

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.34 of 2023**

Arising Out of PS. Case No.-74 Year-2001 Thana- THAKRAHA District- West Champaran

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1. Amar Tiwari Son Of Shomeshwar Tiwari R/O Vill.- Thakaraha, P.S.- Thakaraha, Distt.- West Champaran
2. Urmila Devi Wife Of Late Hari Ram Tiwari R/O Vill.- Thakaraha, P.S.- Thakaraha, Distt.- West Champaran

... ... Appellants

Versus

1. The State of Bihar
2. Arjun Thakur Son Of Ram Shakal Thakur R/O Vill.- Thakaraha, P.S.- Thakaraha, Distt.- West Champaran
3. Jag Mohan Thakur Son Of Awadhesh Thakur R/O Vill.- Thakaraha, P.S.- Thakaraha, Distt.- West Champaran
4. Suresh Sah @ Bhajju Sah Son Of Sattan Sah R/O Vill.- Thakaraha, P.S.- Thakaraha, Distt.- West Champaran

... ... Respondents

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**Appearance :**

For the Appellants	:	Ms. Sushmita Mishra, Advocate
		Mr. Surya Narayan Sah, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Informant	:	Mr. Bimlesh Kumar Pandey, Advocate
		Mr. Krishna Kant Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and**

**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 31-07-2025**

Heard learned counsel for the appellants, learned Additional Public Prosecutor for the State and learned counsel for the respondent nos. 2 to 4.

2. This appeal has been preferred by the informant for setting aside the judgment of acquittal dated 30.07.2022 (hereinafter referred to as the 'impugned judgment') whereby and



whereunder the learned Additional Sessions Judge-III, Bagaha (hereinafter referred to as the 'learned trial court') has been pleased to acquit respondent nos. 2 to 4 of the charges under Section 302/34 of the Indian Penal Code (in short 'IPC') in connection with Sessions Trial No.490 of 2003 arising out of Thakraha P.S. Case No. 74 of 2001.

### **Prosecution Case**

3. The prosecution case is based on the *fardbeyan* of Amar Tiwary who has been examined as PW-6 in the present case. In his *fardbeyan*, recorded by S.I. V.K. Jha, O/C, Thakraha, District-West Champaran at Thakraha Police Station on 13.11.2001 at 23.30 hrs., the informant has stated that on 13.11.2001 at about 7.00 PM, Arjun Thakur (R-2) had come to the house of his uncle Hareram Tiwary (the deceased) for taking some loan, he had taken dinner in the house of his uncle and had left from there at about 8.00 PM for his house. At about 9.15 PM, the informant got an information from someone that his uncle Hareram Tiwary has been stabbed near the house of Arjun Thakur whereafter the informant went there and some other people from his Tola also went to Arjun Thakur. The informant further alleged that his uncle Hareram Tiwary was lying dead on the earth and at the place of occurrence mother of Arjun Thakur and the



neighbours told him that at about 9.00 PM Hareram Tiwary (the deceased) had a hot exchange of words with Suran Gupta and both of them had become physical. It is alleged that mother of Suran had caught hold of both the testicles of Hareram Tiwary and pulled them, Suran took out a knife and gave repeated blow upon the head, neck, stomach and thigh etc. of the deceased. The informant alleged that after the occurrence, Arjun Thakur was absconding. He has also stated that his uncle had no prior enmity with anyone. According to the informant, his uncle was murdered because of the quarrel which had taken place at the relevant time. He raised a suspicion against Awadhesh Thakur as according to him, Awadhesh Thakur had a quarrel with his uncle on the same day in the evening on some issues.

**4.** On the basis of the written report of the informant Amar Tiwary (PW-6), the O/C, Thakraha P.S. registered Thakraha P.S. Case No.74 of 2001 dated 13.11.2001 under Section 302/34 IPC.

**5.** After completion of investigation of the case, the Investigating Officer (the I.O.) of the case submitted a charge-sheet against the FIR named accused vide charge-sheet no. 08/2022 dated 14.02.2022 under Section 302/34 IPC. The learned A.C.J.M., Bagaha vide his order dated 18.02.2002 took cognizance



of the offence under Section 302/34 IPC against respondent nos. 2 and 3. Vide order dated 09.10.2002 supplementary charge-sheet no.62/2002 dated 07.10.2002 has been submitted against respondent no.4 on the basis of which, learned A.C.J.M., Bagaha took cognizance of the offence under Section 302/34 against him. Vide order dated 03.12.2003, case was committed to the court of Sessions and the case was registered as S.T. No.490 of 2003.

**6.** The charges were read over and explained to them in Hindi to which they denied and claimed to be tried. Thereafter, the charges were framed against all the accused persons under Section 302/34 IPC.

**7.** In course of trial, the prosecution examined as many as 9 witnesses and exhibited several documents in support of its case. The list of witnesses and the documents exhibited on behalf of the prosecution are as under:-

**List of prosecution witnesses**

PW-1	Sattan Tiwari
PW-2	Dharmatma Tiwari
PW-3	Punam Devi
PW-4	Dr. A.K. Tiwari
PW-5	Kalavati Devi
PW-6	Amar Tiwari
PW-7	Sohila Tiwari
PW-8	Urmila Devi
PW-9	Harendra Sah



### List of Exhibits

Exhibit 1	Postmortem report prepared and signed by medical witness
Exhibit 2	Signature of the informant (PW-6) on fardbeyan
Exhibit 2/1	Signature of Dharmatma Tiwari (PW-2) on fardbeyan
Exhibit 3	Signature of Harendra Sah (PW-9) on inquest report

**8.** On completion of the prosecution evidence, the statement of the accused persons were recorded under Section 313 Cr.P.C. in which all of them pleaded not guilty.

**9.** The defence also examined some witnesses in support of its case. The list of defence witnesses are as under:-

DW-1	Vinod Thakur
DW-2	Prem Sagar Thakur
DW-3	Chalu Chaudhary

### Findings of the learned trial Court

**10.** After examining the evidences available on the record, the learned trial court observed that none of the prosecution witnesses has deposed categorically regarding involvement of the accused persons in the alleged occurrence. The learned trial court took note of the evidence of PW-1 and 2 who have categorically stated that they have not witnessed the alleged occurrence. PW-2 has stated that he had not deposed before the police that on the



alleged date of occurrence at 8.00 PM he had seen Arjun Thakur taking Hareram Tiwary to his house. The learned trial court took note that the PW-2 and PW-5 have been declared hostile and also took note of the evidence of PW-7 who has deposed that he had given evidence on the basis of hearsay. Learned trial court found that prosecution has failed to examine the I.O. of this case.

**11.** Accordingly, the learned trial court observed that the prosecution has not been able to prove it's case beyond the shadow of all reasonable doubts and, therefore, acquitted the respondent nos.2 to 4 of the charges under Section 302/34 IPC.

**Submissions on behalf of the appellants**

**12.** Learned counsel for the appellants has assailed the impugned judgment on various grounds. Learned counsel submits that the learned trial court has passed the judgment of acquittal without properly appreciating the evidences available on the record. Learned counsel submits that the informant (PW-6) in his examination-in-chief has stated that in the evening of 13.11.2001 at 07:00 PM, Arjun Thakur had taken meal at the house of Hareram Tiwary (deceased) and Arjun Thakur took Hareram Tiwary to his house. Learned counsel submits that the informant has proved his signature on the fardbeyan which has been marked Exhibit '2'. It is submitted that learned trial court has failed to



appreciate the evidence of the informant and erroneously passed the judgment of acquittal.

**Submissions on behalf of the State and the respondent nos.2 to 4.**

13. On the other hand, learned Additional Public Prosecutor for the State and learned counsel for Respondent Nos. 2 to 4 have submitted that the learned trial court while considering all the facts and circumstances of the case has rightly passed the judgment of acquittal. Learned Additional Public Prosecutor submits that the prosecution has not been able to prove the charges against respondent nos. 2 to 4 beyond all reasonable doubts. Learned trial court has rightly observed that no one has seen the alleged occurrence and nothing has been brought on the record to connect the involvement of the accused persons in the killing of Hareram Tiwary (deceased). It is submitted that this Court hearing an appeal against acquittal would be guided by the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581** and the case of **Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka** reported in **(2024) 8 SCC 149**.

**Consideration**

14. Having heard learned counsel for the appellants, learned Additional Public Prosecutor for the State and learned



counsel for the respondent nos. 2 to 4 as also on perusal of the trial court records, this Court finds that the prosecution case is based on the fardbeyan of Amar Tiwary (PW-6). In his fardbeyan (Exhibit-2), the informant alleged that on the date of occurrence, Arjun Thakur (R-2) had come to the house of his uncle (the deceased) for taking some loan, he had taken dinner in the house of his uncle and had left from there at about 8.00 PM for his house. At about 9.15 PM the informant got an information from someone that his uncle Hareram Tiwary has been stabbed near the house of Arjun Thakur whereafter the informant went there and some other people from his Tola also went to Arjun Thakur. The informant further alleged that his uncle Hareram Tiwary was lying dead on the earth and at the place of occurrence, mother of Arjun Thakur and the neighbours told him that at about 9.00 PM Hareram Tiwary (the deceased) had a hot exchange of words with Suran Gupta and both of them had become physical. It is alleged that mother of Suran had caught hold of both the scrotal and the testes of Hareram Tiwary and pulled them, Suran took out a knife and gave repeated blow upon the head, neck, stomach and thigh etc. of the deceased. The informant alleged that after the occurrence, Arjun Thakur was absconding. He has also stated that his uncle had no prior enmity with anyone. According to the informant, his uncle was murdered because of the quarrel which had taken place at the relevant time. He raised a



suspicion against Awadhesh Thakur as according to him Awadhesh Thakur had a quarrel with his uncle on the same day in the evening on some issue.

**15.** It is evident from the fardbeyan of PW-6 that Arjun Thakur had left the house of Hareram Tiwary (the deceased) alone. In fact, in paragraph '8' of his deposition, PW-6 has admitted that in his fardbeyan, he had got written that Arjun Thakur left alone from the house of Hareram Tiwary.

**16.** This Court finds that the informant has neither in his fardbeyan nor in course of deposition stated as to when Hareram Tiwary his uncle had left his house and went towards the house of Arjun Thakur after the said Arjun Thakur had left at about 8.00 PM. In fact, in his examination-in-chief, the informant gives a different statement in paragraph '1' when he says that Arjun Thakur had taken away Hareram Tiwary with him to his house. The informant contradicts himself on this point in paragraph '8' of his deposition. We, therefore, find that the informant is not a wholly reliable witness as he is changing his statements at different stages.

**17.** We have further noticed that in paragraph '10' of his deposition, the informant (PW-6) has stated that when he reached the place of occurrence, he found Hareram Tiwary was lying dead and there were 25-30 persons at the place of occurrence. He named Urmila Devi, Dharmatma Tiwary, Satan Tiwary, Kalawati Devi and



Punam Devi and others name he did not remember. Dharmatma Tiwary (PW-2) has, however, stated in his deposition that Amar Tiwary came to him at about 9.15 PM and told that his uncle Hareram Tiwary has been stabbed to death. PW-2 reached the place of occurrence with the informant (PW-6) and found that Hareram Tiwary was lying dead at the place of occurrence and he had suffered dagger injuries on his body. It is, therefore, evident that this witness was not already present at the place of occurrence when the informant reached there.

**18.** Punam Devi (PW-3) and Kalawati Devi (PW-5) have not supported the prosecution case and they have been declared hostile. The another witness, who is Harendra Sah, a signatory to the inquest report, has proved his signature on the inquest report which has been marked Exhibit-3 but he has stated that police had not recorded his statement regarding the death of Hareram Tiwary. This witness (PW-9) has been declared hostile by the prosecution.

**19.** We find from the evidence of the informant that he claims to have come to know about the death of his uncle Hareram Tiwary from some one but who is that person from whom he came to know about the occurrence remained a mystery. In his examination-in-chief also, the informant (PW-6) has not disclosed the name of the person who came to him to inform that his uncle Hareram Tiwary has been murdered. In paragraph '13' of his



deposition, PW-6 has stated that after his fardbeyan, there was no further statement recorded by police and he had given his fardbeyan on the basis of whatever he heard about the occurrence. He has clearly stated that the occurrence had not taken place in his presence and he had no personal knowledge about it. PW-6 was suggested by the defence that Hareram Tiwary was a drunkard and in drunken condition he had indulged in a quarrel with the criminals outside the village in which he was murdered. PW-6 has, though, denied the suggestion but the defence has brought some of the neighbours as defence witnesses. Vinod Thakur (DW-1) has stated that Hareram Tiwary was killed by unknown criminals. He was a drunkard and miscreant kind of person. Similarly, Prem Sagar Thakur (DW-2) has stated that Hareram Tiwary was involved in lending money on interest, he was a drunkard and miscreant kind of person who was always living in drunken condition and was ready to get involved in quarrel with any one. Chalu Chaudhary (DW-3) has repeated the statement of DW-1 and DW-2 that Hareram Tiwary was a drunkard and was always getting involved in quarrel. DW-3 has further stated that he heard about the murder of Hareram Tiwary by criminals.

**20.** On perusal of the evidence of the doctor (PW-4), this Court finds that the deceased was taken for postmortem to Sub-Divisional Hospital, Bagaha on 14.11.2001 at 10.30 AM. The



doctor has found as many as 14 injuries on his body which were ante-mortem in nature. It is important to note that the doctor (PW-4) has found that the time since death was within 28 to 30 hours. The postmortem had already been conducted by 11.30 AM on 14.11.2001 which would be evident from the postmortem report (Exhibit-1), therefore, if the prosecution case is taken as it is, the death had taken place at around 9.00 PM and the postmortem was done within 12-13 hours but in fact the doctor (PW-4) has found that the time since death was within 28 to 30 hours. The stand of the defence that Hareram Tiwary was engaged in providing money on loan is admitted by the informant also in his fardbeyan when he says that Arjun Thakur had come to take some loan from his uncle and it further strengthens the case of the defence that the time since death being within 28 to 30 hours, it is clear that Hareram Tiwary was killed by the criminals outside the village.

**21.** At this stage, it is also important to note that while in his fardbeyan the informant has stated that the place of occurrence is near the house of Arjun Thakur, in his examination-in-chief, in course of trial, PW-6 has stated that his uncle Hareram Tiwary had died at the door of Awadhesh Thakur and the house of Arjun Thakur is nearby. It is evident that the informant is not aware of the actual place of occurrence. The I.O. has not been examined in this case, therefore, in our considered opinion, the prosecution has not been



able to fully establish the place of occurrence in this case and non-examination of the I.O. would prove fatal to the prosecution.

**22.** On the entire reading of the evidences on the record and on going through the judgment of the learned trial court, we are of the considered opinion that the learned trial court has rightly appreciated the evidences available on the record. No perversity may be found in the findings of the learned trial court. At this stage, we are reminded of the judgments of the Hon'ble Supreme Court in the case of **H.D. Sundara** (supra) and the case of **Babu Sahebagouda Rudragoudar** (supra) wherein the Hon'ble Supreme Court has laid down the principles governing a case of appeal against the judgment of acquittal. Paragraph '8' of the judgment in the case of **H.D. Sundara** (supra) is being reproduced hereunder for a ready reference:-

**“8.1.** The acquittal of the accused further strengthens the presumption of innocence;

**8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

**8.3.** The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

**8.4.** If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

**8.5.** The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was



proved beyond a reasonable doubt and no other conclusion was possible.”

**23.** We find no reason to interfere with the judgment of the acquittal in the present case.

**24.** This appeal has no merit. It is dismissed accordingly.

**(Rajeev Ranjan Prasad, J)**

**(Shailendra Singh, J)**

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