

HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of judgment of conviction and order of sentence dated 4-12-2010 passed by the Additional Sessions Judge (Fast Track Court), Pratappur, District Surguja (now Surajpur), in ST No.106/2010)

CRA No. 389 of 2014

1. Leelavati W/o Kalpanath Singh Aged About 23 Years, Occupation Housewife, R/o Village Khadgawankala, P.S. Pratappur, Civil and Revenue District Surguja (now Dist. Surajpur), Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through the Station House Officer, P.S. Pratappur, District Surguja (now Dist. Surajpur), Chhattisgarh

---- Respondent

For Appellant

Shri Harishankar Patel, Advocate

For Respondent/State

Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment on Board****By****Prashant Kumar Mishra, J.****05/07/2018**

1. Appellant Leelavati has been convicted for committing murder of her 1½ year old son namely; Sudhir Singh and has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo RI for two months.
2. According to the prosecution, Kalawati (PW-6) and the appellant Leelavati both were residents of village Sukhdevpur. Appellant's husband Kalpnath (PW-2) is the resident of village Khadgawankala (Gunderdand), Police Station Pratappur.

Initially, Kalpnath's (PW-2) marriage was fixed with Kalawati (PW-6), but since the appellant and Kalpnath (PW-2) were working together as labourer in some construction work they developed intimacy and eventually got married. Material available in the record indicates that despite his marriage with the appellant, Kalpnath (PW-2) continued to have some kind of relation with Kalawati (PW-6), which was not liked by the appellant and she used to raise quarrel with Kalawati (PW-6).

3. About 14-15 days prior to the date of incident appellant Leelavati left her in-laws' house at village Khadgawankala with her son Sudhir Singh and was staying in her parental house at village Sukhdevpur. The incident is said to have happened between 11-1-2010 to 13-1-2010. A day or two prior to 11-1-2010 appellant raised quarrel with Kalawati (PW-6) on the allegation that she is having affair with her husband Kalpnath (PW-2). Kalawati (PW-6), who is employed as Aanganbadi Worker, went to the house of Kalpnath (PW-2) along with 3-4 villagers of Sukhdevpur and informed Kalpnath (PW-2) about the appellant's conduct. On this Kalpnath (PW-2), Sukhsagar (PW-13) & Purushottam (not examined) went to the residence of the appellant at village Sukhdevpur and stated before Girdhari Singh (PW-8) that Leelavati has sent Kalawati (PW-6) to his house to stay as his wife, therefore, from now onwards he will be living with Kalawati (PW-6) and shall have no relation with the appellant Leelavati or his son Sudhir Singh. He also stated that when Sudhir Singh will grow he will search his

father meaning thereby that he is not going to meet his son Sudhir Singh any further.

4. According to Girdhari Singh (PW-8) & Kailash (PW-9) (brother of the appellant), immediately after Kalpnath (PW-2) left their house, appellant and her son Sudhir Singh were not found in the house. In the above factual evidentiary background, the dead body of deceased Sudhir Singh was found in an abandoned condition in front of the house of Kalpnath (PW-6) in the early morning of 13-1-2010. The family members tried to search the appellant, however, she was not available. After two days Sukhsagar (PW-13) (nephew of the appellant) found the appellant hiding in a dilapidated abandoned house near their house at village Khadgawankala. This witness immediately informed his family members and other villagers who assembled; caught hold of the appellant; and informed the police. Before she was handed over to the police, the villagers interrogated her on which she said to have made extra judicial confession in presence of witnesses namely; Jokhan Ram (PW-3), Kailash (PW-9) (brother of the appellant) and Sukhsagar (PW-13). Out of these three witnesses of extra judicial confession, Sukhsagar (PW-13) has made different statements at four different places during his entire examination, therefore, his statement is not trustworthy. However, Kailash (PW-9) (brother of the appellant), would admit during cross-examination by the prosecution that he had made statement to the police that the appellant had made extra judicial confession about committing murder of the deceased.

Similar is the statement of Jokhan Ram (PW-3). There is nothing further in the statement of these two witnesses, which would discredit them or dilute their statement.

5. Accordingly, we have found that the statements of both these witnesses are worthy of reliance. The manner of committing murder as has been narrated by the appellant in presence of these two witnesses matches with the finding in the postmortem report (Ex.P/6) proved by Dr. Binod Kumar Painkra (PW-10), who has submitted the report that the cause of death is asphyxia due to smothering and the death is homicidal. Accordingly, we conclude that the appellant has rightly been held guilty of committing murder of the deceased.
6. At this juncture, Shri Harishankar Patel, learned counsel appearing for the appellant, would submit that even if the appellant is found to have committed murder of the deceased, the act committed by her would not amount to culpable homicide amounting to murder, but it will amount to culpable homicide not amounting to murder and since the appellant is in jail since 16-1-2010 i.e. for almost 8½ years she may be released by imposing the sentence for the period already undergone.
7. Shri Bhaskar Payashi, learned Panel Lawyer, appearing for the State, *per contra*, would oppose the prayer on submission that the appellant having committed murder of her innocent son aged about 1½ years without there being any motive, her act is

brutal, therefore, it is not a case of culpable homicide not amounting to murder.

8. There can be no dispute about the fact that the child aged about 1½ year is innocent and is not able to defend him, however, at the same time, we cannot loose sight of the background events which led to the occurrence of the crime. Kalpanth (PW-2) was married with the appellant, but yet he appears to be continuing relation with Kalawati (PW-6). The appellant was, therefore, disturbed and was confronting her husband as well as Kalawati (PW-6) about their relation. When Kalpnath (PW-2) reached her parental house at village Sukhdevpur and declared that he will no longer have any relation with the appellant or his son Sudhir Singh, the appellant appears to be in a state of utter disgust and frustration. She was obviously in a strange mental condition which can be felt only by a person who is compelled to face the situation. She appears to have committed the act in a state of grave and sudden outrage and she did not appear to have intended to commit murder. The dead body was not having any grievous injuries. The death has occurred due to asphyxia and the Doctor was also not sure whether asphyxia was due to smothering because in the postmortem report the Doctor has used the word 'smothering, may be'. Thus, the appellant has not acted cruelly or brutally while causing death of the deceased. Her act clearly falls within Exception IV to Section 300 of the IPC and thus she is held guilt for committing culpable homicide not amounting to murder. Since she has

already remained in jail for more than 8½ years as she has never been released on bail after her arrest on 16-1-2010, we are of the opinion that jail sentence of more than 8½ years suffered by her till date is adequate, therefore, the appellant is sentenced to the period already undergone.

9. In the result, the appeal is allowed in part. The conviction & sentence imposed on the appellant under Section 302 of the IPC is set aside. Instead thereof, she is convicted under Section 304 Part I of the IPC. It is stated that appellant has undergone more than 8½ years of jail sentence. The appellant is sentenced to the period already undergone by her. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

Gowri