

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1072 of 2009

Arising out of the judgment of conviction dated 15.10.2009 and the order of sentence dated 16.10.2009 passed by the learned Additional Sessions Judge, Fast Track Court No. II, Nawada in Sessions Trial No. 26 of 2008/177 of 2009 arising out of Nawadah P.S. Case No. 350 of 2007, G.R. No. 1577 of 2007

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Anandi Yadav, S/O Chhotan Yadav, R/O Vill. - Jharayan Tola Haihar Bigha, P.S. - Nawada, Distt. - Nawada

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

For the Respondent : Susri Shashi Bala Verma, A.P.P.

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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: 31-08-2015

The appeal was called out and none appeared to prosecute it. We have heard Sushri Shashi Bala Verma, the learned Additional Public Prosecutor and we have ourselves perused the record. We may refer to the provision of Section 386 Cr.P.C. which creates a right of hearing in favour either of the appellant or his counsel only when he appears. No counsel having appeared before us, we have proceeded to pass the present judgment after having studied the material evidence ourselves.

2. The informant, Sanjay Yadav (P.W. 2), was not an

eye witness to the occurrence. He stated that his mother had gone to sell cow dung cakes in Kadirganj market and was to come from there after purchasing biscuits for his younger brother Babloo Yadav (P.W.3) who was lying ill in the house. He stated that when she had reached south of the village at about 7.30 P.M., this appellant had strangled her to death in a *Arahar* field by dragging her into that field. The deceased Sitabiya Devi raised cries and persons who were passing-by also raised *Hulla* upon which, this appellant is said to have tightened up to the noose around the neck of the deceased to kill her. It was stated by the informant that the present appellant was of bad antecedent and could not have hesitated in abusing any one.

3. It appears that the police had come to the place where the dead body was lying and had recorded the statement of P.W.2 Sanjay Yadav and thereafter held inquest upon it to prepare the inquest report Ext-7. The *fardbeyan* of the informant was marked Ext-2 while the FIR, drawn up on that basis, was marked Ext-5. The dead body was sent for autopsy and as may appear from the evidence of P.W.1 Dr. Ramchandra Prasad, there were bruises on account of tooth bite on the

left palm as also on the outer aspect of the left arm measuring 1" x 1/3" each on the dead body. Scattered abrasion and bruises were also present on it over the upper part of neck spreading over on both of its sides and its front which measured 8"x 4". On dissection, P.W.1 found that the muscles on both sides of the upper part of the neck were deeply congested with further congestion of trachea. Both the lungs were also congested and the injury had been caused by putting a ligature of *Gamachha* around the neck so as to causing the death of the deceased. P.W.1 stated that the death could have occurred within 36 hours of the holding of the postmortem examination.

4. As appears from the evidence of the investigating officer, P.W.10 Pramod Kant, he inspected the place of occurrence which was the *Arahar* field and found the *Arahar* plants broken and trampled. There was a path way running on the southern ridge of that field and it further appeared that the deceased had been dragged into the field as the dragging mark was seen there. The investigating officer P.W.10 recorded the statements of witnesses and after completing the investigation sent the present appellant up for trial.

5. The defence of the appellant was that he had falsely

been implicated on account of some dispute with P.W.2 Sanjay Yadav, the informant of the case.

6. As we have already noted, P.W.2 was not an eye

witness to the occurrence and he claimed that he learnt about the murder of his mother when she had not returned to her house and when

he had set out on a search of his mother who had gone to bring biscuits

and medicines for his younger brother and during that course, he heard

the cries of his mother emanating from a *Arahar* field and when he

arrived there, he found this appellant Anandi Yadav strangulating his

mother with the help of a *Gamachha* and that her mother died there.

P.W.2 stated that this appellant fled from there leaving behind his pair

of *Chhapals* and *Gamachha*. P.W.3 Babloo Yadav as per the evidence

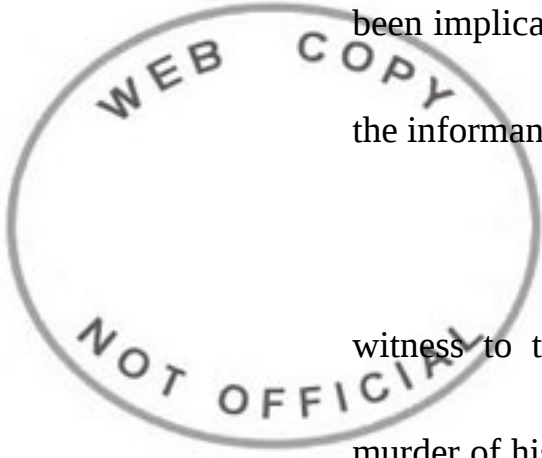
of his brother P.W.2 was lying in his house but he stated that when

P.W.4 Bhonu Yadav came into his village and stated that he had seen

this appellant strangulating the mother of P.Ws.2 and 3 to death with

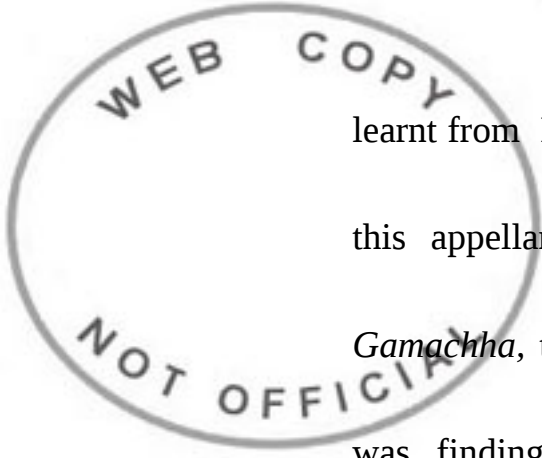
the help of *Gamachha*, whereafter he along with his brother Sanjay

Yadav (P.W.2) went to the *Arahar* field and found that this appellant

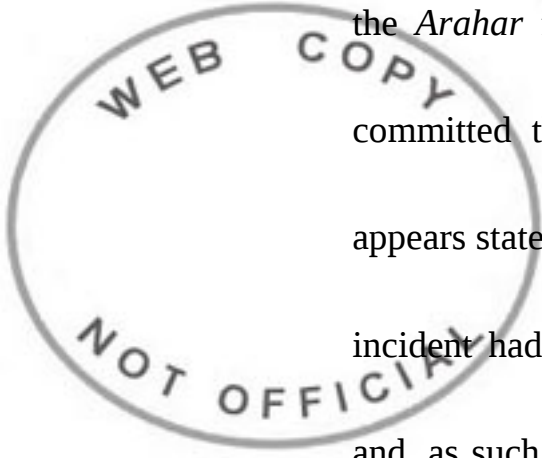


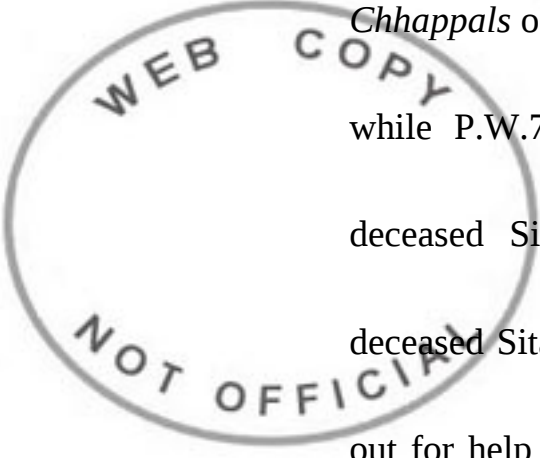
was still there strangulating the lady.

If this is the evidence of P.W.2 that in spite of having learnt from Bhonu Yadav (P.W.4) about the murder of their mother by this appellant by strangulating her to death with the help of a *Gamachha*, then there does not appear any reason as to how he still was finding this appellant present there and amidst the act of strangulating the lady. It may be pertinent to point out the time-distance which was pointed out by P.W.3 from his house to the field where his mother was strangled to death was about ten minutes. Thus, what appears to us is that if Bhonu Yadav (P.W.4) had come from that field, it would have consumed ten minutes and when P.Ws.2 and 3 had gone to the field, it could have taken them ten minutes again to reach the field and it does not appear acceptable that for twenty long minutes, this appellant could be waiting for the witnesses to arrive so as to completing his act of asphyxiating the lady to death. Moreover, the evidence of P.W.4 Bhonu Yadav does not leave any manner of doubt that the lady had not been done to death in his presence when he was coming from Kadirganj market and had found the lady also coming



from there. When he heard the moaning voice of the lady coming from the *Arahar* field, he saw the appellant killing her and after he had committed the murder, he had run away in the north direction as appears stated by P.W.4 in paragraph-5 of his evidence. Thus, whatever incident had taken place it, had occurred only in presence of P.W.4 and, as such, the claim of P.Ws.2 and 3 that when they had arrived at the scene of occurrence, the appellant was still present and was amidst strangulating their mother does not appear acceptable. He does not say that he was a little behind the deceased and the deceased had been dragged into the *Arahar* field in his presence but he does not state that fact and stated that he had heard the moaning sound of the deceased and had been attracted to the field and he reached there accompanied by other witnesses. The other witnesses do not say that they had seen Bhonu Yadav present at the scene of occurrence as appears from the evidence of P.Ws. 2, 3 and 5. Thus, the evidence of other witnesses rules out the possibility of the presence of P.W.4 at the scene of occurrence. P.W.5 Shiya Sharan Yadav is definitely not the eye witness to the occurrence as after his arrival there at the *Arahar* field, he had

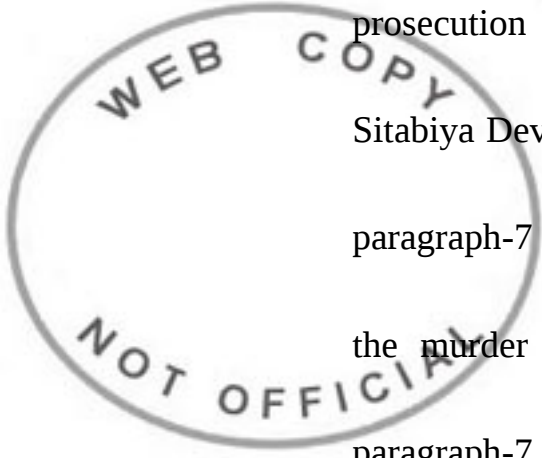




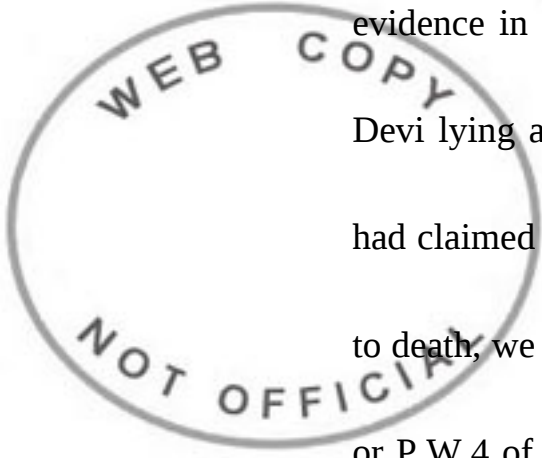
found the dead body lying along with the *Gamachha* and a pair of *Chhappals* of this appellant. P.W.6 Kedar Mahto was a hearsay witness while P.W.7 Awadhesh Prasad has stated that Bhonu Yadav and deceased Sitabiya Devi were coming from the market and that deceased Sitabiya Devi was dragged into *Arahar* field when she cried out for help when Bhonu Yadav stated that it was this appellant who had dragged deceased Sitabiya Devi into the field. However, P.W.7 stated that he did not see anyone committing the murder of deceased Sitabiya Devi nor he had found anyone running away from the scene of occurrence and when he reached there, he found that a pair of *Chhappals* and *Gamachha* was lying there which belonged to appellant Anandi Yadav. The cross-examination evidence of P.W.7 in paragraph-5 also makes it doubtful as regards his claim that Bhonu Yadav (P.W.4) was coming with the deceased Sitabiya Devi from Kadirganj market. P.W.8 Rajendra Prasad Yadav was declared hostile while P.W.9 Bachchan Yadav had not supported the prosecution story. P.W.10 Pramod Kant, as we have already noted, had investigated the case.

7. Thus, after scanning the evidence of the witnesses

what we find is that it is very unsafe to place reliance upon the prosecution evidence that it was this appellant who had strangled Sitabiya Devi to death. The very evidence of Bhonu Yadav (P.W.4) in paragraph-7 itself indicates that he had never seen anyone committing the murder of the deceased by strangulating her as he stated in paragraph-7 that when he had reached there in the field, he found Sitabiya Devi lying dead and seeing her dead, he himself became unconscious and he found no clothes over the dead body of Sitabiya Devi. However, when we had a glimpse of the inquest report, we found that a pink colour printed *saree* along with a yellow blouse were there on the dead body and, as such, the evidence of P.W.4 does not appear reliable. Moreover, this is the prosecution case that it was P.W.4 who had gone into the village to inform persons and the informant and his brother had also come to the place of occurrence. P.W.3, the brother of the informant had testified to that fact that it was P.W.4 Bhonu Yadav who had come and informed him and other villagers about the murder of his mother whereafter they had gone to the place of occurrence to find that this appellant was still in the process of strangulating the



deceased. If Bhonu Yadav was the real eye witness, then as per his evidence in paragraph-7, he had only seen the dead body of Sitabiya Devi lying and had himself become unconscious. Thus, even after he had claimed that he had seen this appellant strangulating Sitabiya Devi to death, we are very reluctant to accept his claim of the two witnesses or P.W.4 of being eye witnesses to the occurrence. The probability of the witnesses having not seen the occurrence been committed makes it unsafe to place reliance upon the evidence. If there is a serious doubt about the competence of P.W.4 being an eye witness, then we can safely hold that no other person could claim to be an eye witness because it is the undisputed prosecution story that only after P.W.4 Bhonu Yadav had informed the informant and others that they had come to the place of occurrence. We have already noted that the time Bhonu Yadav reached near the field, the deceased was already dead. Hence any one who had arrived there subsequent to P.W.4 and, as such, the claim of those witness that they had seen this appellant strangulating their mother is a palpably false story. Thus, what we find is that the prosecution evidence was not only suspect but was deeply



tinged in falsity making it utterly unsafe to place reliance upon their evidence.

8. We do not know what was the reason for the witnesses to come into the witness box for deposing in Court as they did, but we are sure on the basis of the probability which appears arising from their evidence that they had deposed falsely to support a non-existent charge.

9. As a result of the discussion of the evidence, we find the present appeal meritorious and we allow the same by setting aside the judgment of conviction and order of sentence passed upon the appellant Anandi Yadav. The appellant is in custody. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Brajesh Kr./-

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