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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <b>IN THE COURT OF ADDL. SESSIONS JUDGE-II, KATIHAR</b><br><i>Present:- Asutosh Rai, Addl. Sessions Judge, II, Katihar</i><br><i>[Date of judgment- 17 July 2026]</i><br><i>[ S. Trial No. 170/2023 ]</i><br><i>Azamnagar P.S. case No. 450/2022 F.I.R. U/S- 302 of the I.P.C</i> |                                                                                                                                             |
| <i>Complainant/Informant</i>                                                                                                                                                                                                                                                      | <i>State of Bihar through informant namely Sudha Devi, S/o-late Prabhu Singh, R/o-Vill-Hauspur Poldanga, P.S.-Azamnagar, Distt.-Katihar</i> |
| <i>Represented By</i>                                                                                                                                                                                                                                                             | <i>Sri Md. Ezaj Alam Ld. A.P.P.</i>                                                                                                         |
| <i>Accused</i>                                                                                                                                                                                                                                                                    | <i>1. Rajesh Singh, S/O late Binodi Singh aged about 39 years, R/O-Vill-Chaulahar Fudaki Tola P.S.-Azamnagar, Distt.-Katihar</i>            |
| <i>Represented By</i>                                                                                                                                                                                                                                                             | <i>Ld. counsel for defense: Sri B.K. Shrivastava</i>                                                                                        |

|                                           |                   |
|-------------------------------------------|-------------------|
| <i>Date of Offence</i>                    | <i>27-12-2022</i> |
| <i>Date of F.I.R.</i>                     | <i>27-12-2022</i> |
| <i>Date of Charge-sheet No. 164/24</i>    | <i>24-02-2023</i> |
| <i>Date of Framing of Charge</i>          | <i>22-06-2023</i> |
| <i>Date of Commencement of evidence</i>   | <i>20-03-2024</i> |
| <i>Date of which judgment is reserved</i> | <i>06-07-2026</i> |
| <i>Date of Judgment</i>                   | <i>17-07-2026</i> |
| <i>Date of Sentencing Order, if any</i>   | <i>N/A</i>        |

**Accused Details**

| <i>Sl. No.</i> | <i>Name of Accused</i> | <i>Date of Arrest/ Surrender</i> | <i>Date of Release on Bail</i> | <i>Offences Charged with</i> | <i>Whether Acquitted or Convicted</i> | <i>Sentence Imposed</i> | <i>Period of Detention Undergone during Trial for purpose of section 428 of Cr.P.C.</i> |
|----------------|------------------------|----------------------------------|--------------------------------|------------------------------|---------------------------------------|-------------------------|-----------------------------------------------------------------------------------------|
|                |                        |                                  |                                |                              |                                       |                         |                                                                                         |

|   |                 |                |     |                              |           |     |     |
|---|-----------------|----------------|-----|------------------------------|-----------|-----|-----|
| 1 | Rajesh<br>Singh | 28-12-<br>2022 | N/A | U/S- 302<br>of the<br>I.P.C. | Acquitted | N/A | N/A |
|---|-----------------|----------------|-----|------------------------------|-----------|-----|-----|

**JUDGMENT**

1. The accused person namely Rajesh Singh stands charged for the offence punishable U/S- 302 of the I.P.C. as leveled against him.

**CASE OF PROSECUTION/BRIEF FACTS:**

2. As per written report of informant namely Sudha Devi prosecution case in brief is that informant namely Sudha Devi filed a written application before S.H.O. Azamnagar on 27.12.2022 alleging therein that her brother namely Rajesh Singh had fled away after leaving his wife and due to that very reason he was absconding somewhere from two years. Informant has further alleged that yesterday i.e. 26.12.2022 his brother Rajesh Singh came to the house situated at village- Chaulhar, Fudki Tola then family members of her Maika informed to her husband namely Prabhu Singh for convincing. Her husband Prabhu Singh went to her Maika situated at village- Chaulhar, Fudki Tola and after convincing her brother and having had meal he slept. Informant has further alleged that on 27.12.2022 at about 12:00 O'clock in night her sister-in-law (Bhabhi) informed her that his brother has made lethal attack on her husband by sharp edged knife due to which the neck of her husband got cut. For treatment he was taken to P.H.C., Azamnagar but later on her husband was referred for better treatment. Then they were about to proceed with Prabhu Singh for better treatment, but by then her husband Prabhu Singh died. Informant has further alleged that she is confident that his brother Rajesh Singh attacked on the neck by sharp edged knife due to which her husband has died.

**INSTITUTION OF CASE/ INVESTIGATION/ INQUIRY**

3. On the basis of written report of informant namely Sudha Devi formal F.I.R. bearing Azamnagar P.S. case No. 450/2022 F.I.R. U/S- 302 of the I.P.C. was instituted against the accused namely Rajesh Singh

and after investigation I.O of this case submitted charge-sheet No. 48/2023 u/s- 302 of the I.P.C. against the F.I.R. named accused namely Rajesh Singh.

4. On receipt of charge-sheet *Ld. C.J.M. Katihar* took cognizance of the offence u/s 302 of the I.P.C. against the accused namely Rajesh Singh and having seen that the section 302 of the I.P.C. as leveled against the aforesaid accused person is exclusively triable by the court of sessions, *Ld. C.J.M. Katihar* supplied the Xerox copy of police papers as per requirement to the aforesaid accused person and *ld. court* committed the case record to the court of Sessions for further trial. Later on, case record was numbered as S.T. No. 170/2023 and further as per order of the District and Sessions Judge, Katihar case record came to the my court file for further trial and disposal.

**CHARGES AGAINST ACCUSED PERSONS**

5. Later on, after completion of the appearance of the aforesaid accused person namely Rajesh Singh before the court and after considering the materials available on record and on hearing the *ld. A.P.P.* for State as well as *ld. counsel* for the aforesaid sole accused person, court framed the charges u/s-302 of the I.P.C. in written against the aforesaid accused person and the contents of the same were read over and explained to the aforesaid accused person in hindi to which he denied and pleaded to be not guilty and claimed to be tried. Hence the trial.

**PROSECUTION EVIDENCE**

6. In order to substantiate its case prosecution side has examined altogether eight (08) witnesses in the support of its case. They are:-

| Sr. No. | Pws. Number                   | Description     |
|---------|-------------------------------|-----------------|
| 01      | PW-01-Arti Devi               | Eye witness     |
| 02      | P.W.-02-Atul Singh @ Atul Lal | Hearsay witness |
| 03      | PW-03-Bheda Singh             | Hearsay witness |
| 04      | P.W.-04-Sudha Devi            | Hearsay Witness |

|    |                            |                  |
|----|----------------------------|------------------|
| 05 | P. W.-05-Kachalu Singh     | Hearsay witness  |
| 06 | P. W.-06-Bhutkun Ray       | IO. to this case |
| 07 | P. W.-07 Dr. Sushant Kumar | Expert Witness   |
| 08 | P.W.-08-Om Prakash Mahto   | Formal witness   |

7 . Prosecution side has also adduce following documentary evidences on the record in the support of its case:-

| Sr. Number              | Exhibit Number | Description                                                                    |
|-------------------------|----------------|--------------------------------------------------------------------------------|
| 01                      | Ext.- PW6/P1   | Endorsement over written report                                                |
| 02                      | Ext.- P-2/PW-2 | Signature of the informant cum P. W.-02 Sudha Devi on the Written Application. |
| 03                      | Ext.- PW6/P2   | Formal F.I.R.                                                                  |
| 04                      | Ext.-PW6/P3    | Seizure list                                                                   |
| 05                      | Ext.-PW6/P4    | Charge-sheet                                                                   |
| 06                      | Ext.-PW6/P5    | Death Inquest Report                                                           |
| 07                      | Ext.-PW7/P6    | Postmortem report                                                              |
| <b>MATERIL EXHIBITS</b> |                |                                                                                |
| 09                      | Material Ext-M | Knife                                                                          |

**STATEMENT OF ACCUSED PERSON**

8. After conclusion of the prosecution evidence, the statement of the accused person namely Rajesh Singh were recorded under section 313 of the Cr.P.C. and all incriminating evidences were put to him but he denied veracity of prosecution evidences with the contentions that he is innocent and has falsely been implicated in this case. While accused person neither examined any witness before court nor adduced any documentary evidence on record.

9. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused person, beyond the shadow of all reasonable doubts ?

**FINDINGS**

10. From perusal of the record it is evident that in order to substantiate its case prosecution has examined altogether eight (08) witnesses and prosecution has also adduced some documentary evidences on the record. Out of them P.W.-04 Sudha Devi (informant) has stated in her examination-in-chief that it has been about 01 year and 11 months since the incident. Her husband Prabhu Singh had gone to her mother's house to convince her brother namely Rajesh Singh. After that at about 12:00 o'clock at night, the news came that Rajesh had killed her husband with a knife. P.W.-04 has further stated that when she went there at 3:00 o'clock in the night, she did not find her husband at home as he had been sent to Azamnagar Hospital. Then she went there, where her husband was being treated and blood was flowing from his neck. P.W.-04 has further stated that her husband told her that Rajesh stabbed him with a knife and when he was stabbing him, he wanted to hold him but Rajesh did not let him hold him. P.W.-04 has further stated that her husband could not be treated there and was sent to Sadar Hospital, Katihar by ambulance, but he died on the way near Salmari. She was in that ambulance. P.W.-04 has further stated that she gave a written application to the police station, on which her thumb impression is there, and the police took her statement again. P.W.-04 has further recognized her brother namely Rajesh Singh, who was present in court.

During cross-examination, P.W.-04 stated that her sister-in-law informed her about the incident via mobile phone, but she does not know as to from whose phone she called her. P.W.-04 has further stated that after receiving the information, she went out to look again, did not talk to anyone, and arrived at her parents' house around 03:00 o'clock. She did not talk to anyone at her parents' house and went straight to the hospital. Her sister-in-law had called her and inform that murder has been committed and requested for coming hospital. P. W.-04 has further stated that her statement was recorded before the police. She told to the police that she had talked to her husband in the hospital. There were total five to six people in the hospital. But she had no conversation with them. She stayed there near about half hours. After that treatment of her husband

was going on. She had not talked with her husband or the people of nearby. She knows to the Bheda Singh, who is her maternal brother in relation. Murder of her husband was not done at her house but same was done at her brother's house. This incident didn't took place before her. On the date of occurrence, Akalu Singh was not at the home. P.W.-04 has further stated that on the day of the incident, she went to sleep at 09:00 P.M. with her two daughters and woke up at 12:00 P.M. when she heard the noise of murder. After that, she went to the doctor. They took Prabhu Singh to Azamnagar Hospital in a tempo, the tempo driver was from the neighborhood, but she does not know his name and cannot tell who went to call him. They reached Azamnagar Hospital at 04:00 P.M., by which time Prabhu's condition was very bad. Her house and Rajesh Singh's house are situated in one and same courtyard. P.W.-01 has further stated that after that she returned home and her sister-in-law (Nanad) told her that Prabhu had died on the way P.W.-01 has further stated that the incident did not took place before her, but she saw him running away from the courtyard. At the place of occurrence there was the light of government bulb. The bulb had been installed/fixed at her roof, but she could not remember since when the said Bulb had been fixed. P.W.-01 has further stated that on the day of the incident, her statement was recorded before the police in the hospital at 04:00 o'clock and later on the same day at home. She does not know whether there was any land dispute between Rajesh Singh and Prabhu Singh or not?

11. P.W.-01 Arti Devi has stated in her examination-in-chief that the deceased namely Prabhu Singh was her (Nandosi) brother-in-law. He died near about 01 year ago. It was the time of 12:0 O'clock of Knife, at that time, she was sleeping at her home. By the Knife, Rajesh singh caused murder to her Jija. Knife hit at his neck. Neck/Throat got cut/slit. After that, she along with Kachalu Singh and her sister Sudha Devi took the injured Prabhu Singh to Azamnagar Hospital by an ambulance, from where he was referred to Katihar Sadar Hospital, but Prabhu died on the way. The police had come and took her statement and whatever she told the police, she is saying the same thing in court today. After that, the

police sent Prabhu's body for post-mortem. P. W.-01 has further recognized to the accused namely Rajesh Singh, who was present in before court.

During cross-examination by the defense, P.W.-01 has stated that she does not know as to how there was relationship in between Rajesh Singh and Prabhu Singh. She does not know if there was any quarrel or dispute between them or not ?.

12. P.W.-02 Atul Singh has stated in his examination-in-chief that he knew the deceased Prabhu Singh, and it has been more than a year since his death. At about 12:00 o'clock at night, Rajesh Singh slit Prabhu Singh's throat/neck with a sharp weapon, after which there was an uproar and everyone woke up and took Prabhu to Azamnagar Hospital, from where he was referred to Sadar Hospital, Katihar, where he died on the way. P. W.-02 has further stated that the police came and conducted an enquiry etc and went away. Police had taken her statement as well as Sudha Kumari and Aarti. He does not know why Rajesh killed Prabhu. P. W.-2 who has further recognized to the accused namely Rajesh singh, who was present before the court.

During cross-examination by the defense, P.W.-02 has stated that he has known Aarti Devi for 4-5 years; she is his neighbour, and her husband is Kalu Singh. Aarti Devi is over 50 years old. Kalu Singh's father's name was Vinod Singh, and Kalu Singh has two sisters and two brothers. Kalu Singh owns approximately 6 decimals of land, in which all four siblings have a share, and Rajesh Singh will also have a share in that land. Half of that 6 decimal land is occupied by Kalu Singh and the other half by Rajesh Singh. Rajesh Singh has a thatched house, while Kalu Singh has a brick house. Kalu Singh's house face is in north direction while the face of the Rajesh Singh's house is in east direction. P. W.-02 has further stated that he had not seen the incident from his own eyes.

13. P.W.-03 Bheda Singh has stated in his examination-in-chief that it has been nearabout 1 years since incident. Incident took place at 12:00

O'clock at night. Incident took place at the house of Akalu Singh. Rajesh Singh had stabbed his brother-in-law namely Prabhu Singh by the Knife. The knife was stuck in his neck. He did not know as to why he stabbed knife. After the incident, he went at the house of Prabhu Singh. Prabhu Singh told him that Rajesh Singh had stabbed him. There were many villagers present at that time. P. W.-03 has further recognized to the accused namely Rajesh Singh who was present in court.

During cross-examination, P.W.-03 stated that at the time of the incident, he was sleeping at home. On commotion he came to know about the incident. Prabhu Singh told him that Rajesh Singh has stabbed him. Having heard the commotion he went at the house of Prabhu Singh on foot. He cannot say as to who all were at the place of occurrence. P. W.-03 has further stated that his house is situated 05-06 km far away from the house of Prabhu Singh. P. W.-03 has further stated that he had not gone at the house of Prabhu Singh. P. W.-03 has further stated that when he had gone at the house of Prabhu Singh at that time murder of Prabhu Singh had been done. Having heard the commotion about the murder of Prabhu Singh, he stayed home and went to work as a laborer the next morning, but cannot tell where he went to work.

14. P.W.-05 Kachalu Singh has stated in his examination-in-chief that it has been almost two and a half years since the incident, which occurred at 12:00 o'clock at night. When he went to Azamnagar Hospital, then he saw that Prabhu Singh had been stabbed in the neck. P. W.-05 has further stated that the name of the person who stabbed was not disclosed, but he heard that Rajesh Singh has stabbed. Prabhu Singh was not treated and was referred to Katihar, where he died on the way. Post-mortem was also done. P.W.-05 has further recognized to the accused namely Rajesh Singh, who was present before the court.

During cross-examination by the defence, P.W.-05 has stated that he has not seen the incident. P.W.-05 has further stated that his statement was recorded before the police, incident occurred two and a half years ago. He had given statement before the police that when he

went to Azamnagar, he saw that Prabhu Singh has been stabbed. He had stated before the police that treatment of Prabhu Singh was not done at Azamnagar Hospital and from there he was referred to Katihar, but he died on the way. Rajesh Singh his own brother-in-law.

15. P.W.-06 Bhutakun Ray who is the I.O. to this case has stated in his examination-in-chief that on dt. 27-12-2022 he was posted as S.I. at police-station Azamnagar. P.W.-06 has further stated that on that date, on the basis of the written report of Sudha Devi formal F.I.R. was registered by the SHO. P.W.-06 has further proved the endorsement written on written report and formal F.I.R. and accordingly same was marked as Ext-PW6/P1 and Ext-PW6/P2 respectively. P.W.-06 has further stated that during investigation, he recorded the statement of Sudha Devi, Aarti Devi, Bhadula Singh, Atul Singh, and Kachali Singh. He inspected the place of occurrence. The place of occurrence of this case is situated at village-Chaulahar Fudki Tola which is the house of Akalu Singh, brother of accused Rajesh Singh. P.W.-06 has further proved the boundaries of the place of occurrence as follows:- Rajesh's land upon which firewood has been kept, South-house of Sabadesh Sah, East-house of Akalu Singh and West-house of Akalu Singh with roof. P.W.-06 has further stated that a knife was recovered at the instance of Rajesh and the seizure list was prepared by the then S.H.O., p.w.-06 has further proved the Seizure list accordingly same was marked as Ext-PW6/P3. P.W.-06 has further stated that he obtained the post-mortem report and recorded it in the case diary. After investigation, he found the case to be true and submitted a charge sheet against the accused Rajesh Singh,. P.W.-06 has further proved the Charge-sheet and accordingly same was marked as Ext No.-PW6/P4. P.W.-06 has further proved the Death Inquest Report and accordingly same was marked as Ext-PW6/P5. P.W.-06 has further recognized to the accused namely Rajesh Singh, who was present before the court .

During cross-examination P.W.-06 has stated that he does not know who wrote informant's written application, and he never asked the station-in-charge about who wrote it. He did not receive any other documents except the said application. P.W.-06 has further stated that

after going to the place of occurrence he took the statement of the informant and the time and date of departure were recorded in the case diary. P.W.-06 has further stated that after reaching at the place of occurrence, he inspected the place of occurrence and he took the statement of informant and other witnesses. P.W.-06 has further stated that he did not make Najari-Naksha of the place of the occurrence. Witness namely Arti Devi had stated that she saw the incident from her own eye. He has recorded in para No.-08 of the case diary that Aarti Devi stated that her brother-in-law, the deceased Prabhu Singh, had said that Rajesh Singh stabbed him. P.W.-06 has further stated that he did not examine any witnesses of the Death inquest report. He went to the place of occurrence but he did not prepare an FSL report and he did not take any samples for DNA testing. P.W.-06 has further stated that the seizure list of this case was prepared by the SHO near the lower part of Chaulahar Dam situated near Hatia Bandh. But he was neither given a copy of the seizure list and test memo test memo, nor a photocopy of the formate/form duly completed for sending to the FSL.. P.W.-06 has further stated that it was not the case that the accused was present at the place of occurrence on the day of the incident and he was present in Bengal.

16. P.W.-07 Dr. Sushant Kumar has stated in his examination-in-chief that on that day he did post-mortem examination over the dead body of Prabhu Singh and he found the following :-.

Externally- there was a penetrating wound in the upper region of the left neck having dimension 5 cm in length, 1 cm in breadth, and deep into the neck, with bleeding from both nostrils.

Internally- on opening of the cranial cavity, the meninges and brain tissues were intact and pale. On opening of the thorax heart was intact and all chambers were empty, and both lungs were intact and pale. On opening of the abdominal cavity, stomach was intact and contained 250 ml of liquid mixed with semi-digested food particles with a non-specific smell, and all other abdominal viscera were intact and pale. On

dissection of the neck trachea, larynx, and major vessels of the left side of the neck were cut.

Cause of death: in his opinion cause of death is haemorrhagic shock and pulmonary edema due to the above injuries caused by a sharp object.

The time elapsed since death and post-mortem examination done is within 24 hours.

P.W.-07 has further proved the Post-mortem report and accordingly same was marked Ext-PW7/P6.

During cross-examination P.W.-07 stated that he did not take help from any other staff during the examination. It is difficult to tell how much blood loss can cause a person's death, and it is also difficult to tell how much building can be done in 09 hours. When the deceased came to him, there was no bleeding from his body. He has not shown the colour of injury in his post-mortem report. Such injury can also occur due to falling on a sharp object. Pulmonary edema is a clinical diagnosis based on the basis of which the cause of death has been given. High blood pressure can cause nasal bleeding. He did not keep the viscera safe.

17. P.W.-08 Om Prakash Singh who is the formal witness has stated in his examination-in-chief that he has presented the seized exhibit before court in the light of the order of the Malkhana-In-charge cum SHO Azamnagar, which has been seized in Azamnagar P.S. Case No. 450/2022 which was opened in the court as per the order of the Court, in which there is a knife whose butt is near about 10 fingers long and the edge of the knife is near about 08-09 fingers long. Which has been sealed in the small bag of white colour upon which MR No. 6522 has been written. Accordingly said knife was marked as material exhibit-M.

During cross-examination by the defense, P.W.-08 has stated that he has not come to testify in this case; he has brought exhibits before the court in this case. He can not say as to who was the I.O. of this case. The knife was not recovered in his presence, and he has no knowledge in this matter.

18. While at the time of final argument Id. A.P.P. for the state has submitted before this court that all the material witnesses have clearly stated that Rajesh Singh stabbed to the Prabhu Singh and thereby caused murder to Prabhu Singh. Further in his confessional statement aforesaid accused has clearly confessed his involvement in this alleged occurrence. Further, on the instance of the accused namely Rajesh Singh alleged knife was recovered, which has been used in this alleged murder of Prabhu Singh and seizure list has been duly proved. Further from perusal of the oral testimony of P.W.-01 Arti Devi it is quite clear that she that saw to the Rajesh Singh fleeing away from the place of occurrence. Further, P.W.-04 Sudha Devi has stated that her husband late Prabhu Singh told to her that Rajesh Singh stabbed him. Further from perusal of the postmortem report as well as the entire case record in entirety, it is evident that prosecution has succeeded to prove the all circumstantial evidences which clearly prove that non else but the Rajesh is the author of this alleged occurrence. Hence, aforesaid accused person namely Rajesh Singh may be held guilty for the commission of the offence punishable u/s 302 of the I.P.C. as leveled against him.

19. While Id. counsel for the defense has argued before this court as follows:-

(i) Prosecution wants to prove its case on the basis of circumstantial evidences. But prosecution has miserably failed to prove all the chain of circumstantial evidence which indicate the involvement of accused in the murder of late Prabhu Singh.

(ii) Id. counsel has further submitted that from perusal of the oral testimony of the P.W.-04 Sudha Devi who is non else but the informant to this case, it is quite clear that she is not the eye witness. Though she has stated that her husband told her that Rajesh Singh stabbed him. But her statement is not fully reliable because in her cross-examination she has clearly stated that she did not talk with her husband. Further, prosecution has not examined any seizure list witness before this court.

*There is nothing on record to connect the alleged recovered knife with the murder of Prabhu Singh.*

*(iii) Ld. counsel has further submitted that P.W.-02, P.W.-03, and P.W.-05 are not the eye witness of this alleged occurrence rather they are admittedly hearsay witness of this alleged occurrence. While P.W.-06 Bhutkun Ray who is none else but the I.O. to this case has not properly conducted the investigation in this case as he has not prepared the map (Najari Naksha) of place of occurrence. Further he did not collect the blood stained earth, blood soaked clothes and bed from the place of occurrence. Further he has not given vivid picture of the place of occurrence either in case diary or in his oral testimony. Further any attempt was not made to collect the finger print from place of the occurrence. Further, he has not collected such evidence which may show the complicity of the accused person in this case.*

*(iv) Ld. counsel has further submitted that P.W.-07 is expert witness who conducted the postmortem of the dead-body of deceased to this case namely Prabhu Singh, has categorically stated about the injuries sustained by the Prabhu Singh. While from perusal of the postmortem report as well as oral testimony of P.W.-07 it is evident that Prabhu Singh sustained severe injuries on his neck. So, it may be easily presumed that in the case of complete cutting of the larynx, trachea, and major neck vessels it was impossible for the Prabhu Singh to utter any meaningful words and sentence. while P.W.-08 is the formal witness.*

*(v) Furthermore in the case of which based on the circumstantial evidence, motive plays very important role to put the light on the reason behind the commission of the alleged crime. But from perusal of the oral testimonies of prosecution witnesses it is quite clear that there was no dispute in between accused and deceased to this case and they were close relative to each other. SO there was no reason for the accused to made lethal attack on the deceased to this case.*

(vi) Moreover, there is nothing on record to show the complicity of the accused person in this alleged occurrence. So from above facts it is evident that there is nothing on the record to prove the charges u/s 302 of the I.P.C. as leveled against accused namely Rajesh Singh. So, Rajesh Singh may be acquitted from the charge u/s 302 of the I.P.C. as leveled against him.

20. From perusal of the case record it is quite clear that law was put in motion by Sudha Devi by way of lodging the written report before the police-station-in-charge, Azamnagar. In her written report informant to this case namely Sudha Devi has alleged that her brother namely Rajesh Singh had fled away after leaving his wife and due to that very reason he was absconding somewhere from two years. Informant has further alleged that yesterday i.e. 26.12.2022 his brother Rajesh Singh came to the house situated at village- Chaulhar, Fudki Tola then family members of her Maika informed to her husband namely Prabhu Singh for convincing. Her husband Prabhu Singh went to her Maika situated at village- Chaulhar, Fudki Tola and after convincing her brother and having had meal he slept. Informant has further alleged that on 27.12.2022 at about 12:00 O'clock in night her sister-in-law (Bhabhi) informed her that his brother has made lethal attack on her husband by sharp edged knife due to which the neck of her husband got cut. For treatment he was taken to P.H.C., Azamnagar but later on her husband was referred for better treatment. Then they were about to proceed with Prabhu Singh for better treatment, but by then her husband Prabhu Singh died.

21. While from perusal of the case record it is evident that with view to substantiate its case the prosecution side has examined altogether (08) eight witnesses as well some documentary evidences on record. I have carefully considered the contentions of the Id. A.P.P. appearing for the state as well the Id. counsel for the defense and perused the oral and

documentary evidences available on the record. It is notable that it is not in dispute that Prabhu Singh faced homicidal death. The Ext-PW6/P6-Postmortem report of dead-body of Prabhu Singh which has been duly proved by the P.W.-07 Dr. Shushant Kumar go to prove that deceased namely Prabhu Singh sustained a penetrating sharp-cut injury on the left side of the neck due to which the trachea, larynx and major blood vessels got cut. Further P.W.-07 Dr. Shushant Kumar has clearly opined that the cause of death was hemorrhagic shock and pulmonary edema due to injuries caused by a sharp-edged weapon. Moreover, defense side has never challenged that Prabhu Singh did not face homicidal death. So, it may be easily concluded that Prabhu Singh faced homicidal death. But the question before this court as to who was the author of this alleged murder of late Prabhu Singh. No doubt in criminal case prosecution is under obligation to prove its case beyond the all the shadows of reasonable doubt.

22. I have carefully considered the contentions of the Id. A.P.P. appearing for the state as well the Id. counsel for the defense and perused the oral and documentary evidences available on the record. It is notable that it is not in dispute that Prabhu Singh faced homicidal death. The Ext-PW6/P6-Postmortem report of dead-body of Prabhu Singh which has been duly proved by the P.W.-07 Dr. Shushant Kumar go to prove that deceased namely Prabhu Singh sustained a penetrating sharp-cut injury on the left side of the neck due to which the trachea, larynx and major blood vessels got cut. Further P.W.-07 Dr. Shushant Kumar has clearly opined that the cause of death was hemorrhagic shock and pulmonary edema due to injuries caused by a sharp-edged weapon. Moreover, defense side has never challenged that Prabhu Singh did not face homicidal death. So, it may be easily concluded that Prabhu Singh faced homicidal death.

23. Though it is well known fact that merely proving this fact that the death was homicidal is not sufficient to convict the accused, rather the

prosecution is under obligation to prove its case beyond reasonable doubt that non else but the trial facing accused has committed the alleged crime of murder. No doubt that the burden of proving the guilt of the accused beyond all shadows of reasonable doubt always lies upon the prosecution. While the accused is presumed to be innocent unless the prosecution proves its case by way of producing reliable, cogent and trustworthy evidence on record. While from record it is quite clear that the present case of prosecution is not based on direct evidence of eyewitness on the point of actual lethal assault of the late Prabhu Singh but the case of the prosecution on the circumstantial evidence as well as on the alleged dying declaration of the deceased to this case namely Prabhu Singh. So, prosecution is under obligation to establish an unbroken chain of circumstances pointing towards the guilt of the accused and by ruling out every other hypothesis consistent with his innocence. Further the alleged dying declaration is not concocted and free from any doubt. In the case of in the case of Hanumant v. The State of Madhyapradesh" the hon'ble court has observed that the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved..... it must be such as to show that within all human probability the act must have been done by the accused." While in the case of Sharad Birdhichand v. State of Maharashtra, (1984) 4 SCC 116, the hon'ble apex has clearly observed that (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) the circumstances should be of a conclusive nature and tendency. (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the the accused and must show that in all human probability the act must have been done by the accused.

24. So keeping in the mind of aforesaid observation by the hon'ble in the aforesaid cases, regarding the circumstantial evidences, it has to be seen as to whether prosecution has succeeded to prove its case beyond the all shadows of reasonable doubt against the accused namely Rajesh Singh. From perusal of the record it is evident that prosecution side has projected to the P.W.-01 Arti Devi as an eyewitness of this case. However, when the oral testimony of P.W.-01 is carefully appreciated then it appears that P.W.-01 Arti Devi has not actually seen the alleged act of assaulting to the deceased to this case namely Rajesh Singh. Because during her examination-in-chief she has simply stated that Rajesh Singh killed her Jija (brother-in-law) by inflicting knife on his neck. While in her cross-examination P.W.-01 has stated that incident did not take place before her, she saw him (Rajesh Singh) fleeing away from the courtyard. So from her testimony it is clear that P.W.01 had not seen to the accused by inflicting knife on the neck of the deceased. Further, it would not be out of place that in her statement given before I.O. to this case Arti Devi has never stated that she saw to the Rajesh Singh by fleeing away. While no doubt that such type evidence may create suspicion about the involvement of accused in the alleged crime but such type evidence can not be considered to be nature of conclusive proof on the point of involvement of accused in the alleged crime. Because it is well settled law that however strong the suspicion may be, but same can not take place of proof. Further it is notable that in her statement before police P.W.-01 has never stated that she saw to the Rajesh Singh fleeing away from the courtyard. So, it appear that with view to fill up the lacuna of prosecution case P.W.-01 has made some improvement and has given such oral testimony after thought. Further prosecution has relied on the oral testimony of PW-04 Sudha Devi who is non-else but the informant of this case. Who admittedly was not present at the place of occurrence when the alleged crime was committed. As P.W.-04 has herself stated in her oral testimony that she reached at hospital after receiving information from her sister-in-law namely Arti Devi. Though P.W.-04 has stated that her husband (deceased to this case namely Prabhu Singh)

disclosed that Rajesh Singh had stabbed him. So it is evident that by way of oral testimony of P.W.-04 Prosecution wants to prove its case on the alleged oral dying declaration of late Prabhu Singh. But at this juncture it would not be out of place to mention here that in his oral testimony P.W.-07 Dr. Shushant Kumar go to prove that deceased namely Prabhu Singh sustained a penetrating sharp-cut injury on the left side of the neck due to which the trachea, larynx and major blood vessels got cut. While, it is well known that Larynx is commonly known as voice box. While as per opinion of the P.W.-07 the larynx and trachea had got sufficiently injured/cut, so in such circumstance it is difficult to hold that injured Prabhu Singh was in condition to utter any words and sentence. Further any doctor was not examined on behalf of the prosecution to prove that Prabhu Singh was able to speak when he was brought to Azamnagar hospital or not. Further due some other reason the oral evidence of P.W.-04 does not appear to be reliable on the point of disclosure statement of injured Prabhu Singh that her husband told her that Rajesh Singh stabbed him, because in her cross-examination P.W.-04 has stated that after reaching the hospital she neither talked to anybody present there nor talked to her husband. So her such admission directly contradicts her statement as made in examination-in-chief wherein she has stated that her husband told her that he was stabbed by Rajesh Singh. So no doubt that such material contradiction as indicated above is sufficient to demolish the very root of the prosecution case regarding the alleged oral dying declaration. Further, P.W.-03 Bheda Singh has deposed before this court that deceased told him that Rajesh Singh had stabbed him. But his oral testimony on said point does not appear to be reliable, because he has further stated in his oral deposition that he went to the house of the deceased after hearing the commotion. While later on, P.W.-03 has stated that he had not gone at the house of the deceased rather he went for labour work on the next morning. These contradictory statements is sufficient to demolish the credibility of the oral testimony of the said witness. So, due to that very reason the oral testimony of P.W.-03 on the point of alleged dying declaration of the late Prabhu Singh does not appear to be reliable at all.

25. No doubt that an oral dying declaration is admissible in evidence under Section 32(1) of the Evidence Act. But dying declaration is considered to be weak type evidence. It is well settled law that an oral dying declaration should be accepted only when it is free from any doubt. In *Khushal Rao v. State of Bombay* the hon'ble apex court has held that a dying declaration can form the sole basis of conviction only if it is found to be wholly reliable and inspires confidence. But from the discussion as made above it is evident that prosecution has not succeeded to prove that alleged dying declaration of late Prabhu Singh is free from doubt. Because PW-04 herself contradicted her own version during her cross-examination. Further, from the perusal of the Ext-PW7/P6-Postmortem report as well as oral testimony of P.W.-07 Dr. Sushant Kumar it is evident that Prabhu Singh had sustained penetrating wound in the upper region of the left neck having dimension 05cm in length, 01cm in breadth, and deep into the neck and bleeding from both nostrils. Further P.W.-07 has opined that on dissection of the neck, trachea, larynx, and major vessels of the left side of the neck were cut. So, from the injuries sustained by the Prabhu Singh it prima facie appears that Prabhu Singh sustained penetrating wound 05cm X 01 cm extending deep into neck. Further from oral testimony of P.W.-07 it is evident that larynx, Trachea and Major blood vessels on the left side of the neck were cut. While no doubt that such type injuries on the larynx and trachea would interrupt the normal airway the larynx. So, due to that very reason, it appears that injured Prabhu Singh would not be able to speak. Further due to cut injuries on major vessels must have caused the massive hemorrhage and rapid hemorrhagic shock. So, above noted medical findings, go to suggest that Prabhu Singh would have already lost his capacity to speak.. Furthermore, with view to remove any doubt it was the duty of the prosecution to examine any medical officer, so that he may testify on the capacity of speak of late Prabhu Singh when he was allegedly being treated in Azamnagar Hospital. But prosecution did not examine any medical officer to prove that the deceased was in a fit condition to make such alleged statement. Any other independent witness

present in the hospital at the time of treatment, has been examined to support the alleged dying declaration. So, in such compelling circumstance, this Court is not inclined to place any reliance or conclusion upon the alleged oral dying declaration.

26. While coming on the other witnesses of the prosecution court finds that PW-02 Atul Singh, and PW-05 Kachalu Singh admittedly are not eyewitnesses. PW-02 specifically admitted in cross-examination that he had not seen the occurrence. PW-05 also admitted that he reached the hospital after the incident and had only heard that Rajesh Singh stabbed the deceased. Therefore, their's evidence is purely hearsay and carries little evidential value.

27. Further from perusal of the case record it is evident that prosecution side has further relied upon the recovery of the alleged knife at the instance of the accused namely Rajesh Singh. But from record it is evident that the then SHO, Azamnagar had recovered the alleged knife on the basis of confessional statement of the accused namely Rajesh Singh who was admittedly in the custody of the police when knife was recovered. Further it is alleged that seizure list of the said knife was prepared by the the then SHO, Azamnagr. But prosecution has not examined the said SHO, who prepared the Seizure list. Further prosecution has not examined any witness of the seizure list before this court. Only P.W.-06 who is the I.O. to this case has formally proved the seizure list. While P.W.-06 I.O. to this case has clearly admitted that he did not prepare any test memo for sending the knife to the Forensic Science Laboratory. Since, alleged recovered Knife was not sent to the F.S.L for needful examination, so there is no F.S.L. report on record to show the presence of human blood on the knife or to prove that injuries sustained by the deceased was caused by said knife. Though the alleged recovered knife was produced before court by the P.W.-08, who is clearly deposed before this court that he has no personal knowledge about the said knife. Moreover P.W.-08 is only formal witness who produced the said knife before court. But his oral evidence does not prove the alleged

recovery of knife or any connection of said knife with this alleged crime of murder of Prabhu Singh. Further it is notable that seizure list is only a document while it is well settled law that mere exhibition of a document is not sufficient to prove the contents of the document, rather it is must to prove the contents of the document by reliable oral evidence. So, merely exhibiting the alleged Ext-PW6/P3- Seizure list by the I.O. is not sufficient to prove the recovery of the said knife.. While the prosecution has not examined the then SHO, Azamnagar who actually prepared the Seizure list. While it is well settled law that mere recovery of a weapon alone is not sufficient unless it is connected with the crime by reliable evidence. While in present case, in the want of F.S.L. report or other connecting evidence, recovery of alleged knife loses its evidentiary value in the eye of law.

28. Further from oral testimony of the P.W.-06 it is evident that in present case investigation was not properly conducted by the I.O.to this case. Because, from the oral testimony of P.W.-06 it is quite clear that he neither prepared the sketch map (Nazari Naksha) of the place of occurrence nor he collected blood-stained earth, blood-soaked clothes and bedding from the place of occurrence. Further it was incumbent of the I.O. to call for Finger expert so that finger mark may be collected from the place of occurrence. Further, neither in case dairy nor in his oral deposition, P.W.-06 has made clear as to whether P.W.-01 Arti Devi was sleeping, further as to whether Prabhu Singh and Rajesh Singh were sleeping. So that it may be clear that Arti Devi was able to see to the Rajesh by fleeing away from the place of occurrence or not? Further being the I.O. to this case it was his duty to send the seized knife for F.S.L. examination, but he did not do so. Though, every lapse or latches committed by the prosecution agency does not have necessarily bad effect on the merit of the prosecution case. But in this present case, prosecution case is based entirely upon circumstantial evidence, but from the discussion as made in previous para it is quite clear that prosecution has not adduced such reliable evidence which may prove the involvement of the accused beyond all the shadows of reasonable doubt. So such lapses

as indicated above go to create reasonable doubt regarding the prosecution story. Though the story as projected by the prosecution side and basing its case on dying declaration as well as on alleged recovery has not been proved beyond the all shadows of reasonable doubt. Whole story of prosecution is full with suspicion. While it is well settled law that suspicion, however strong, cannot take the place of proof. While in *Kali Ram v. State of Himachal Pradesh*, .A.I.R. 1973, 2773 the Hon'ble Apex court held that "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the, guilt of the accused, the accused must have the benefit of that doubt." So, by applying said settled principles to the present case, this Court finds that the all chain of circumstances is not complete, because the prosecution has miserably failed to establish every link necessary to connect the accused with the commission of the alleged crime of murder of late Prabhu Singh. Moreover, the evidences available on record creates only suspicion against the accused, but it is well settled law that suspicion alone cannot form the basis of conviction.

29. Further coming on the contentions of the ld. A.P.P. appearing on the behalf of the state as well as ld. defense counsel court finds that prosecution wants to establish of it is case on the basis of alleged oral dying declaration made by deceased to this case namely Prabhu Singh to the PW-04 namely Sudha Devi as well as on alleged recovery of the knife at the instance of Rajesh Singh and on the basis of the oral testimony of P.W.-01 that she saw the accused by fleeing away from the

place of occurrence. But, oral deposition of P.W.-04 on the point of dying declaration does not appear to be reliable because P.W.-04 has clearly admitted in her cross-examination that she neither talked her husband nor anyone present in the hospital. Further, neither doctor nor any other person allegedly present in the said hospital has supported the alleged dying declaration made by late Prabhu Singh prior his death. While the oral evidence of P.W.-01 to this effect that she saw the accused namely Rajesh Singh fleeing away from the place of occurrence, also does not appear to be fully reliable, because she has only stated that she saw to the accused fleeing away from the place of occurrence, but she has never stated that she saw to the accused by committing alleged assaulting to the Prabhu Singh. Further the not made clear that accused was having the knife in his hand or not?. Further she has never stated that after seeing the occurrence she raised noise/alarm and her noise people came at the place of occurrence. So her behavior appears to to be contrary the behavior of common people. While rest witnesses of prosecution appears to be hearsay witness. Further the alleged recovery of knife has also not been proved beyond reasonable doubt. Further neither the copy of the seizure list was provided to the accused nor it was made clear as to in what circumstance only thumb impression of accused was taken on the seizure list while accused appear to be literate person, because he has signed before court several times with skilled manner. Further from perusal of the oral testimonies of the P.W.-01 and P.W.-04 it is quite clear that they have made some improvements in theirs respective oral testimonies. Further, prosecution has not succeeded to produce any forensic evidence with view to connect the alleged recovered knife with the murder of Prabhu Singh. Further, the I.O. to this case has not made clear as to how he came to know that accused Rajesh Singh was present at Harishchandrapur (W.B) far away from the place of occurrence. Further much latches have been committed in the investigation, as I.O. to this case has neither made the sketch map (Najari Naksha) of the place of occurrence nor collected the blood stained earth, blood soaked clothes and bed of the deceased from the place of occurrence. Though it is well known that any latches committed by prosecution agency is not always

considered to be fatal for prosecution case but alleged latches as committed by the prosecution agency in this case has much importance where the whole prosecution case has been based on circumstantial evidence. Hence this court finds much force in the contention of the Id. defense counsel that all the chain of circumstances is not complete which may prove the complicity of the accused in this alleged offense. Further court finds much force in the submission of the Id. counsel of the defense that in the case of which based on the circumstantial evidence, motive plays very important role to put the light on the reason behind the commission of the alleged crime. But in this case prosecution has miserably failed to prove the motive of accused for committing such type heinous crime against such person who is none else but the own husband of his sister namely Sudha Devi. So, having consideration the above facts and circumstances of this case as well as sagacious contentions raised by Id. Counsel for the defense, this court finds and holds that prosecution has not succeeded to prove the charges u/s- 302 of the I.P.C. beyond the all shadows of reasonable doubt as leveled against aforesaid accused person namely Rajesh Singh.

30. So, keeping in the minds above all discussed facts and circumstance of this case as well as evidences available on record, court finds and holds that accused is entitled for the benefit of doubt with respect of the charge u/s 302 of the I.P.C. as leveled against him. Hence, by granting the benefit of doubt the aforesaid accused person is hereby acquitted from the charges u/s- 302 of the I.P.C. as leveled against him. Since aforesaid accused person is in custody, so O/C is hereby directed to issue release order at once and jail authority is hereby directed to release the said accused if he is not warranted in other case.

31. Compensation:- From the discussion as made above it is quite clear that Prabhu Singh has faced homicidal death. Further no doubt that the legal heirs of the deceased late Prabhu Singh must have undergone unbearable pain and suffering due homicidal death of late Prabhu Singh. So, in view of the above facts, that legal heirs of said deceased namely

late Prabhu Singh are found to entitled to get the compensation. Therefore, I deem it proper to award compensation to the legal heirs of deceased person. The Secretary, District Legal Services Authority, Katihar is hereby requested to pay compensation to the legal heirs of the said deceased namely Late Prabhu Singh under the Bihar Victim Compensation Rule/Scheme formulated by the State Government for such cases.

32 Further office, clerk is hereby directed to send a copy of the judgment to the Secretary, District Legal Services Authority Katihar, after obtaining full details of the wife and children of late Prabhu Singh, if any or her any other legal heirs from prosecution side for payment of compensation as per rule.

Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 365 of Cr.P.C.

Office is further directed to consign the case record to the D.R.R, Katihar after necessary compliance, if any.

Judgment was dictated and corrected by me and same was pronounced by me in open court.

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

17-07-2026

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

17-07-2026

**IN THE COURT OF ADDL. SESSIONS JUDGE-II KATIHAR**  
**Sessions Trial Case No.-170/2023**

**LIST OF PROSECUTION WITNESSES:-**

| <b>Sr. No.</b> | <b>Pws. Number</b>            | <b>Description</b> |
|----------------|-------------------------------|--------------------|
| 01             | PW-01-Arti Devi               | Eye witness        |
| 02             | P.W.-02-Atul Singh @ Atul Lal | Hearsay witness    |
| 03             | PW-03-Bheda Singh             | Hearsay witness    |
| 04             | P.W.-04-Sudha Devi            | Hearsay Witness    |
| 05             | P. W.-05-Kachalu Singh        | Hearsay witness    |
| 06             | P. W.-06-Bhutkun Ray          | IO. to this case   |
| 07             | P. W.-07 Dr. Sushant Kumar    | Expert Witness     |
| 08             | P.W.-08-Om Prakash Mahto      | Formal witness     |

**LIST OF PROSECUTION EXHIBITS:-**

| <b>Sr. No.</b>          | <b>Exhibit Number</b> | <b>Description</b>                                        |
|-------------------------|-----------------------|-----------------------------------------------------------|
| 01                      | Ext.- PW6/P1          | Endorsement over written report                           |
| 02                      | Ext.- P-2/PW-2        | Signature P. W.-02 Sudha Devi on the Written Application. |
| 03                      | Ext.- PW6/P2          | Formal F.I.R.                                             |
| 04                      | Ext.-PW6/P3           | Seizure list                                              |
| 05                      | Ext.-PW6/P4           | Charge-sheet                                              |
| 06                      | Ext.-PW6/P5           | Death Inquest Report                                      |
| 07                      | Ext.-PW7/P6           | Postmortem report                                         |
| <b>MATERIL EXHIBITS</b> |                       |                                                           |
| 09                      | Material Ext-M        | Knife                                                     |

**LIST OF DEFENCE WITNESS**

| <b>RANK</b> | <b>NAME</b> | <b>NATURE OF EVIDENCE</b> |
|-------------|-------------|---------------------------|
| 1           | N/A         | N/A                       |

**LIST OF DEFENCE EXHIBITS**

| <i>Sr. Number</i> | <i>Exhibit Number</i> | <i>Description</i> |
|-------------------|-----------------------|--------------------|
| <i>1</i>          | <i>N/A</i>            | <i>N/A</i>         |

*(Asutosh Rai)*

*Addl. Sessions Judge-II, Katihar*

*17-07-2026*

|                                           |                            |
|-------------------------------------------|----------------------------|
| <i>Date of which judgment is reserved</i> | <i>06-07-2026</i>          |
| <i>Date of Judgment</i>                   | <i>17-07-2026</i>          |
| <i>Uploading date</i>                     | <i>20.07.2026</i>          |
| <i>Uploaded by</i>                        | <i>Prakash Kumar Singh</i> |