of common intention, the accused persons committed murder of Somni Devi, voluntarily restrained her and also attacked her with an intention to commit murder. The learned trial court has recorded that the court made repeated attempts for the examination of the Doctor to procure his presence before the court for evidence but the Doctor did not turn up for evidence. The postmortem report has not been brought into evidence by the prosecution. There is no eyewitness in this case and the cause of death cannot be ascertained.

21. Learned counsel further submits that the learned trial court has duly considered as to whether the *fardbeyan* may be treated as dying declaration. It has been held that in this case, the



informant was admitted at P.H.C., Khajauli and her *fardbeyan* was recorded on the same day at 19:45 Hours. Later, it has come in evidence that she was referred to DMCH, Darbhanga and died during course of treatment. Thus, during this period, she was admitted in the hospital but there was no certificate from the Doctor that the victim was in a fit condition to make statement. The I.O. of the case has also not been examined by the prosecution. The ASI who had recorded the *fardbeyan* has not been examined and this would prove fatal to the prosecution. Learned counsel, therefore, submits that the judgment of acquittal is based on cogent reasons deduced from the evidences available on the record, hence, no perversity may be found in the impugned judgment.

Consideration

22. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the Respondent Nos. 2 to 4 as also on perusal of the records, this Court finds that as per the prosecution case, the informant Somni Devi recorded her statement on 05.11.2008 at 19:45 Hours at Khajauli PHC by Umesh Singh, ASI of Khajauli P.S. in which she alleged that on 05.11.2008 at 07:00 AM she was at her home. Subodh Kumar Shrivastava came at her house and told her to vacate the house because Subodh had purchased the house. She told him that there was no one at home and then Raman Shrivastava and



Bhawan Shrivastava also came there. All of them started uprooting the *taat* of the house. She told them that her son Pappu Rai will come and then she will vacate the house but all of them broke the *taat* of the house and took her rice, wheat, moong etc. Subodh Shrivastava caught hold of her hair and tried to assault her. She tried to run but in the paddy field adjacent to her house he dragged her down as such her left hand and both the legs became senseless. It is alleged that the quarrel took place due to the dispute over the house. The informant claimed that Sunaina Devi and others were witnesses to the incident.

23. This Court further finds that later on, *fardbeyan* of Pappu Kumar Rai, who is the son of the deceased, was recorded by ASI Jagdish Oraon, Benta O.P., Darbhanga on 09.11.2008 at 10:00 Hours at DMCH in the unit of Dr. Nand Kumar. This statement was recorded after death of Somni Devi. In his statement, Pappu Kumar Rai alleged that on 05.11.2008 at 05:00 AM he had gone to Kamlakat Ghat on the occasion of Chhath Puja and after Puja when he returned home then on the disputed land Subodh Kumar Shrivastava, Raman Kumar Shrivastava, Bhawan Kumar Shrivastava and his villagers were assaulting his mother and wife and when he went for the rescue, then they tried to assault him. He fled towards village and hid himself. After some time, when he came back, he saw that his mother was lying senseless in the cattle



house and was in pain. She told that Subodh Kumar Shrivastava, Raman Kumar Shrivastava and Bhawan Kumar Shrivastava had abused him and broken the *taat* of the house and had given order to lit fire. When she had made protest then they assaulted her and also to her daughter-in-law. He took her to Khajauli Hospital for the treatment and in Khajauli, she had given her *fardbeyan* to the police. After treatment by the Doctor, she was referred to DMCH for proper treatment and during the course of treatment at DMCH, his mother died.

24. It appears on perusal of the records that in this case, the prosecution has examined Sunania Devi (PW-1), Reshma Devi (PW-2), Bablu Rai (PW-3), Bauku Rai (PW-4) and Pappu Rai (PW-5). PW-1 is the daughter-in-law of the deceased. She has claimed that on the date of occurrence, she was with her mother-in-law sitting at the door of the house. Subodh Kumar Shrivastava, Raman Kumar Shrivastava, Bhawan Kumar Shrivastava came and they twisted the neck (*kanth*) of Somni Devi and threw her in the paddy field. In her cross-examination, she has stated that both the parties had land dispute and litigation was going on. She was not aware whether her father-in-law Bauku Rai had sold the land to the accused persons or not. In paragraph '8' of her deposition, she has stated that when the accused persons came, except her nobody else was there near her mother-in-law. She has specifically stated that her husband and



father-in-law had not come. In paragraph '9', she has stated that after 5-7 days of the occurrence, her husband came and after 10 days of the occurrence, her father-in-law came. In paragraph '10' of her deposition, PW-1 has stated that her mother-in-law had become unconscious during the occurrence and she died in the unconscious condition. Her treatment had taken place at Darbhanga and nowhere else. This witness has stated that the occurrence took place in the cattle shed. The case was lodged three days after the death and it was lodged by her father-in-law Bauku Rai. Police had come to her house three days after the death of her mother-in-law.

25. Reshma Devi (PW-2) is the mother-in-law of the deceased. She has stated that her daughter-in-law Somni Devi returned from Chhath Ghat then Subodh Kumar Shrivastava, Raman Kumar Shrivastava and Bhawan Kumar Shrivastava asked Somni Devi to vacate the house. She did not vacate the house, therefore, Subodh Kumar Shrivastava, Raman Kumar Shrivastava and Bhawan Kumar Shrivastava started uprooting the house and they pressed the neck of her daughter-in-law and hanged her. She was taken to Khajauli but Doctor did not admit her and then she was taken to Darbhanga where during treatment she died after three days. In her cross-examination, this witness has stated that she can see only up to 2-3 hands distance and she cannot see more than that. In her cross-examination, she had stated that Somni had returned from Ghat at



07-08:00 AM. She claimed that Ganga Prasad Rai and many other people had come at the place of occurrence and they had seen the occurrence.

26. Bablu Rai (PW-3) is the son of the deceased. He has stated that at the time of occurrence, he had gone to *bandh* to see his field. His *bhabhi* and mother were present in the *baithka*. This witness has specifically stated in paragraph '4' of his deposition that his father was not present there at the time of occurrence and he returned on 8th and came to DMCH after three days. In paragraph '5', he has stated that when he returned home, his mother was lying unconscious. This witness has claimed that she was taken to hospital by his elder brother whose name is Pappu Rai. He reached hospital at 8:30 where treatment started and thereafter her mother regained consciousness. On the second day at Darbhanga in the morning, her statement was recorded. He has stated that his brother and mother had only gone to the hospital and there was no fourth person. He has stated that his brother works in Ludhiana but on the date of occurrence he was here, he had come from Ludhiana about 10 days back. He claims that he also lives in Ludhiana and had returned only 10 days prior to the occurrence.

27. From a bare reading of the deposition of PW-1, PW-2 and PW3, it appears that they are making contradictory statements to each other. PW-1 is the wife of Pappu Rai, who has categorically



stated that when the occurrence took place, only she was present with her mother-in-law. Her husband came after 5-7 days of the occurrence and father-in-law came after ten days. In paragraph '8', she has stated that half an hour after the occurrence, the grandmother-in-law (*dadi*) had come. Thus, PW-1 denies the presence of PW-2 and PW-3 at the place of occurrence. She has specifically stated that there was no one else except her with her mother-in-law at the time of occurrence. The claim of PW-2 and PW-3, therefore, that they were present at the place of occurrence would not inspire confidence. In fact, PW-3 claims that her mother had regained consciousness in the hospital, but PW-1 has specifically stated that her mother-in-law remained unconscious throughout and she died in unconscious condition during her treatment in DMCH. PW-3 has claimed that his mother had regained consciousness in the hospital, but this statement of PW-3 is in complete conflict and contradiction with the statement of PW-1. PW-3 denies the presence of any fourth person except he, his mother and his brother in the hospital, whereas PW-1 has claimed in paragraph '11' that she had gone to Darbhanga during the treatment of her mother-in-law and she had stayed there for three days, after her death she had returned with the mother-in-law of the deceased. From the evidence of PW-1, it appears that PW-1 claims that she along with PW-2 had returned from the hospital after death of her



mother-in-law. PW-1, PW-2 and PW-3 are contradicting each other on this point. PW-2 has specifically stated in paragraph '8' of her deposition that Somni Devi was taken to hospital at 11:00 AM. She was taken to hospital by Jokhan Rai, Pavitra and others. In this case, Jokhan Rai and Pavitra have not been examined. It is evident that PW-2 does not support the statement of PW-1 and PW-3 as to who were the persons who had gone with the victim and stayed with her during her treatment in DMCH.

28. Bauku Rai (PW-4) has claimed himself an eyewitness. He is the husband of the deceased and father-in-law of Sunaina (PW-1). In his examination-in-chief, this witness has stated that his wife had told him about the occurrence when he returned home after the occurrence. He has stated about the transactions of land having taken place between the parties, but denies that there was any land dispute. He claimed that he had some outstanding against the accused on account of two dhur of land. The dispute was over Rs. 12,000/- which was due against the accused persons. He has specifically stated that at the time of occurrence, he was in Khajauli. From the evidence of PW-4, it is evident that he had not seen the occurrence.

29. Pappu Rai (PW-5) is the elder son of the deceased, about whom PW-3 has stated that he had taken the victim to the hospital. PW-5 is the husband of PW-1. He claimed that he had



taken his mother for treatment to Khajauli hospital where police had come and recorded the statement of his mother. He had put his signature on the said statement of his mother and this witness has identified his signature (Exhibit '1'). He also proved his signature on his *fardbeyan* recorded at DMCH on 09.11.2008 (Exhibit '1/A'). This witness has stated that at the time of occurrence he was in his house, but contrary to his claim, his wife (PW-1) has stated that her husband came 5-7 days after the occurrence. This witness has stated that the accused persons had tried to assault him also, he had fled away to his maternal uncle's place, which is at a distance of about 4-5 kilometers west-south. This witness has stated that when he fled away, at that time his mother was lying on the bed. He had not stated to his maternal uncle about the persons who were present at the occurrence. This witness has stated that on the date of occurrence, his other three brothers and father were not present at house and he had given information of the occurrence to his brothers and father, they came on 08.11.2008 in Darbhanga hospital.

30. It is evident from the deposition of this witness (PW-5) that while he claims that the statement of her mother was recorded at Khajauli, PW-1 has stated that her mother-in-law died in unconscious condition. PW-3 has stated in paragraph '5' of his deposition that his mother had regained consciousness after one hour and at that time, her mother was in Khajauli hospital. It was



around 9:00-9:30 AM. This witness had gone to *badhar* between 5:00 to 6:00 o'clock and returned by 6:45 and he claimed that he along with his elder brother had taken their mother (deceased) to the hospital. This statement of PW-3 is in complete contradiction with the statement of his brother (PW-5). PW-5 claimed that he had fled away from the place of occurrence and had gone to the village of his maternal uncle from where he returned around 3:00-4:00 PM (evening) and till that time his mother was lying on the cot. Near his mother, his grandmother and wife were sitting. PW-5 has stated that at the time of occurrence, his other three brothers and father were not at house. This shows the falsity of the statement of PW-3, who claims his presence in the house at 6:45 AM and has stated that at 9:30 AM he had taken his mother with his elder brother to the hospital at Khajauli.

31. We have discussed the entire evidences available on the record hereinabove. This Court has no iota of doubt in saying that these prosecution witnesses have been contradicting each other on several aspects. They have contradicted the presence of each other at the place of occurrence. The trial court is correct in recording that there is no eyewitness of the occurrence. The quality of the evidences of the prosecution witnesses, who are all closely related to the deceased, are very poor and they do not inspire confidence of the Court. Although the officer who recorded the



fardbeyan of the informant, the I.O. and the doctor have not been examined in this case, in our considered opinion, that would not make any difference as the witnesses produced on behalf of prosecution are falling in the category of wholly unreliable witnesses.

32. We are considering an appeal against acquittal. It is well settled in law that an appellate court need not interfere with the judgment of the learned trial court regarding acquittal of the accused unless the appellate court comes to an irresistible conclusion that the accused are guilty of the offences.

33. We do not find any perversity in the impugned judgment of acquittal.

34. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

SUSHMA2/-

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CAV DATE	
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