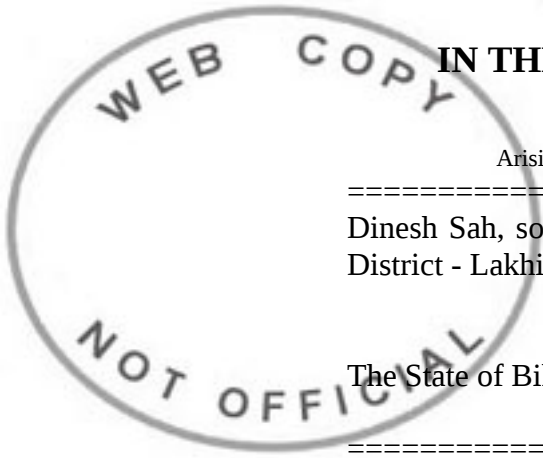




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 133 of 2006

Arising out of P.S.Case No. 262 Year - 1996 Thana – Surajgarha District - LAKHISARAI

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Dinesh Sah, son of Sri Durak Sah, resident of village - Husana, P.S. Mednichoki,
District - Lakhisarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Sri Om Prakash Pandey &
Sri Neeraj Kumar @ Sanidh, both Amicus Curiae
For the Respondent : Sri Abhimanyu Sharma, APP.

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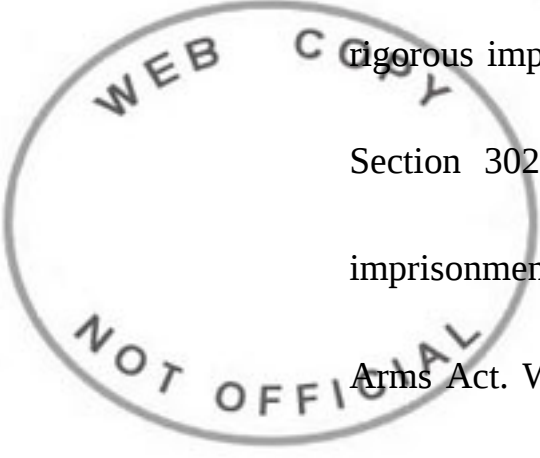
CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

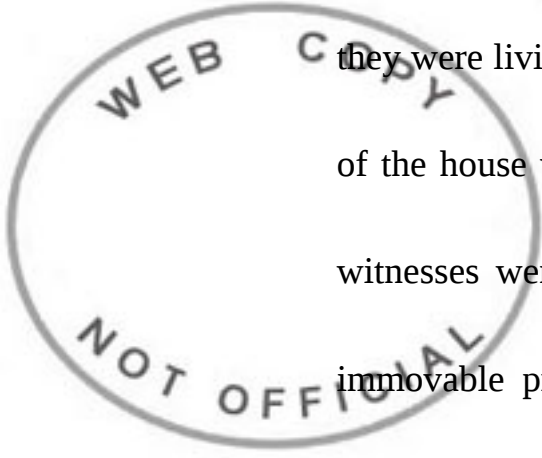
Date: 02-02-2015

The solitary appellant was put on trial by the learned Additional Sessions Judge, Fast Track Court No. - I, Lakhisarai after being indicted of committing offences under Section 302 IPC and Section 27 of the Arms Act. The learned trial Judge handed out the judgment of conviction to the appellant in Sessions Trial No. 575 of 2000 on the 20th day of May, 2005 by holding him guilty of committing the two offences he had been charged with. The appellant was heard on sentence on the 25th day of May, 2005 and was directed to suffer



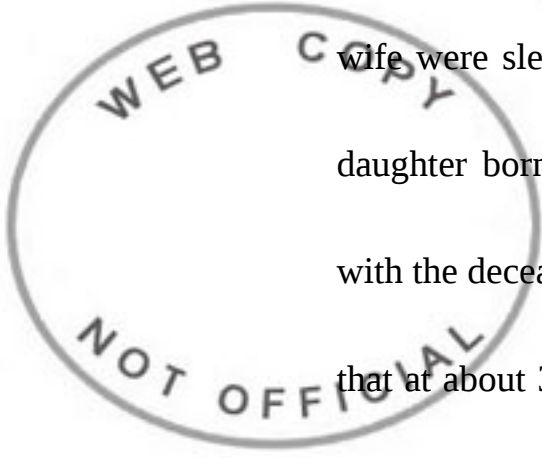
rigorous imprisonment for life as also to pay a fine of Rs.5000/- under Section 302 IPC. The appellant was further sentenced to rigorous imprisonment for three years with a fine of Rs.2,000/- under Section 27 Arms Act. While the sentences were directed to run concurrently upon the appellant, it was directed that if he had defaulted in making the payment of quantum of fine, he was to consolidately suffer rigorous imprisonment for three months on both the counts. The appellant appeals to this Court against the judgment of conviction and order of sentence passed upon him.

2. Before we come to the facts of the case, we want to notice some of the admitted facts. The appellant was the brother of P.W.3 Shiv Balak Sah, P.W.5 Shital Sah and P.W.11 Shambhu Sah, all of whom were sons of P.W.6 Dwarik Sah and P.W.4 Runa Devi. P.W.1 Sushila Devi and P.W.2 Shail Devi were married to the eldest of the four brothers, namely, Shambhu Sah. It is also undisputed that there had been a partition amongst the brothers' in respect of the joint properties belonging to the family quite some times prior to the incident, but still



they were living under the same roof with individual occupation of rooms of the house which were allotted to each of the brothers in partition the witnesses were one in pointing out that the appellant had sold out his immovable properties and had probably fallen from the favour of his brothers and parents so much so that no one was interested in ensuring that the appellant had settled down in his life by marrying a lady. The appellant as such married the deceased who was not chosen by his family members. This evidence is undisputed, as appears from the evidence of many witnesses including the mother of the appellant P.W.4 Runa Devi who stated that the appellant had married out of his own free will the deceased Kanchan Devi and as may appear from the evidence of the informant and other witnesses, the family members were quite unhappy with the appellant for marrying himself to a lady of his choice, the deceased.

3. The allegation as contained in the fardbeyan (Ext-3) was that the witnesses who were examined in the case, were sleeping at the roof-top of the house while the present appellant Dinesh Sah and his



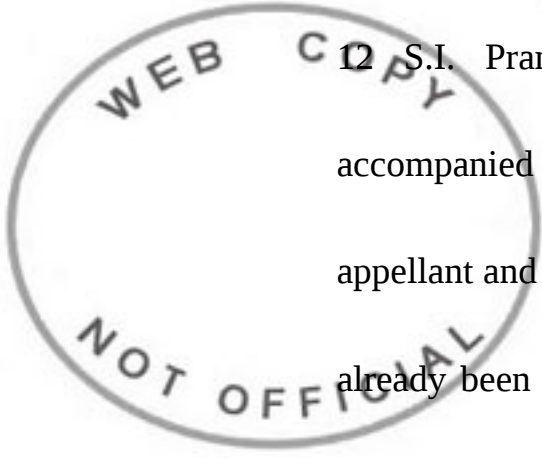
wife were sleeping inside a room. The appellant had a three-month-old-daughter born from the wed-lock and the little child was also sleeping with the deceased and the present appellant. P.W.1 stated in her fardbeyan that at about 3 A.M. this appellant vigorously knocked at the door of the room, as a result of which P.Ws.1 and 2 both wives of P.W.11 woke up and they, thereafter heard the sound of gun shot emanating from the ground floor and it was stated that that shot was fired by this appellant Dinesh Sah who escaped from the house. The little child also started weeping and P.W.1 asked her mother-in-law P.W.4 to look into it, upon which P.W.4 descended the stairs to come into the room where the incident had taken place to find that deceased Kanchan Devi aged about 20 years was lying dead and, accordingly, P.W.4 Runa Devi, the mother of this appellant and mother-in-law of P.W.1, told P.W.1 that it was this appellant who had killed the deceased Kanchan Devi and had run away from the place of occurrence.

4. The informant, thereafter came down the stairs and the mother-in-law P.W.4 Runa Devi went up the stairs with the child.



5. It was stated by the informant that the deceased Kanchan Devi used to reside in her parent's house and had only come two days prior to the occurrence. On 17.09.1996 the couple, i.e., the present appellant and the deceased Kanchan Devi had gone to Surajgarha market and had come back home. The deceased had arrived in the house with her brother Mithilesh Kumar (P.W.9) only on 17.09.1996. However, what appears from the fardbeyan is that the informant could not give out any reason as to why this appellant should have killed his wife and it also appears stated by P.W.1 that she did not have any clue regarding the good or bad relationship between the couple.

6. The incident had occurred at around 3 A.M. in the night intervening the 18th -19th of September, 1996 and Ext - 3, the fardbeyan of P.W. 1 was the document recorded at the house of Dwarik Sah (P.W.6), the father-in-law of P.W.1 and thereafter the FIR of the case was drawn up. The investigation was taken up by S.I. R. A. Ram who was the Officer-in-Charge of Medni Chowki police station. What we find from the records is that S.I. R. A. Ram was not examined and P. W.

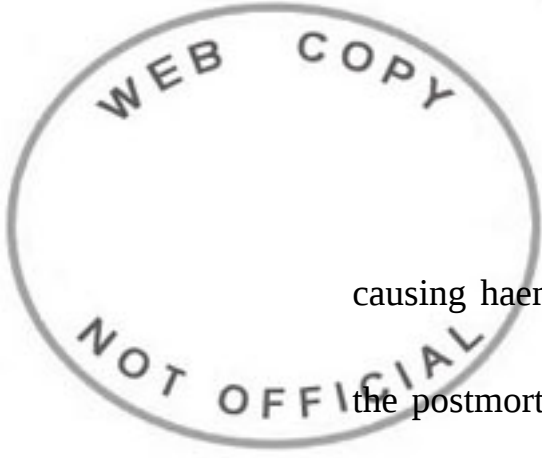


12 S.I. Pramod Sharma, examined during the trial, had merely accompanied S.I. R.A.Ram for making raids and arresting the present appellant and had submitted the chargesheet because the investigation had already been completed by S.I. R.A.Ram. However, what we find from the record further is that the investigating officer had held inquest upon the dead body of the deceased and had prepared Ext-4 the inquest report and had definitely transmitted it for postmortem examination.

7. P.W.13 Dr. Krishna Mohan Purbe would testify that during the course of performing autopsy on the dead body, he had found the following ante-mortem injury:-

- (i) One lacerated circular wound, 1/2" in diameter x brain cavity deep, with blackened edge with singeing of hairs on the middle of occipital region. P.W.13 found ecchymosis present on right temporal region in the area of 2"x 1".

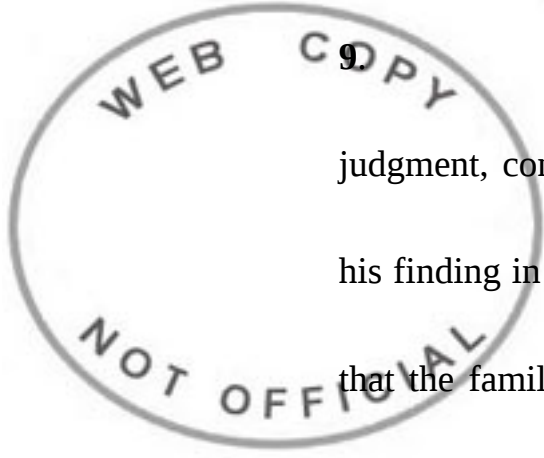
On dissection P.W.13 found the fracture of occipital and right tempo-perital bones with further laceration of the brain matter. Blood clots were found present in the cranial cavity. P.W.13 found a bullet lodged in the right temporo-mandibular joint which was retrieved and sealed and handed over to



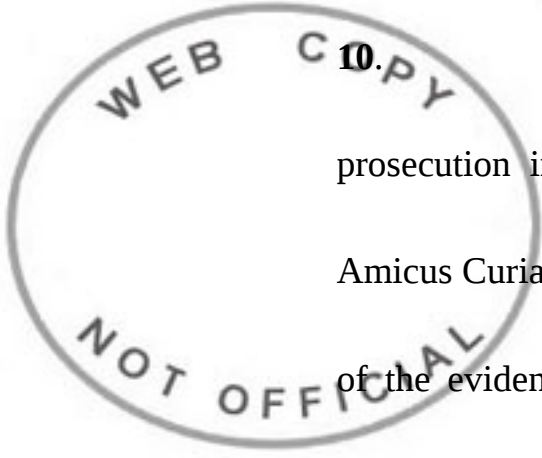
the constable accompanying the dead body.

In the opinion of P.W.13 death had resulted due to shock causing haemorrhage and fired by fire arm within 24 hours of holding the postmortem examination. Thus, what appears from the evidence of P.W.13 is that the deceased Kanchan Devi had definitely been killed by firing a shot in her head.

8. Besides the evidence of P.W.13, the prosecution led oral testimony of witnesses, like, P.W.1 Sushila Devi, P.W.2 Shail Devi both wives of P.W.11 Shambhu Sah, P.W.3 Shiv Balak Sah, the brother of Shambhu Sah. P.W.4 Runa Devi, the mother of the present appellant and P.Ws.3 and 11 Shambhu Sah and P.W.5 Shital Sah, yet another brother of P.Ws.3 and 11 and son of P.W.6 Dwarik Sah. P.W.7 Hare Ram Sahni was a witness to inquest proceedings while P.W.8 Shanti Devi was the mother of the deceased. P.W.9 Mithilesh Kumar was the brother of the deceased and P.W.10 was her father. We have already noted that P.W.12 Pramod Sharma had only submitted chargesheet forwarding the solitary appellant for trial.

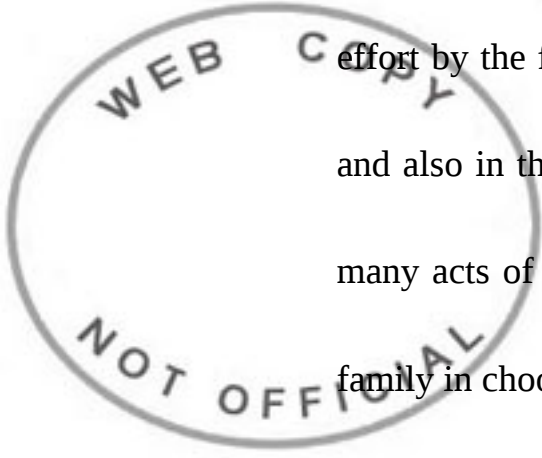


9. The learned trial court rendered the impugned judgment, considering the evidence of witnesses and thereafter recorded his finding in paragraph-8 of the judgment. The learned trial Judge found that the family members of the present appellant who did not have any axe to grind against the appellant, had come forward to depose against the appellant and thereafter proceeded to record that there was consistency with the evidence of witnesses as regards the prosecution story that the appellant had slept in the fateful night in a room with his wife (deceased) from which the sound of gun shot was heard coming from by the witnesses. The second circumstance which was noted by the learned trial Judge against the appellant was that just after the sound of gun shot was heard, the appellant was seen rushing out from the room of the house and he was seen running away by the witnesses. The third circumstance was that the appellant kept absconding and was not found at his house. The learned trial Judge, reading for the above circumstances, was considering the evidence of each witness on the relevant point and then was noting that the charges had been duly established by the prosecution.



10. We went through the evidence which was led by the prosecution in support of the charges and we also heard the learned Amicus Curiae and the learned Additional Public Prosecutor on the merits of the evidence as also on the merits of the findings upon which the appellant was convicted and sentenced as noted at the very outset of the present judgment.

11. The submission which was advanced on behalf of the appellant was, firstly, that the evidence of witnesses appear not acceptable because they appear making improvements during the trial of the case after making some serious departure from the story which were earlier narrated by P.W.1. Secondly, it was contended that the evidence also suffered from improbabilities and absurdities making the evidence of witnesses not acceptable and thirdly, the mere abscondence of the appellant could not be a circumstance in isolation especially when there does not appear any motive for the appellant to kill his wife rather the evidence suggests that if the relationship was not very cordial, it was not bad either. Submission further was that it appears a case of concerted

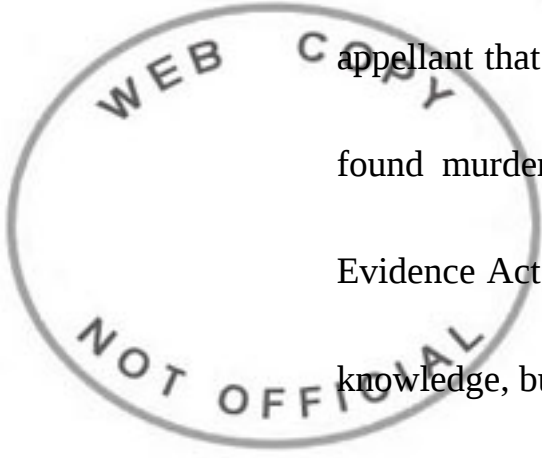


effort by the family members of the appellant who had fallen from grace and also in their estimation to come together to probably punish him for many acts of omission and commission including the one of defying the family in choosing the bride of his choice so as to getting married to her.

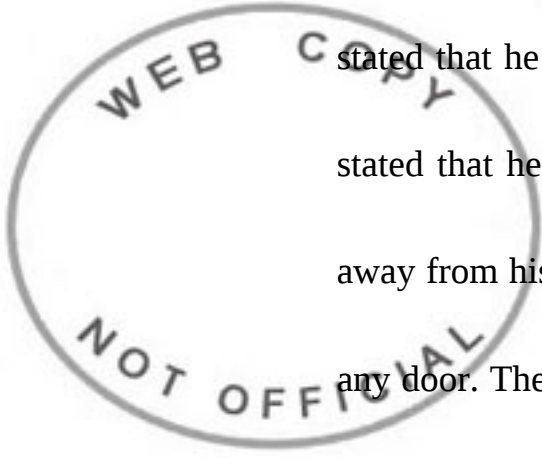
12. The learned Additional P.P. was also very fair in pointing out that circumstances do not appear really coming out of the evidence of witnesses and the evidence suffers from many pitfalls creating serious doubt in the veracity of the narration.

13. Before, we take up the circumstances and read the evidence so as to judging the findings of the learned trial Judge, we are tempted to quote a single line from the State of U.P. v. Hari Prasad and others reported in AIR 1974 SC 1740. It was noted “ as criminal cases go, this is an interesting case in the sense that it offers for solution a riddle of many facets. And since many answers reasonably come to mind, the accused would appear to be entitled to the benefit of that perplexity”.

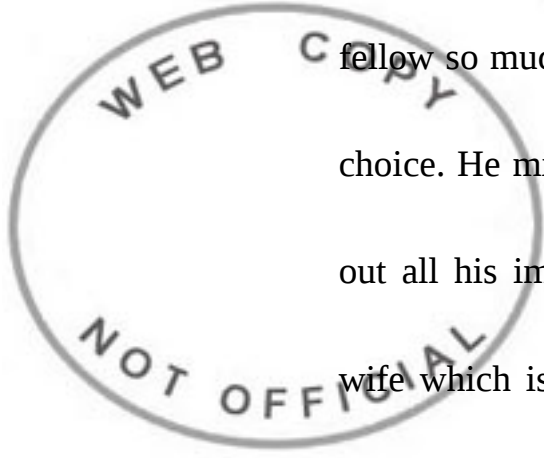
14. We perused the evidence ourselves when at the first blush, we found a circumstance very strongly appearing against the



appellant that he had slept with the deceased in a room and the lady was found murdered by a gun shot. We were reading Section 106 of the Evidence Act which requires a person to explain a fact within his special knowledge, but when we proceeded further to rove through the papers, we found the strong inference which was arising in our mind by virtue of Section 106 of the Evidence Act being diluted to such an extent that we found many perplexities and doubts creeping into our mind. The first circumstance of sleeping inside the room may be as concrete and conclusive a circumstance as to hold the appellant guilty. We do not have doubt about that, but it could be a circumstance that only we only when we find supporting circumstances reinforcing the inference of culpability arising out of the ordinary circumstance of living together of a wife and husband in a room, only when we have found the evidence of witnesses trustworthy. The witnesses are equivocal in stating that they had gone up stairs and had slept at the roof top. All family members present in the house that night were at the top of the house enjoying their sleep except P.W.11 Shambhu Sah. We doubt that he was present in the house. P.W.1

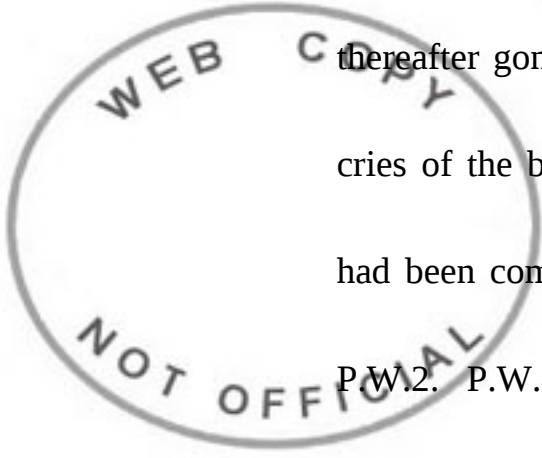


stated that he was also at the roof top but P.W.2 another wife of P.W.11 stated that he was sleeping at the top of another house which was quite away from his own house. The evidence is that the stair-case did not bear any door. The witnesses were fast asleep. The vigorous knocks were given to the room which was in occupation of P.Ws.1, 2 and 11 down the stairs, on the ground floor. No one had seen that it was this appellant who had knocked at the door vigorously or otherwise. In cross-examination P.W.1 was very categorical in stating as appears from page-8 of the paper book that there was no door fixed in the stair-case at the top of the house. We do not see any particular reason as to why the appellant who was sleeping in his own room or any room other than that which was in occupation of P.W.1 would, firstly, choose to knock the doors of the house. We do not see any for any person who was to commit the murder of his spouse and who was sleeping very much inside the same room with the deceased, to knock at the door of another room in somebody's occupation so as to sending a message that he was likely to commit the crime. The appellant was not insane as appears from the evidence of witnesses. He was a saner



fellow so much so that he was choosing and had married the lady of his choice. He might have been an extravagant so much so that he had sold out all his immovable properties, but he had good association with his wife which is indicated by the fact stated in the very First Information Report that just a day prior to the occurrence, he had gone to a market place with the lady of his choice for purchasing necessary articles. The story and the evidence that the appellant had given vigorous knocks at the door of P.W.1, in our opinion, is as absurd as not only to merit rejection of the story but also to clearly put into doubt the veracity of the witnesses who consistently deposed to that part of the false story.

15. The FIR did not state that the appellant was either carrying any article or was carrying the weapon when he was going out of the house, but while we were considering the statement and the evidence of the witnesses, we found that there was vast difference between the story which was initially narrated in the First Information Report and that narrated by the witnesses during the trial. In the FIR, the informant P.W.1 stated that the appellant had vigorous knocks at the door of the room and

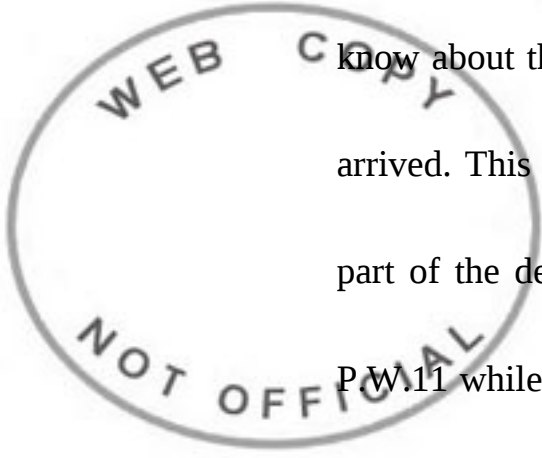


thereafter gone into his own room to fire a shot and further, that on the cries of the baby which were coming from the room where the murder had been committed, she awoke her mother-in-law through her Sautan P.W.2. P.W.4 Runa Devi, thereafter, came down the stairs and entered inside the room and informed P.W.1 after returning from there that it was this appellant who had killed his wife. Thus, what appears from the statement made in the FIR is that P.W.1 had not descended from the roof top rather had categorically stated that she did not come down the stair out of fear. We find it very curious as to how P.W.1 could have been so certain to narrate that it was this appellant who had, as we noted earlier, knocked at her doors and how could she again tell the Court and the police that it was this appellant who had fired the shot as appears from the FIR. However, what comes from the evidence during trial is that P.W.2 her Sautan and her mother-in-law P.W.3 all woke up merely by knocks at the doors given by this appellant and thereafter, P.W.1 heard the gun shot and then found this appellant exiting the house with some articles. There is no whisper in the evidence of P.W.1 as to from where she could see the

appellant knocking at the door or running away or going out of the house.

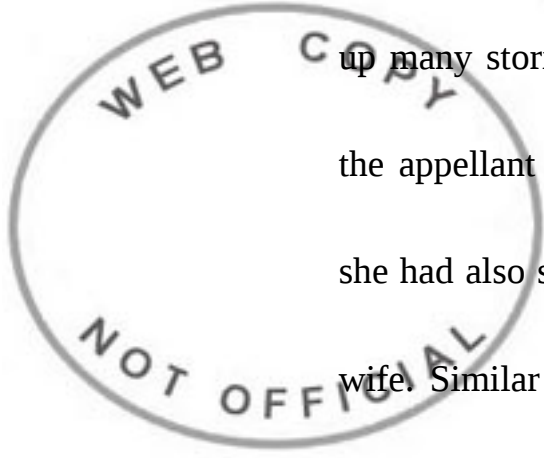
She stated that she and others, like, P.Ws. 2 or 3 had come down the roof from the top of the building and had found the deceased murdered and that P.W.4 Runa Devi picked up the little child in her lap. This evidence of P.W.1 is completely contrary to her own story which was narrated in the FIR and this was the reason that she was cross-examined to her earlier statements during cross-examination. She claimed that she had made those statements which were made by her in examination-in-chief as appears from pages-12 and 13 of the paper book. But in absence of the evidence of the investigating officer, we are precluded from verifying as to whether she had made any statement or not. We, in the alternative, have to draw adverse inference that if investigating officer had been examined, he should not have proved those facts which she had claimed stating to him.

16. Not only the above, P.W.1 claimed that her husband was also sleeping on the same roof but he could not know about the occurrence instantaneously. P.W.11 as per the evidence of P.W.1 could



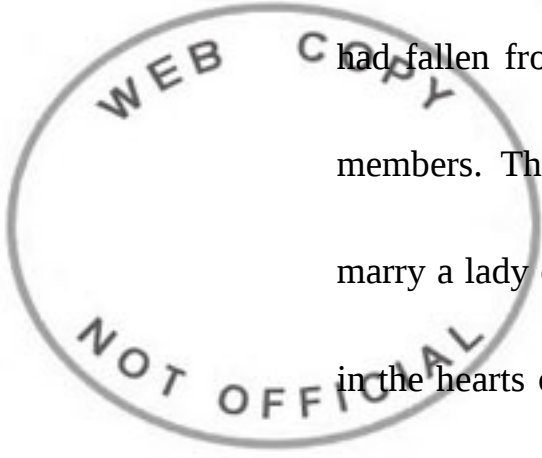
know about the occurrence only in the morning after the Chowkidar had arrived. This evidence appears at page-7 of the paper book which is the part of the deposition of P.W.1. Her Sautan who was the other wife of P.W.11 while deposing in Court stated that her husband was not sleeping on the roof of the same house rather he was sleeping at the roof top of another house which was away from his own house and was intervened by 2-4 other houses (P.W.2 at page-19 of the paper book). P.W.2 further stated that her husband could know about the incident at about 8-9 A.M. Similar is the evidence of P.W.4 Runa Devi who also stated that her eldest (P.W.11) could not know about the occurrence on account of not being present in the house and he could know about the occurrence only when the police had arrived. We do not see any reason as to why P.W.11 Shambhu Sah will not sleep in his own house or at the roof top of his house and would have chosen to sleep at the roof top of someone else's house. This also creates a doubt regarding the presence of the witnesses and also regarding the evidence that they were giving during trial.

17. While deposing in Court, the witnesses were adding

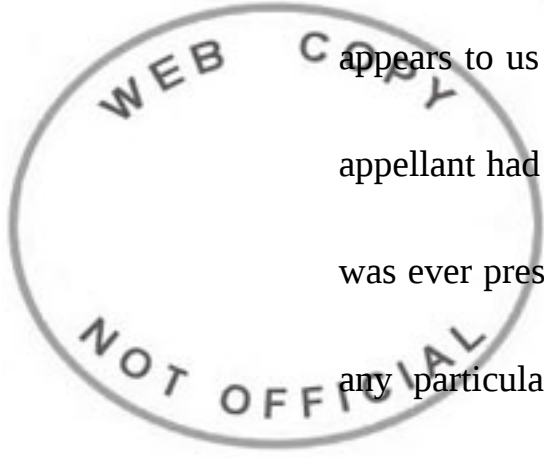


up many stories. P.W.1 added up the story of carrying some articles by the appellant while he was leaving the house while P.W.2 claimed that she had also seen the appellant carrying the gun with which he killed his wife. Similar is the evidence of P.W.3 Shiv Balak Sah. We are of the opinion that these additions were purposely made in order to making the evidence of witnesses trustworthy and acceptable. This also creates a doubt that the appellant had at all been seen by any of the witnesses at the time or thereafter, ejecting from the house and this remains in doubt that he could be present there at the place of occurrence.

18. The solitary circumstance of being last seen with the wife has been one of the circumstances used by the learned trial Judge for convicting the appellant. We may point out that it is not unusual that the spouses are seen together at any place and especially at the place where they reside. Moreover, we have already noted that the evidence of witnesses suffers from such infirmities as we have just pointed out that it appears very unsafe for us to place reliance upon their evidence. The evidence of witnesses may be consistent, but we find that the appellant



had fallen from the grace and he was not held in esteem by his family members. The evidence is consistent that the appellant had chosen to marry a lady of his choice and that has created some sort of discomfiture in the hearts of his family members. What we find from the evidence of P.W.3 as also that of P.W.1 Sushila Devi is that the appellant had married out of his own free-will. In fact, the marriage was so annoying to the family members, as appears from P.W.3 at page-3 of the paper book, that not even a welcome ceremony like Dwarpuja had been performed by his family members. In fact, the appellant had married the lady out of some compulsions as appears from the evidence of P.W.3 who stated that no one was interested in getting the appellant married and whenever someone came with a proposal, he abandoned the proposal and left the place. The appellant, as such, was a loner in the family who did not command any respect from any of the family members. It was a marriage which was against the will of the family members. Besides, the appellant had sold out all his properties and had caused yet another reason for annoyance and discomfiture in the minds of his family members. It

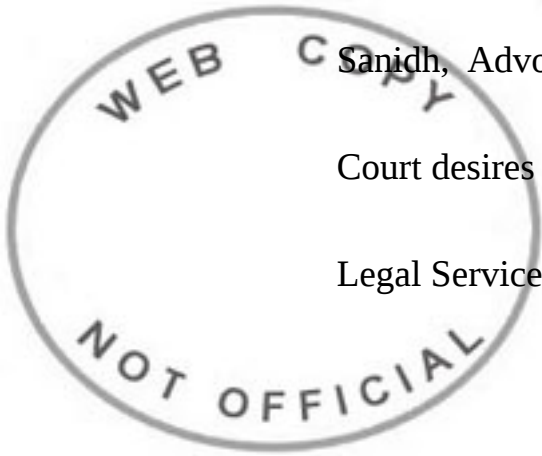


appears to us from the evidence as if it were a case of suspicion that the appellant had killed his wife. We find it rather doubtful that the appellant was ever present in the house on the day of occurrence and some one for any particular reason had killed the deceased. There was a specific suggestion given to the witnesses that it was P.W.11 Shambhu Sah who had either killed the deceased or had engineered her killing. We do not say that it may be the truth, but there may be a probability that on account of the annoyance that the appellant had earned for himself and the lady that the murder committed by some one.

19. In the result, what we find is that the evidence of witnesses suffers from many absurdities creating a serious doubt in the prosecution story, the benefit of which must accrue to the appellant.

20. In the result, the appeal succeeds. The appellant Dinesh Sah is acquitted of the charges he had been found guilty of. He is in custody. He shall be set free immediately if not wanted in any other case.

21. Shri Om Prakash Pandey and Shri Neeraj Kumar @



Sanidh, Advocates have assisted the Court as Amicus Curiae and the Court desires that they be paid one fee of hearing by the Patna High Court Legal Services Committee.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

B.Kr./Kundan
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